

to pass upon evidence without ever having seen the witnesses. For hundreds of years in England, courts of equity determined all issues that came before these courts, without the judges seeing the witnesses at all. The evidence was taken in the master's office, or by affidavit. In my own province they did the same thing; evidence was taken before the master in equity cases. In Admiralty cases adjudication was pronounced upon evidence taken before the registrar and the judge did not see the witnesses at all. These are matters upon which the judges and not the hon. Minister of Justice should pronounce. Two of these very commissioners, when sitting in the courts of Ontario, have many times had occasion to pass upon evidence without having seen the witnesses.

Then, the hon. Minister of Justice also thinks that there is nothing in our suggestion about the Clerk of the Crown in Chancery. I think there may be a very grave question about that. In the first place, so far as the Clerk of the Crown in Chancery is an officer of this House, I should doubt very much whether or not these commissioners would have jurisdiction over him and over the documents in his custody. In so far as the ballot papers and other documents are in the custody of this House, or of its officer, the Clerk of the Crown in Chancery, there seems to be very much doubt as to whether or not they should be produced by him. The hon. Minister of Justice has apparently overlooked the provisions of section 72 of the Elections Act. That section reads as follows:

No person shall be allowed to inspect any ballot paper in the custody of the Clerk of the Crown in Chancery, except under the rule or order of a Superior Court Judge or a judge thereof—which rule or order may be granted by such court or judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition which has been filed questioning an election or return; and any such rule or order for the inspection or production of ballot papers may be made subject to conditions as to persons, time, place and mode of inspection or production, as the court or judge making the same thinks expedient, and shall be obeyed by the Clerk of the Crown in Chancery.

That provision has a most important bearing on this particular case, and of course it is most important that the ballot papers should be produced. It is not only important that the ballot papers should be produced when you proceed to examine witnesses in this case, but it is also important that the ballot papers should be produced for the purpose of examination by counsel and experts before the proceedings in court begin, and you cannot accomplish that in view of the provisions of this section except by legislation in this House giving necessary powers to this commission.

Mr. BORDEN (Halifax).

The MINISTER OF MARINE AND FISHERIES. It was managed last year by the Committee on Privileges and Elections.

Mr. BORDEN (Halifax). Why, of course, because the House directed the Clerk of the Crown in Chancery to attend at the Bar of the House and produce all these documents. They were laid on the Table of the House.

The MINISTER OF MARINE AND FISHERIES. Perhaps I misunderstand the hon. gentleman's argument. I rather thought he quoted the statute to show that except in two particular cases mentioned no such ballot papers were to be subject to examination at all. I understood my hon. friend to be relying upon that section as offering a bar to the production of these documents before the commission. If that argument is good now, it was equally good last year against their being produced before the Privileges and Elections Committee.

Mr. BORDEN (Halifax). I am afraid I have not made myself plain. I would not regard section 72 as having the slightest relation to the proceedings of this House, or to its control over the Clerk of the Crown in Chancery who holds the ballots and other documents, as an officer of this House, and is completely under the control of this House. We are not dealing with a case of that kind.

The MINISTER OF MARINE AND FISHERIES. The Clerk of the Crown in Chancery is not an officer of this House.

Mr. BORDEN (Halifax). My contention is, that he is an officer of the House in respect to the custody of these ballot papers. The matter seems to be very plain to me. The Clerk of the Crown in Chancery is subject to the direction of this House with respect to the production of any document relating to the election of any member of this House; and necessarily so, because the House, although it has abdicated to the courts its functions with respect to elections, in some measure, at least, has not abdicated its control over these documents and has not abdicated its control over its officers—as I established to this House, as the leader of this House admitted, and as the Minister of Trade and Commerce (Sir Richard Cartwright) admitted, in the debate which took place in reference to the West Huron and Brockville elections last year. As respects these matters, I see no conflict between section 72 and the powers which this House could undoubtedly have exercised, if section 72 had never been passed. At all events, all I am asking in respect to this matter is that it be made perfectly plain. If you refer to section 114 of the Elections Act, you see