didates is a matter of doubt. The Master of the Rolls reserves the question whether the mayor at the nomination may reject a candidate as ineligible, and whether the returning officer at a Parliamentary election may reject as ineligible the candidate with most votes. These, however, are crucial points in the action of the respective officers, and it were better first to decide their duties in regard to them, and afterwards to decide their duties on minor occasions. It can hardly have been intended that the duties of a returning officer should be at one point to declare a candidate elected, and at another point to return some one else. So far as municipal elections are concerned, the duties of the mayor at a nomination appear, by Rule 9 of Part 2 of Schedule 3, to be confined to objections to nomination papers. How far this strict interpretation of the Ballot Act will affect Parliamentary elections remains to be decided. At present all that is definitely laid down is that the returning officer of a ward at a municipal election is a ministerial officer, but indirectly the decision appears to go far towards making the duties of all returning officers purely ministerial.—*Law Journal.*

EMPLOYERS' LIABILITY FOR DEFECTIVE PLANT.

In *Thomas* v. *Quartermaine*, 56 Law J. Rep. Q. B. 340, reported in the June number of the *Law Journal Reports*, the Court of Appeal differed in opinion as to the meaning to be put on the obscure expression of the Legislature at the end of section 1 of the Employers' Liability Act, 1880,* as applied to the first of the subjects on which the law of master and servant is altered. "Where," says the section, "personal injury is caused to a workman by reason (among other things) of any defect in the condition of the ways, works, machinery, or plant connected with, or used in the business of, the employer, the workman shall have the same right of compensation and remedies against the employer, as if the workman had not been a workman of, nor in the service of, the employer." The enacting part of this provision, so far as regards the other three cases mentioned in the section, all of which involve the old doctrine of common employment, can have an intelligible meaning given to it. The words "as if the workman had not been a workman," however inept, may be read to destroy the doctrine of common employment. What is their meaning when applied to the case of defective machinery? Lord Esher differs on this point from Lord Justice Bowen and Lord Justice Fry. Lord Esher's view is that the words "as if he were not a workman" mean in this application that "the employer shall pay." The workman has only to establish a defect in the plant of his employer, and damage arising out of that defect to himself, and he can call on his employer to compensate him. On the other hand, Lord Justice Bowen and Lord Justice Fry consider the effect of the words to be, to convert the workman's relation into the same relation to the employer as if he were a stranger invited on to the premises by the employer. There are grave difficulties in the way of both those views. If Lord Esher be right, why did not the statute impose the liability for defective plant directly on the employer instead of using words which evidently refer to the responsibility of the master only in regard to the acts of fellow-servants? On the other hand, the interpretation of Lords Justices Bowen and Fry seems inconsistent with itself, especially as put by Lord Justice Bowen—that is, on the doctrine, that the workman incurred the risk with his eyes open. The learned judges assume that the workman is a stranger, but they impute to him the knowledge he possesses as a workman. There is a third construction of the section which makes the whole tolerably intelligible. It is this, that the "defect" referred to, which is to throw the liability on the employer as if the workman were not his workman, means a defect brought about by the negligence of a fellow-workman. The only difficulty in the way of this interpretation, apparent on the statute itself, is that section 2, subsection 1, provides that "the defect under sub-section 1 of the previous section shall arise from, or not be discovered or remedied owing to, the negligence of the employer" or his superintendent; but the object of this clause seems rather meant to include within the jurisdiction of the

* See 49 Vict. c. 28, s. 3 (O.).