

afraid that he was incurring penalties which it would not be very convenient for him to pay, got himself unseated; but in that case the House was not asked to go the length we are asked to go this afternoon, of seating his opponent. Therefore I say we may be taking away the right of some one who desires to petition. More than that, we may be infringing the right of some person who has already petitioned. I understand that in the case of the hon. member for Queen's the time has not yet expired for presenting a petition, and it may be that the court to which we have given jurisdiction, by the Statute of 1874, for the trial of controverted elections, is already exercising that jurisdiction. If the matter goes before the Committee of Privileges and Elections, this is a question that can be enquired into. But it is proposed by the motion not to enquire into a matter of that kind at all, but to deal with the case summarily and let the court go on and exercise that jurisdiction or not, just as it pleases. If it be the case that a petition has already been entered, we shall have the anomaly of two jurisdictions—the jurisdiction of this House unseating the sitting member, and that of the court under the petition, seating or unseating him as it may please; and the singular result may be that, after we have decided, in our zeal to do what we thought was right without any enquiry at all, that Mr. King was entitled to the seat, the tribunal, which proceeded more leisurely, thinking it consistent with justice to hear both parties, might decide that he was not entitled to the seat after all. For these reasons I move in amendment to the resolution the hon. gentleman has moved:

That all the words after the word "That" where it first appears, be left out, and the following inserted instead thereof: The return transmitted by John R. Dunn, the returning officer for Queen's county, in the Province of New Brunswick, at last election for said electoral district, together with all papers laid before the House by the Clerk of the Crown in Chancery, and relating to said election, be referred to the Select Standing Committee on Privileges and Elections, with power to send for persons, papers, and records, and to report thereon with all convenient speed.

Mr. MILLS (Bothwell). It seems to me, Sir, that the motion made by the hon. Minister of Justice is altogether at variance with the line of argument he has addressed to the House. He has given us an elaborate argument in which he has undertaken to show that this House has no jurisdiction in the matter, that it divested itself of any authority it had by the creation of courts for the trial of controverted elections, and that it could not properly deal with this matter. That was the hon. gentleman's proposition; and notwithstanding the fact that he has elaborately defended it, he has concluded his speech with a motion to refer this case to a committee of the House to enquire into the propriety of taking any proceedings in a matter with reference to which he has declared that it would be improper for the House to take action. Now, the hon. gentleman has made a statement which it seems to me is not borne out by the precedents. He has said that because the House has referred the trial of controverted elections to the courts, it ought not to deal with a matter of this kind. We must bear in mind that the jurisdiction which the ordinary tribunals of the country possess under our Controverted Elections Act is precisely the same as the jurisdiction which was formerly vested in special committees of the House. We formerly appointed committees for the trial of controverted elections, which committees sat and dealt with those cases. We did not divest ourselves of any of the extraordinary jurisdiction committees did not exercise; and we have to look to what was the practice of the House before the House established the courts for the trial of controverted elections, to see whether we have retained to ourselves such power as is proposed to be exercised on this occasion. We know well that long after the trial of controverted elections by committees existed, the House took direct action in all cases such as this—where the returning officer had acted in a way grossly irregular, where, instead of complying

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with the law, he had departed from it, and violated the principles which the law had laid down for his guidance in the conduct of the elections. The House of Commons, in such cases, did not refer the question to the committee with the view of contesting the election, but took action directly. Where there were no disputed facts, the House dealt directly with the matter. The first case in the history of this country was the case of the Beauharnois election, in which the member declared elected was excluded, and it was proposed to bring the Clerk of the Crown in Chancery before the bar of the House, and to order the return to be amended accordingly. That was done in the case of the Kent election. The sheriff took exception to the qualification of the Hon. Malcolm Cameron, and made no return. The sheriff was brought to the bar of the House. The seat was given by the House to Mr. Cameron, and the officer who had acted irregularly was dismissed. In the Oxford case the returning officer returned, not the party having the majority of votes, but the candidate who had the minority of votes. The returning officer refused to return Sir Francis Hincks, and the Clerk of the Crown in Chancery was brought to the bar of the House and ordered to amend the return so as to give to Sir Francis Hincks the seat. I need not go over the list of cases. In not one of them was there any attempt to deal with the question on the line laid down by the hon. the Minister of Justice. There were committees for the trial of controverted elections, these committees had the jurisdiction the courts have now, and no one seriously argued that the cases I have referred to were proper cases to bring before the committee for the trial of controverted elections. On the contrary, they were held to be gross and improper violations of the rights and privileges of Parliament, and the House corrected the returns accordingly. The hon. gentleman has referred to the Bangor case quoted by my hon. friend, and he says that in this case the returning officer was not required to make any declaration, and that his declaration was therefore *ultra vires*. He quoted the words of Lord Esher, the Master of the Rolls: "I have already said the returning officer had no power to make that declaration, and that it was void." But the hon. gentleman argued he had no power to make any declaration. Does the Master of the Rolls say so? Does he maintain any such proposition? On the contrary, he says that he had no power to make the declaration he did make, which returned the candidate in the minority, and the Master of the Rolls quotes the Statute to say it was his duty to make the return—

Mr. THOMPSON. Does not the Master of the Rolls say he had no return to make? He has no return to make to anybody as in the case of a parliamentary election.

Mr. MILLS. The Master of the Rolls quotes the words of the Statute:

"It is not, as in sec. 2 of the Ballot Act, 1872, that the returning officer shall forthwith declare 'to be elected' the candidate to whom the majority of votes has been given, but that he shall give public notice of the name of the candidate 'elected,' showing that the rule was intended to apply to an election which had been before completed."

These are the words, and the hon. gentleman's statements, if not calculated to mislead, nevertheless would have the effect of misleading the House. Now, the Master of the Rolls goes on to say, referring to the declaration, that the returning officer had a declaration to make, and that was to state the number of votes given, and declare the person who had the majority elected:

"I therefore say that the returning officer had no power whatever to declare Pritchard elected, and the declaration to that effect which he made in the placard issued the day after the election was *ultra vires* and void."

Why? Not because he had no declaration to make, but because he had no power to make the declaration stating the candidate of the minority should be returned, when the law