

March 10, 1873

to take, and not after argument in the light of day as in the House. Hon. gentlemen say that the returning officers are supposed to act honestly in all these matters; but the House, forsooth, when only called upon to draw a conclusion as to what was the well settled law of the land, might be biased to give a partisan vote, though five of them in committee would be quite sure not to give a partisan vote. That was the logic of the argument of the gentleman opposite.

He had long been of opinion that the man who would not do honestly without the sanctity of an oath would not be the ones with the oath. He had long been of the opinion that the man whom you are obliged to bind by an oath would not be bound by an oath. The obligations of members of the House were as solemn as if they had received that sanctity of an oath.

He desired to make another observation in order to remove a false impression. The suggestion was thrown out that they were deciding the election. That was not the case. The proposal they made was to put the candidate in the position in which he would have been placed had the returning officer done his duty fully. Having put him in that position, the question as to whether he was duly elected could be determined according to the general law; but to call upon a man who had been returned by a decisive majority, for whom his constituents had shown a marked preference, to send in an election petition, which could not perhaps, be disposed of for two sessions, to provide securities, and be at considerable expense, was to deny him and his constituents justice subject to being petitioned against, and what they desired in this case was that Mr. Cockburn should be returned and that Mr. Boulton should be left to petition against him in the ordinary way.

Having pointed out the result of the worst possible construction against Mr. Cockburn, he might sit down without saying a single word as to what the result ought to be. On the townships of Morrison and Parry Sound, he had already said that it was not material whether there were difficulties or not as to them, but it was necessary that a word or two should be said upon that in order that the House might clearly understand what was the result of such action on the part of the returning officer. An irregularity of the poll book of the most trivial character would be taken as a sufficient reason for the returning officer preventing a member from taking his seat.

Take the case of the returning officer for Middlesex East. In that case, as the return shows, for the polling division in which the hon. gentleman from that riding got his majority the return was sent in by the deputy returning officer, unsworn to by either the poll clerk or deputy returning officer. Now, the statute required that both those officials should append their oaths at the close of the poll, showing the total number of votes. The duty of the returning officer, finding that these oaths were not attached, was to call both the deputy returning officer and the poll clerk before him and enter into an enquiry under oath as prescribed in the statute, and having found that there was this majority of votes by these poll books, to have returned Mr. Glass. He thought the returning officer erred in not making this enquiry, but he did not pretend for a moment to say that he ought to have struck the poll book off; yet if they agreed to

the proposition of the hon. gentlemen opposite, they would render it possible for a returning officer to make a special return, and keep a member, who had been elected, out of the House for some time.

Within a few hours, he had heard of another case in which the poll books were altogether missing, and there was no account yet of all in the return. The hon. gentlemen who was returned happened to be a supporter of the Government, and of course he was returned as duly elected; but the question was whether they were to allow the statute law of our land to be violated, as would be the result of the House hesitating to affirm its jurisdiction, at any rate when the returning officer declared himself unable to obey the exigencies of the writ and to return the person whom the returning officer ought to have declared returned. Look at the difficulty which this officer had raised.

In the township of Morrison the poll book was lost. The statute provided for the appointment of a deputy returning officer for each polling division. The duty of the deputy returning officer was declared to be to take a record of the votes of electors according to law. He was to keep the poll and record the votes. The deputy, however, was required by statute to appoint a poll clerk to assist him in keeping the poll. The duty of the poll clerk was to assist the deputy and obey his orders. Then when any poll clerk refused or neglected or was unable to perform his duty, the deputy may and shall appoint another person to be poll clerk. When a poll book has been lost, the statute provides that the deputy returning officer shall attend upon the returning officer and inform him of the fact, and the returning officer shall examine him and the poll clerk upon oath as to the loss of the poll book and its contents. The examination to be taken down in writing and annexes to the returned number of votes which the returning officer shall find recorded on the poll book for each candidate and shall be included in his summing up as if the same had been taken from the poll book. The returning officer in this case did call the deputy of Morrison before him and examined him according to the statute. He found from him what the number of votes polled in Morrison was, but he could not call the poll clerk, because the deputy had himself recorded every vote in Morrison. That was his difficulty.

In the Beauharnois case the poll deeds were missing altogether, and it was adjudged that the returning officer did wrong in making a special return; but the returning officer in this case went a little further.

In the poll book for Parry Sound, he found the first two entries in a different handwriting from the remaining entries, and he found the cause to be that the poll clerk was found to be incompetent and the deputy called upon one Foley, who acted without oath. The poll book was returned with the oath of the poll clerk but without the oath of Foley. This was a grossly irregular act on the part of the returning officer, and he was entitled to make enquiry in certain cases. The 69th section embraces the whole of the authority, and provided that the returning officer, having reason to believe the poll book has been altered or injured, shall make enquiry as to the circumstance, in the same manner as if the poll book had been lost. He is to examine the deputy returning officer and poll clerk; but in