

latter words I think must clearly mean, then actually being in the Clerk's custody.

The respondent argues that there is no provision for inspecting the records in the Clerk's office, and the petitioners have no legal right to search there. Be that as it may, I do not think it can affect the decision. If the returning officer making and duly mailing the return commences the twenty-one days, then if by a post-office blunder the papers went astray and did not reach the Chancery till the lapse of twenty-two days, the time would have expired, and the return had never been actually made to the Clerk in Chancery in the sense of giving that officer custody of the record. If we were speaking of a writ of execution, and either by statute or rule of court a party to a suit had the right to take some further proceeding within twenty-one days after the return of such writ made by the sheriff to the court from which the writ issued, my strong impression is that the twenty-one days would certainly count from the actual receipt of the returned writ into the court, and not from some day when a sheriff in Ottawa or Sandwich wrote his return and put it into the post office properly addressed to the clerk of the court, even though, as here, he was by law directed to make and mail such return to the court. If the writ or return here had been lost or destroyed in transmission, and never reached its address, there would of course be a remedy, and another return must be made, as best could be done, and the twenty-one days would count from the actual receipt in Chancery of the substituted return. The provision in section 56 for the simultaneous return of the original poll-book, &c., to the Clerk in Chancery, affords another reason, I think, to show that the time should count from the actual depositing of all these records in the proper department, where any objection apparent on their face could be properly examined.

I notice in the Controverted Elections Act of Canada. Con. Stat. Can cap 7, sec. 3, a provision that "if the day on which the return upon such election is brought into the office of the Clerk of the Crown in Chancery is a day on which Parliament is not in session, or is one of the last fourteen days of any session, then the petition shall be presented within the first fourteen days of the session of Parliament commencing and held next after the day on which such return has been so brought into the office of the Clerk in Chancery." &c. The preceding statute had provided for the returning officer making an indenture with the electors as to the return, and section 70 provided for his transmitting the original poll-books with the writ of election and his return to the Clerk of the Crown in Chancery. I cite this as merely illustrative of the meaning Parliament has placed upon somewhat ambiguous words. My opinion on this point is against the respondent.

It is next objected that the petitioners have no right to exclude Good Friday and Easter Monday from the twenty-one days. Section 52 of our late act says, "In reckoning time for the purpose of this act, Sunday and any day set apart by any act of the Legislature of Ontario for a public holiday, fast or thanksgiving, shall be excluded." The respondent contends that the Legislature has never in fact set apart any day for a

public holiday. This is true in terms; there has been no specific setting apart of any such day. But the petitioners rely on the Ontario Interpretation Act, 31 Vic. cap. 1. Section 7 says, "Subject to the limitations in the 6th section (which provides that 'unless it be otherwise provided, or there be something in the context or other provisions thereof indicating a different meaning or calling for a different construction,' &c.), in every act of the Legislature of Ontario to which this section applies, * * * (13thly,) the word 'holiday' shall include Sunday, New Year's Day, Good Friday, Easter Monday and Christmas Day, the days appointed for the birthdays of her Majesty and her Royal successors, and any day appointed by proclamation for a general fast or thanksgiving." Now, as it appears to me, the weight of respondent's objection is that our late act says "any day set apart by any act of the Legislature, &c., for a public holiday;" and that, as a matter of strict construction, the Legislature never has in terms set any day apart. Had the words been "Sunday and any public holiday, fast or thanksgiving," I do not think there could be any serious question but that the Interpretation Act would require us to read it so that the word "holiday" should include Good Friday, Easter Monday, &c. If respondent's contention be right, there can be no holiday in Ontario on this Election Act, unless and until an Act be passed expressly setting certain named days apart. We must of course read the two clauses together. It would then read in popular language thus, "Whenever we, the Legislature use the word 'holiday,' we declare that by that we mean Good Friday, Easter Monday, &c., and any further days appointed by proclamation, &c. Then we tell you in the Election Act, in reckoning time, not to include any day which we, the Legislature, set apart as a public holiday, fast or thanksgiving. We have already declared that by holiday it means these days in question."

It is to be noted that the "fast or thanksgiving" is not fixed or to be fixed by Act of the Legislature, it is by proclamation. So that by respondent's argument a proclaimed fast or thanksgiving could not be excluded from the reckoning, as it was not so set apart by any Act of the Legislature. But I consider the "setting apart by Act of the Legislature" has in this cause been already defined in the case of a fast or thanksgiving, where it shall be proclaimed as such. I think in the same manner the words "public holiday set apart by Act of the Legislature" is answered. The joint effect of the two clauses read together is that when the word "holiday" is used, it includes these two days as being set apart by Act of the Legislature.

I observe in the Election Act of 1868-9 the word "holiday" does not occur, but section 30 declares that the day of polling shall not be a Sunday, New Year's Day, Good Friday, Christmas Day, First of July or Birthday of the Sovereign. In the Interpretation Act of Canada, 22 Vic. ch. 5 sec. 12 defines what the words "holiday" shall include—Sunday, New Year's Day, Epiphany, Annunciation, Good Friday, &c., omitting Easter Monday and any day appointed by proclamation, &c. In the Dominion Interpretation Act, 31 Vic. ch. 1 sec. 15, it says the word "holiday" shall include Sunday, Good