

AFTER RECESS.

(The House resumed in Committee.)

On clause 6,

Mr. DAVID HENDERSON (Halton). It seems to me that clause 6 is scarcely as definite as it ought to be, inasmuch as it leaves great doubt as to who shall determine whether a candidate is a member of the local legislature or not. It says :

If a member of a provincial legislature, notwithstanding his disqualification, as in the next preceding section mentioned, receives the majority of votes at an election, such majority of votes shall be thrown away, and the returning officer shall return the person having the next greatest number of votes, provided he is otherwise eligible.

I can conceive that a returning officer would be at a loss to know whether a member of the local legislature had resigned or not. Hon. members will recall a case that occurred in the province of Ontario. Mr. Conmee, who was a member of the local legislature, handed his resignation to his solicitor, when he prepared to contest a riding for this parliament in 1896. His solicitor, instead of handing his resignation to the Speaker of the legislature, retained it until after the elections were over, and then returned it to Mr. Conmee, who was defeated in the contest for a seat in this House. Now, had Mr. Conmee been elected, his resignation would have found its way into the hands of the Speaker of the legislature, and he would have been held to have resigned as a member of the legislature, and would, no doubt, have been declared elected to this House. It seems to me the section should be so arranged that there would be no possible doubt as to whether a man had resigned his seat in the legislature or not, in fact that some evidence should be produced to the returning officer at the time of nomination, by any candidate who holds a seat in the local legislature, to show conclusively that he has resigned that seat. I hope the Solicitor General will so frame the law as to make it impossible for such a case as that I have referred to to arise again. I do not claim to be able to suggest the necessary words, but it seems to me that it ought to be possible to amend the clause, for instance, so as to make it necessary for a candidate who is a member of the local legislature to place in the hands of the returning officer a certificate from the Speaker, that he has resigned his seat in that House.

The SOLICITOR GENERAL. I cannot conceive of any form of clause that would serve the purpose better than the one we have. The fact that a member of the local legislature has been declared elected by the returning officer, does not finally settle the question, it can still be disposed of by the courts.

Mr. BORDEN (Halifax). If a deputy minister, collector of customs, or other well known officer, who is disqualified, were to become a candidate, and receive the majority of votes, it would still be necessary for the returning officer to return him, but it would be possible to unseat him by an election petition. It seems strange that in case of a member of the provincial legislature, the returning officer should be authorized to adjudicate on the question of fact. I think it would be better not to give this power to the returning officer.

Mr. CASGRAIN. I think we could overcome the difficulty, by amending the first clause of section 6, so as to read :

If a person declared ineligible by paragraph (a) or (b) of the next preceding section or a member of the local legislature is returned as a member, his election and return shall be null and void.

—and then take out the second paragraph of this clause. Because, if you allow the second paragraph to remain as it is, the same difficulty may present itself. For instance, how is the returning officer to judge whether or not the resignation of a member of the provincial parliament has been made according to law? Some returning officers have sufficient knowledge to enable them to judge of the validity of a resignation, but others have not. I believe that in all the provinces, it is required, as it is by our Act, that a resignation should be signed and sealed. Perhaps the seal may not be affixed. But you leave the returning officer to judge of that matter, which, properly, comes within the purview of the courts of law.

Mr. D. C. FRASER (Guysborough). Under the amendment, the hon. gentleman (Mr. Casgrain) suggests, the same difficulty would arise—for the returning officer must return somebody.

Mr. CASGRAIN. He would return the man having the highest number of votes.

Mr. FRASER (Guysborough). But if there was only the first part of the section, he would return a man who was disqualified. It seems simply a choice of evils.

Mr. CASGRAIN. There is an inconvenience either way. But what we are striving to do, is to get the best clause, and the one under which the least difficulty would arise. You would leave it to the courts then to decide whether the resignation is really a valid resignation, as in the case of a man who is disqualified under subsections *a* and *b*.

Mr. FRASER (Guysborough). You would have to go to the court in the same way if the return is made, so there must be some way for making a return. It would amount