

should not have taken place until this appeal had been decided. That is the point at issue.

Mr. MONCRIEFF. The appealed votes have not been decided yet.

Mr. LAURIER. Exactly. Do you pretend they should be counted?

Mr. MONCRIEFF. Of course I do. I understand your position exactly. You say they should not have been counted, and I am taking the ground that they should have been counted. If you will refer to a section further on you will find provision made for the case of an election taking place when there are pending appeals. That is your case. The law says, then, that the time for having a recount shall be extended until some six days after the final decision is given.

Mr. MULOCK. Do you think the returning officer should?

Some hon. MEMBERS. Order.

Mr. MONCRIEFF. I was merely following out the line of argument I was pursuing when I was reminded that I was varying from the question that was at issue between the two sides of the House. Referring, then, to section 60, it says:

"It shall be the duty of the returning officer to add together the number of votes given to each candidate, from the statements contained in the several ballot boxes returned by the deputy returning officers of the ballot papers counted by them; and the candidate who, on the summing up of the votes, is found to have the majority of votes, shall then be declared elected."

Now, I am not going into the question of who is elected in this case: I am merely referring to that section to show conclusively that it would be the duty of the deputy returning officers not to exclude, in their calculation of the votes given, any votes that are subject to appeal. As the hon. member for Bothwell (Mr. Mills) says that he will bring the subject before the House again to-morrow, I shall be pleased then to consider what he has to say. In the meantime, I think, the position he has taken in reference to those names which are upon the voters' lists and marked subject to appeal, is a construction of the statute that I, at any rate in my humble judgment, cannot agree to.

Mr. MULOCK. As this question is to come up to-morrow I shall follow the example of my hon. friend who has just spoken, and not go very fully into it. The revising officer declared that, in his judgment, 229 names, which were subsequently put upon the list, were not the names of *bonâ fide* voters. He made his return to the Clerk of the Crown in Chancery. He did more than the Minister of Justice says he did: he not only gave the names of the qualified voters, but he appended at the foot of that list a certificate enumerating the number in each polling sub-division, and his judgment of the qualified voters on that enumeration entirely excluded the 229 names that are now the subject of appeal. As has been stated, he also added a foot note to each list wherein he stated that certain names which he had struck out, namely, the 229 which he had disallowed, were, in his judgment, not valid, but he stated that they were the subject of an appeal. That list he forwarded to the Clerk of the Crown in Chancery, under the Franchise Act. When he did that is duties as revising officer were, in my judgment, entirely completed. His power was spent, he had adjudicated, and he had exhausted his powers. Judgment

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had been rendered by him, and that judgment became of record when it was gazetted by the Clerk of the Crown in Chancery. The Clerk of the Crown in Chancery, in pursuance of his duties, gazetted that return, publishing in the *Gazette* the notice required by section 21 and sub-section 4 of the Franchise Act, which says:

"The Clerk of the Crown in Chancery, on receipt of the said lists for any electoral districts, shall, in the next issue of the Canada *Gazette*, insert a notice in the Form 'F' in the schedule to this Act,—on and after the publication of which notice the persons whose names are entered on the said list as voters shall, subject to any correction or amendment, made by any judgment on appeal, as hereinafter provided for, be held to be duly registered voters in and for such electoral district."

Schedule "B," referred to in the Act, sets forth a form of the return by the revising officer to the Clerk of the Crown in Chancery, and this form contains no provision whatever for the revising officer setting forth the names that are the subject of appeal, or setting forth any information except such as indicates who are the voters. Schedule "B" sets forth, in the first column, the names in full of the electors. Then, opposite their name there is a number, and the total number shows the total number of electors, according to his finding. The return has to be in that form, and I submit that whatever the revising officer placed in that form other than what the law requires, is simply a nullity. Now, Mr. Speaker, what has followed? Admitting that the advice and opinion of the Deputy Minister of Justice is correct, the Minister of Justice himself has scarcely taken the responsibility of endorsing it.

Sir JOHN THOMPSON. What I said was that I did not wish to be supposed as disclaiming responsibility.

Mr. MULOCK. At all events, that has taken place. The revising officer, in the first place, pronounced against these names. An election has been held. A portion of these 229 names against whom there has been an adverse decision, have succeeded in getting their votes into the ballot box—or their ballots rather, for we cannot call them votes yet. Now, it is contended that these votes, which have up to this moment been declared bad, against which there is an adverse judgment, must, nevertheless, be counted, and the result of which we all know, and it means the seating of a candidate who, but for these votes, would not be seated.

An hon. MEMBER. Yes.

Mr. MULOCK. Well, I may say, nevertheless, that of the excluded votes, the votes which are the subject of an undecided appeal, 128 were cast for Mr. Carling, and three were cast in favour of Mr. Hyman. That leaves a majority of 125 of these votes in favour of Mr. Carling. Now, his majority, as found by giving him credit for these 125 votes, which have been decided not to be votes by the revising barrister, is only 109. If the 125 votes, which the revising barrister has said were bad votes, were ignored, Mr. Hyman would have a majority of 16 votes. That is the state of the facts.

Sir JOHN THOMPSON. They will be ignored so soon as the appellate authority decides that they shall be ignored.

Mr. MULOCK. The point is whether we are going to aid in any way in the seating of a candidate who has not received a majority of votes. Are we