

the fifth section of chapter 9 of the Acts of 1886, because, in reference to the petition which could be presented by the person aggrieved or by the person considering that he was entitled to be returned, that petition must complain of an undue return or undue election of a member, and, as the House will see at once, if this resolution passed, we would be depriving Mr. Baird, the present member of this House, of the right to petition against the return of Mr. King. I venture to say that this resolution, in those two points, will require very careful and mature consideration before those gentlemen who, on the merits of the case, are disposed to decide in favor of Mr. King and against Mr. Baird, will support it. I think the House, having listened to the very able and very thorough argument of the Minister of Justice touching the practice of Parliament in the past, and touching the legislation of 1868 in the English House of Commons, and the legislation of 1874 in this House, must have been struck with the reply of the hon. member for Bothwell. He dwelt very considerably on the old cases, which, I think, most members will agree cannot affect the very important question touched upon by the Minister of Justice, since they were all parliamentary cases referred to by the hon. gentleman who moved the resolution this afternoon. I think the whole question hinges upon the clause in the Controverted Elections Act, introduced, I may add, by the Reform party, by the party opposite, in the year 1874, in the Bill they brought down to the House dealing with controverted elections at that time. I think that that clause of the Act is the one to which the hon. member for Bothwell (Mr. Mills) in his argument paid the least attention, and I do not consider that the position taken by the Minister of Justice, upon the interpretation of that clause and its effect, has been considered by him. The Minister of Justice was twitted somewhat by the hon. member for Bothwell with having taken an inconsistent position on this question. I deny that entirely. I say the member for Bothwell could not have listened to the speech delivered to the House this afternoon and come to that conclusion, because, while the Minister of Justice mentioned the very important matters which were to be considered in connection with this important step which the House was asked to take, he pointed out that there was no authority for the course the hon. member for St. John (Mr. Skinner) wishes the House to pursue, while, on the other hand, there were many cases which pointed to the House not having the right to consider the case at all. And under all these circumstances, and as it is a case of great importance, bringing the question here for the first time for our consideration, the Minister of Justice was willing that this matter should be carefully considered and carefully threshed out in the regular way before the Committee on Privileges and Elections. The two positions were not inconsistent. The Privileges and Elections Committee, if they agree with the views of the Minister of Justice, may very properly report to this House that, having investigated these cases, having looked into the legislation, having compared, for instance, the sections of the Ballot Act, on which so much stress is laid, with the sections of our Controverted Election Act, they have come to the conclusion that the matter should not be entertained, nor be dealt with in the House of Commons. Therefore, if that be so, it was not only consistent, but, from many points of view, highly proper, that this course should be taken. I, myself, having looked into this subject, with, I hope, a judicial spirit, have come to the conclusion that perhaps, if the Minister of Justice had taken the course which the hon. member for Bothwell (Mr. Mills) desires, that the position of the hon. member for St. John (Mr. Skinner) should be directly challenged and the matter discussed here—I, myself, should have thought that course a proper one, because I believe that the matter is not properly before this House, and I propose to show that before I sit down. I wish now to

Mr. TUPPER (Pictou).

refer to the allusion made by the hon. member for Bothwell, to the Mitchel case, and his claim that if the contention of the Minister of Justice was sound, that would have been sent to the courts. That case was sent to the courts and dealt with by them, and Mr. Gladstone took no such course, and no such course was taken as is proposed by the hon. member for Bothwell to be followed to-day. Now, the senior member for St. John, in introducing this matter, appealed to us to consider the question calmly and judicially, but I do not think that he showed much of the spirit of the judge in his discussion of that portion of the subject. I have great respect for the opinions of the senior member for St. John as a commercial lawyer; I believe his standing as a brilliant commercial lawyer is acknowledged by both sides of this House, but I do not think much of his judicial opinion in reference to an election petition while he is a member for St. John. I have no doubt that when he reaches the position, to which he will undoubtedly some day be entitled, we will all place the greatest confidence in the opinions which he may give concerning an election; but as member for St. John I think his utterances will have to be watched carefully and weighed well. For instance, before he sat down he adverted to the conduct of the returning officer, who certainly has some rights, who is to conduct his functions in the face of a Statute imposing tremendous pains and penalties upon him for disobedience in any one of his duties; and I think the member for St. John alluded to his conduct in a spirit that was hardly judicial—in fact, I believe that before he sat down he had worked himself up into such a feeling that he would have supported a resolution to draw and quarter the returning officer in this case, when he charged him with “gross dereliction of duty, and hoped the House would not tolerate such conduct on the part of a returning officer when his duty was so clearly pointed out by the Statute.” Another position taken by the member for St. John I challenge. He stated to the House that with the nomination, or what was done at the nomination for Queen’s, we had nothing to do; that was not material; that we had only to skip the sections, virtually, in the Controverted Elections Act regarding what was to be done at the nomination, and to skip all the sections regarding the duties of the returning officer, and to come down to the counting of the votes. I say, that properly to treat this subject, we must, of necessity, begin at the beginning, and ascertain what the duties of the returning officer were at the nomination, and whether, having done anything at the time of the nomination improper and contrary to the imperative language of the Statute, he had power to rectify that mistake before he made his return. Whether my opinions on that point are right or wrong, certainly I think that the hon. member for St. John erred in thinking that to be all the question before us. There was one thing, one sentence that dropped from the hon. member, to which I call particular attention. He stated that “if any of the proceedings were irregular, there is a tribunal provided in the Controverted Elections Act by which the returns can be rectified.” That was the only portion of his speech with which I heartily concur. We have that tribunal. The Minister of Justice has pointed out that this matter is one for that tribunal. I do not understand that the hon. member for Bothwell has challenged that position, and I think that no member of the legal profession in this House will say that this matter could not have been brought before the legal tribunal pointed out by the Controverted Elections Act, and dealt with satisfactorily there. Now, much has been said in reference to the Ballot Act of 1872. That was the Act before the judges in the case to which so much attention has been paid to-day, the case of the Queen and the Mayor of Bangor. It was with the provisions of that Act that the judges of the court were then dealing. The Minister of Justice has directed the attention of the House to the fact that that case, as it stands,