

the bad state of the roads; on the 5th of March the returning officer held his court and opened the ballot boxes. He summed up the votes, but in the return which has been laid on the Table, we find he has carefully and studiously avoided stating what was the result of the voting. He has stated that he summed up the votes, and so far he was right, but beyond that there was gross dereliction of duty on his part, and I hope this House will not tolerate such conduct on the part of a returning officer where his duty is so clearly pointed out by the statute. I hold in my hand the certificate and the copy of the affidavit made by Mr. Baird, one of the candidates on that occasion, who states:

"That on the said 5th inst. the said returning officer opened his court, opened the ballot boxes, and added together the number of votes given for said George G. King and for myself, from the statement contained in the several ballot boxes returned by the deputy returning officers, and stated that he found by said statements that 1,191 votes had been given for said George G. King, and 1,130 votes had been given for this deponent."

If that was the case—and I state here from my place as a member of this House that I believe the statement to be correct that Mr. King, when the votes were summed up, had the majority—I say that, by the law, the duty of the returning officer was clearly laid down. What his duty might be at the nomination, it is not necessary to enquire. We find that the nomination was made, that the deposit was made, and a receipt given to Mr. King; and that, according to the requirements of the law, the names of the candidates were posted throughout the county, that a poll was held on the 22nd of February, and that the ballot boxes, certificates of return and poll books, were returned to the returning officer. What then was the duty of that officer? The law says:

"The returning officer at the place, day and hour appointed by his proclamation, and after having received all the ballot boxes, shall proceed to open them, in the presence of the election clerk, the candidates or their representatives, if present, or of at least two electors, if the candidates or their representatives are not present, and to add together the number of votes given for each candidate, from the statements contained in the several ballot boxes returned by the deputy returning officers of the ballot papers counted by them. The candidate who, on the summing up of the votes, is found to have a majority of votes shall be then declared elected."

The duty of the returning officer was simply ministerial, or, to use the language of an eminent judge in England, in a very late case, his duty was the arithmetical calculation of the number of votes, and that is all. Beyond that he had no power, and if any of the proceedings were irregular there is a tribunal provided in the Controverted Elections Act by which returns can be rectified. But I say, without fear of contradiction, no power exists in a returning officer to declare an election invalid, or to refuse to count up the votes, or to refuse to declare elected the candidate who had the majority of votes. Then we find, still further, that after he is to do this:

"The returning officer shall, immediately after the sixth day after the final addition by him, unless before that time he receives notice that he is required to attend before a judge for the purpose of a final addition or recount by such judge of the votes given at the election, transmit his return to the Clerk of the Crown in Chancery, that the candidate having the largest number of votes has been duly elected, and shall forward to each of the respective candidates a duplicate or copy thereof, and such return shall be in the form OC in the first schedule to this Act."

"The returning officer shall accompany his return to the Clerk of the Crown in Chancery with a report of his proceedings, in which report he shall make any observation he thinks proper as to the state of the ballot boxes or ballot papers as received by him."

"The returning officer shall also transmit to the Clerk of the Crown in Chancery with his return the ballot papers, the original statements of the several deputy returning officers hereinbefore referred to, together with the lists of voters and poll-books used in the several polling districts, and all other lists and documents used or required at such election or which have been transmitted to him by the deputy returning officers."

The duty of the returning officer is plain, and, with regard to his duty as to the return to the Clerk of the Crown, the law is so clear and distinct that "he who runs may read." It

requires no legal lore to decide what is his duty, and that duty this officer has entirely failed to perform. He has failed in refusing to declare the person who had the majority of votes elected, and he has also failed in refusing to return the ballot boxes. If rumor speaks true—I do not vouch for the correctness of the statement—these ballot papers are no longer in existence, and if that be so, the duty and the honor of this House require that this matter should be fully investigated. I do not care on what side the candidate may be, but justice should be done, and as far as the law can be maintained we should maintain it in every particular. In a case decided in England a short time ago, I should like to read the language of Lord Esher, as the case is very much like this one. In that case, the returning officer, after the nomination, and after the poll, undertook to declare that one of the candidates was disqualified, and that the other candidate, having the minority of votes in a municipal election, should be returned. I may also add that the language of the statute in England, the Ballot Act of 1872, and that of our own Act are almost the same. In that case, delivering the judgment of the Court of Appeal, Lord Esher said as follows:—

"It is next said that Roberts was not duly elected because the returning officer did not declare him to be elected. It is not denied that he obtained a majority of votes. We have to see, therefore, what are the powers and duties of a returning officer in a municipal election. First comes the nomination, which is to take place before the mayor, when the borough is divided into wards. It is not necessary here to decide whether the mayor could reject the nomination of a candidate not properly qualified. If he had that power, he did not exercise it in the present case, because he accepted the nomination of both candidates. Then come the powers and duties of the returning officer, which are indicated in and limited by the second section of the Ballot Act, 1872. Those powers and duties begin after the close of the poll. He is to take charge of the ballot boxes; open them in the presence of such of the agents (if any) of the candidates as may be present, 'and ascertain the result of the poll by counting the votes given to each candidate.' The result of the poll is what he is to ascertain, and he must ascertain it in the way prescribed by the Act, and in that way only. The section then proceeds: 'And shall forthwith declare to be elected the candidate or candidates to whom the majority of votes have been given.' No power is given to him to declare that candidate elected to whom the majority of votes has been legally given. The moment he has cast up the votes, he must declare the candidate elected who has the arithmetical majority. He may only adjourn for the purpose of finishing the count. The section does not entitle him to enquire whether the candidate is under any personal disability to be elected, whether the candidate be man or woman, or whether the person nominated be dead or alive. The returning officer has simply to perform the arithmetical duty of adding up the votes, and to declare the person elected who has the majority. Though it is not necessary to decide the point, I am inclined to think that his declaration is merely ministerial, and that, if he remained silent and did not make any declaration, the person who had the majority of votes would be duly elected."

I say that no language could apply more absolutely to the case I am now presenting to the House than the language of the Master of the Rolls in England, and I say that under our Act the same duties devolve upon the returning officer, and that is his only duty. It would be unfortunate for the people of this country, it would be unfortunate for the liberty of the people, that any such powers should be given to returning officers as one of them has undertaken to exercise in this case. I trust that the spirit of honor and fair play will animate every member of this House, irrespective of political leaning, so far as to see that the law is carried out, and that right and justice is done as between these parties. I beg to move:

That Mr John R. Dunn, the Returning Officer for the Electoral District of the County of Queen's, N.B., be ordered by telegraph to transmit forthwith to the Clerk of the Crown in Chancery the poll-books, certificate of return, ballots, and all other papers used and otherwise connected with the late election and poll held in the said Electoral District.

I trust that this motion will pass, and that immediate steps will be taken to communicate with the returning officer so as to have these papers laid before the House at as early a day as possible.

Sir JOHN A. MACDONALD. I am quite sure the House will approach this case, as they ought to approach