

March 7, 1873

CONTINUATION OF DEBATE ON PETERBOROUGH WEST ELECTION

Mr. JETTÉ (in French) commented on the singularity of the fact that the returning officer had judged that the proper man to return for Peterborough West received only 705 votes to his opponent's 745. It seemed from this that we were to have minority representation. This appeared on the face of this return, and therefore no investigation was necessary. The position taken by the hon. member for Cardwell (Hon. Mr. Cameron) presupposed a doubt as to the contents of the return, but what had to be decided was on facts already adduced. Bertram's qualification was tendered to the officer, and it was not for that officer to decide upon its validity, but the House. The officer not being a judge of those matters, but an executive servant, his conduct could not be defended.

Mr. Jetté proceeded to point out the law relating to the matter, and contended that the declaration of qualification was in time. It was not for the returning officer to say whether this was the case or not; his duty was to return the candidate having the majority of votes, leaving other matters to be decided by the House.

Mr. CARTER did not think that the question of whether the powers of a returning officer were judicial or ministerial was to be decided by them. The most important point they had to consider was, were they to adopt the resolution before the House, which presupposed questions of fact which could only be decided by the tribunal to which they belonged? The statute to him seemed to be perfectly clear, and as they had a statute of that description, he thought the House had derogated their power in such cases. He did not think it would be advisable to establish a precedent by deviating from the usual mode of procedure. It has been stated they had in that House a number of precedents, but he held that they were not bound by the action of former Parliaments. They had a right to act as they considered wisest. He afterwards reviewed the observations of several previous speakers, and thought the matter should be referred to a Committee.

Hon. Mr. HUNTINGTON replied at length to the observations of the previous speaker. He held that the principles on which investigations of this kind had been made were definite and clear. Motions of this kind were made when upon the fact of the returns there appeared a manifest error, and it had been shown that the House had acted so before in the Three Rivers case, which had been alluded to. The House refused to enter into an examination of it because there were outside considerations which necessitated the examination of witnesses.

He denounced in strong terms the contention that they should follow only the precedents of the English Parliament, and maintained that they should not throw aside the doctrines and principles established in our own Parliament and adopt these which had been established by the English Parliament. It had been asked if cases could be pointed out where the English Parliament had acted in a similar case without a petition having been presented. He

thought it would be difficult for gentlemen opposite to quote an instance in which a returning officer in England had acted as the returning officer of Peterborough West had acted. (*Hear, hear.*) He asserted that the business of the House was not so great as to preclude them from entertaining such a case. He thought the case of his hon. friend (Hon. Mr. Blake) had been clearly made out.

Mr. BLAIN said he was prepared to vote upon the question upon its merits, and asked the hon. member for Cardwell (Hon. Mr. Cameron) if he was prepared to substantiate what he had said as to the power being taken from the House to determine whether any member was properly or improperly occupying a seat in the House. He denied that this was the fact, and though he had carefully examined the matter he failed to find any evidence to support the proposition laid down by the member for Cardwell. On the fact of evidence already before the House, the fact that the returning officer had not legally fulfilled his duties was perfectly evident, and it was perfectly evident, and it was not proposed to go without this House for any evidence in the matter. He could not see how it could be argued that a returning officer was invested with the judicial authority necessary to give him the power of judging of the eligibility of the candidates. He contended that the candidate of the majority was qualified to take his seat, and let the proper authorities declare whether or not he was qualified. (*Cheers.*)

Mr. SCATCHERD said that the proposition now before the House was to send this case before a Committee, which was not sworn, and this was anything but in accordance with the principles for which the Minister of Justice and the other hon. gentlemen opposite had pretended to favour.

Mr. CARTER made a few observations in explanation.

Hon. Mr. MACKENZIE rising said he entered into the debate with some trepidation, because they, the "laymen", were told they could not be expected to judge a matter of that importance. The hon. gentlemen who led the Government forgot that those very laymen from the country districts, of whom he spoke so contemptuously, and of whom he spoke as if there were not capable of forming an opinion for themselves upon the merits of the case—he forgot that those very persons would have to act as sworn judges if the matter went before an election Committee. (*Hear, hear.*)

An Hon. MEMBER: There is a lawyer as chairman.

Hon. Mr. MACKENZIE said that everyone knew that other than lawyers had been chairmen of Committees. It was possible that the lawyers might be exhausted, numerous as they were, (*laughter*) and it would then devolve upon laymen to preside over the committees; and further, if the lawyers were to be appointed chairmen of the committees, by far the major portion of the committee would consist of laymen, the men whom the hon. gentlemen opposite considered incompetent to act on the matter. He thought lay gentlemen could decide whether the gentleman who had received 745 votes or the gentleman who had received 705, votes was entitled to his seat. (*Hear, hear, and laughter.*) He was of the opinion that anyone as capable of deciding that the returning officer