

Can. Rep.]

SOUTH RENFREW ELECTION PETITION.

[Elec. Case.]

personal property he was on the Assessor's roll for 1873, but not for any real property. He was burned out early in 1873, and he removed to other premises, and in that way by some means he was not assessed in respect of real property, although he was the tenant of a shop during that time, paying a rental of \$200 per annum. Muir made the attestation to the nomination paper, believing it to be true.

Shortly before 2 p. m., the hour for closing the reception of nominations, the election clerk, Mr. Bromley, on looking over the voters' list for the village of Renfrew, which was lying on the table in the town hall, but which was not the Returning Officer's official list, did not see the name of Tierney upon it and mentioned the fact. The Returning Officer and the clerk then examined the names on Mr. Bannerman's paper with the voters' list on the table, and Tierney's name was not found on it. The Returning Officer sent for Mr. McDonald, the only legal gentleman in the village, to come to the hall, that he might advise with him as to what should be done. Mr. McDonald came, and upon hearing the facts and referring to the Statute he advised the Returning Officer that he could not accept of the nomination paper because Wm. Tierney was not an elector according to the voters' list. The Returning Officer then went for his own official lists, brought them to the hall, examined them, and William Tierney's name was not found on them. The Returning Officer then sent for Mr. Bannerman and told him that William Tierney's name was not on the voters' lists, and he asked Mr. Bannerman what he should do. Nothing definite was said by Bannerman at that time. The Returning Officer says he advised Mr. Bannerman to see Mr. McDougall and ask him to waive the objection. Mr. Bannerman did so. Mr. McDougall said he would do so if his friends consented, but they did not, and that was told to the Returning Officer. Mr. Kelly, one of Mr. Bannerman's friends, asked the Returning Officer to be allowed to add a name in the place of William Tierney's, but that was refused, because that, it was said, would be equivalent to a new nomination paper. The Returning Officer then declared that Mr. Bannerman's nomination paper was bad, and that he must reject it. Mr. Bannerman objected to that decision. A good deal of stress was laid upon what Mr. Muir said to the Returning Officer on this subject. The Returning Officer and two others declared that before the Returning Officer gave his decision, Mr. Muir had acknowledged that the affidavit he had made was not correct,

that he had made a mistake, and that the name of William Tierney was not on the voters' list. Mr. Muir said he did not say so, because he did not know as a fact at that time it was not on the list; that what he said was that Tierney's was a good vote, but if he had made a mistake it was not intentionally made. I do not know that it is of much consequence one way or the other, except so far as the Returning Officer makes it of consequence in this way. He says he did not give his decision until after Mr. Muir admitted his affidavit was wrong, and it was upon that being done, and Tierney's name not being on the list, and Mr. Bannerman not showing any cause why his paper should not be rejected, that he pronounced his opinion adversely to Mr. Bannerman. The Returning Officer then declared Mr. McDougall to be the only person who had been duly nominated, and he returned him as duly elected accordingly.

Cockburn, Q. C., for petitioner. The duties of a Returning Officer are ministerial. He has no judicial power, and therefore has no right to enquire into the validity of the nomination paper. The Statute expressly excludes him from making any scrutiny. It has been doubted under the old law whether a Returning Officer is ministerial or judicial: *Middlesex Case*, 2 Peckwell 16. The Returning Officer there allowed certain votes. It was argued that the Returning Officer was ministerial only and was bound to receive the votes if the voters would take the necessary oaths. The Returning Officer here was bound by the attestation oath of Muir. In *Ashby v. White*, 1 Smith's L. C. 105, the House of Lords held that the Returning Officer was a ministerial officer only. Warren's Election Law (1857), states the same view, pp. 203, 208. The Returning Officer may know the person has no vote, but he cannot act on his own knowledge. If a candidate is plainly disqualified, the Returning Officer must decide. If the Legislature had intended to confer power on Returning Officers to decide on validity of nomination paper, it would have done so. See Election Act, secs. 18, 19, 21. The oath under sec. 21 precludes the Returning Officer from acting against the paper. Sec. 80 shews that the election would not be set aside if had it been entirely carried through but for this defect. The paper here was *bona fide*.

Bethune, contra. At Common law the Returning Officer's duties are not entirely ministerial, but are partly judicial. See *Cullen v. Morris*, 2 Starkie 587; Addison on Torts, p. 26; *Drew v. Coulton*, 1 East 502. He is a judicial officer when the matter is open and notorious: *Ashby*