

Can. Rep.

SOUTH RENFREW ELECTION PETITION.

[Elec. Case.]

ment, and being so, although as a fact William Tierney was not an elector, yet the paper being duly sworn to according to the statute, the Returning Officer was bound to accept it, and to act upon it as a genuine truthful document. It is said that he and the election clerk raised and took an objection which was not apparent on the face of the document, and that they discovered it by an examination of the voters' lists, and that such a proceeding was in effect a judicial investigation and inquisition held without authority, and determined contrary to law. For the respondent, it is said that the Returning Officer is not wholly and only a ministerial officer, that he is necessarily, and in fact has certain judicial functions to perform; that he is by section 11 of the Act to decide on the number of polling places to be appointed; that he has to grant a poll by section 24 if more candidates than can be returned are nominated in the manner required by the Act; and he is by section 23 to report any nomination proposed or rejected for non-compliance with the requirements of the Act; and that in all cases when the objection to the candidate or voter or to the nomination paper is patent or notorious, he may act judicially; and that he cannot receive a nomination paper with only twenty-four names to it for that would be the same as if he received it with less than the number of twenty-five electors in fact upon it.

I am of opinion the Returning Officer is both a ministerial and a judicial officer. He has not now, as formerly, to hold an inquisition into the capacity or qualification of a candidate or voter; but I feel assured if a person appeared and was nominated, and the candidate were a woman or a mere child, that the Returning Officer could decline to receive such a nomination, and in like manner he could decline to receive the nomination of a Chief Justice or the Speaker of the Senate. I think, also, he might refuse a nomination paper signed by less than twenty-five electors, because the Act requires that a nomination shall be by twenty-five. I am disposed to think, too, that he could reject a paper signed by twenty-five if it were declared by the candidate that the paper was a sham; that the names were those of persons who were not electors at all, and never had been; or that half the names were forgeries; and if there were good reasons for the Returning Officer to believe that statement, and he did believe it.

It is not every paper in the form of a nomination paper, however formally it may be prepared, that is to govern a Returning Officer, for that would be to make a farce of the whole

proceeding, and to put parties to an unnecessary and vexatious expense, when it was known before hand that it would be all to no purpose.

I feel a great difficulty in dealing with this case. The nomination paper was formally, on its face, correct. It was prepared and intended to be a correct document. It was honestly believed to be correct, and it was used fairly and truly for the purpose of an election, and it was a surprise to Mr. Bannerman and to Mr. Muir, the attestant, to discover that William Tierney, one of the twenty-five, was not entered on the voters' list. I have no doubt the Returning Officer acted honestly and with perfect propriety in all respects according to the best of his judgment, and he acted on the legal advice which he sought for and followed in rejecting the paper. He had the means, to some extent, by him to verify the correctness of the persons' names in the paper being electors or not—assuming that *electors* mean those persons who were electors on the lists to be used at that election. I think, however, with much hesitation, that the defect in this case, which I have no doubt exists, was one to which the Returning Officer should not have yielded, and it certainly was not accepted or yielded to by Mr. Bannerman, but was resisted by him, and the fact that the affidavit was wrong at all was denied by Mr. Muir. By reason of this one defect—one rather of form than of substance, for Tierney was in fact a real property holder who should have been on the list, and a defect not appearing on the paper, but found by an examination of it with the voters' lists—the electors have been prevented from voting for and electing their own representative, when, in truth, if the election had gone on, this defect could not in any manner whatever, according to the 80th section, have affected the result of the election.

The policy certainly is to have no scrutiny, or as little as possible, in such cases, and to give the people a full voice in choosing their own representatives. That has not been done here, and I must hold the election, according to the best opinion I can form, to be void, and that John Lorn McDougall, who was returned as the member elect, was not duly elected. I acquit the Returning Officer in every respect from all blame, and I am of opinion he acted honestly and fairly to all parties; and if he erred, which, with some doubt, I think he did, he did so where many might equally have erred. He was anxious to have no difficulty raised, and his judgment was fortified by competent legal advice. I must leave each party to bear his own costs.

*Election set aside.*