

consequences which might follow an investigation in the courts, by resigning and becoming again a candidate; whereas if the matter were contested, it might be that he would be disqualified in consequence of his acts. Therefore, during this time, under the law of the Dominion, and specially under the law of Prince Edward Island, a member is absolutely prohibited from effecting his resignation. In Prince Edward Island this delay is stipulated for twenty-one days; not twenty-one days from the time of the election, but from the time when the notice of the election shall have reached the Provincial Secretary. In the case of Dr. Robertson's election to the Local Legislature this notice reached the Provincial Secretary on May 27, and therefore at the time when he presented himself as a candidate on the 13th of June afterwards for election to this House, the twenty-one days had not expired, nor had they expired when the election took place on June 20th. The Committee find, in the first place, that it was impossible for Dr. Robertson to have resigned, within the terms of the law, at the time he presented himself for his election to this House. But in the face of this fact, it is contended, on behalf of Dr. Robertson, that he did resign, and therefore it is necessary to consider the circumstances and procedure under which he professes to have made that resignation. He claims to have used the last of the three methods which the law provides, viz.: by tender of his resignation to two members of the House. It is claimed, on behalf of Dr. Robertson, that this was done in the form of a letter dated June 12th, and delivered on June 13th, the latter date being the day on which the nomination took place. Notwithstanding the provision of the law, that members receiving declarations of another member's wish to resign, must forthwith communicate the same to the Lieutenant-Governor, no communication of any kind reached the Lieutenant-Governor from those two members that Dr. Robertson had resigned or intended to resign until 8th of July afterwards; nearly a month after the date of the letter, and eighteen days after the election had taken place, which this resignation was intended to affect. It has been suggested that it is probable Dr. Robertson did not intend seriously to resign, that he intended to make his resignation in such a form that it might be used or not used according to the result of the Dominion Election; and the very strange, inexcusable and illegal detention of the letter on the part of the two gentlemen to whom he entrusted it, gives ground for very grave suspicion, and this suspicion is further confirmed by the fact that when the letter was finally unearthed, it was discovered to be a letter, not addressed to those two members in their official capacity as members of the House, but simply as individuals, thus furnishing them with the excuse, if their conduct should ever be called in question, that the letter was not addressed to them in any official capacity, but as neighbors and friends, and that they were justified therefore in treating it officially, or not, as they chose. It was not considered necessary by the Committee to give much weight to technicalities of this kind, and I only refer to them incidentally in passing. The Committee arrived at the conclusion—and I have no doubt it will be concurred in almost unanimously by the House—that Dr. Robertson could not, and did not, legally resign his seat in the Local Legislature before or at the time he presented himself for election to this House, and consequently that he was legally disqualified from so presenting himself and from being elected. We then come to the question of the effect of that disqualification. I mentioned at the outset that there were two Statutes in regard to it. Under the Statute which was first passed in 1872 that disqualification was made applicable to members of the Legislature of any Province in which corresponding legislation had taken place; that is, where any Province had passed a law that any member of this House could not be elected to the Provincial Legislature, this

Statute would come in force. The second clause of that Act reads as follows:—

"If any such member of a Provincial Legislature shall, notwithstanding his disqualification as in the preceding section mentioned, receive a majority of votes at any such election, such majority of votes shall be thrown away, and it shall be the duty of the returning officer to return the person having the next greatest number of votes, provided he be otherwise eligible."

If that Statute be in force, all difficulty is removed. It was clear that the returning officer was bound—and if he did not do so, this House is bound—to declare that the votes given for Dr. Robertson were wasted, and that the candidate having the next largest number of votes should be entitled to the seat. It is urged, however, that this law is not in force. It is not contended that it has been formally repealed, but it is contended that it has been repealed by implication. Now, the general principle applicable to the interpretation of Statutes is: that unless they contain within themselves some limitative clause, they remain in force until they are formally and specially repealed by a succeeding Act. As I have said, there is no contention that this Act has been formally repealed by a succeeding Act, nor that it contains within itself any limiting clause; but the contention is that it has been repealed by implication, because a subsequent Act was passed on the same subject. Upon that point I will cite the authority of Dwaris on Statutes, who is recognized as the best authority on the subject. At page 154 of the Library edition, he says:

"Every affirmative Statute is a repeal of a precedent affirmative Statute, where its matter necessarily implies a negative; but only so far as it is clearly and indisputably contradictory and contrary to the former Act, 'in the very matter' (Foster's case); and the repugnancy such that the two Acts cannot be reconciled; for then, *leges posteriores, priores contrarias abrogant*. The leaning of the courts is so strong against repealing the positive provisions of a former Statute by construction, as almost to establish the doctrine of 'No repeal by implication.' It is a general rule that subsequent Statutes, which add accumulative penalties, and institute new methods of proceeding, do not repeal former penalties and methods of proceeding ordained by preceding Statutes, without negative words. Nor hath a latter Act of Parliament ever been construed to repeal a prior Act, unless there be a contrariety or repugnancy in them, or, at least, some notice taken of the former Act, so as to indicate an intention in the lawgiver to repeal it. Neither is a bare recital in a Statute, without a clause of repeal, sufficient to repeal the positive provisions of a former Statute. The law does not favor a repeal by implication, unless the repugnance be quite plain; and such repeal, carrying with it a reflection on the wisdom of former Parliaments, it has ever been confined to repealing as little as possible of the preceding Statutes. Although, then, two Acts of Parliament are seemingly repugnant, yet if there be no clause of *non obstante* in the latter, they shall, if possible, have such construction that the latter may not be a repeal of the former by implication. The same view has been taken where powers under several Acts are such as may well subsist together. A subsequent Act, too, which can be reconciled with a former Act, shall not be a repeal of it, though there be negative words; as the 1st and 2nd Ph., and 31. Ch. 10, that all trials for treason shall be according to the course of the common law, and not otherwise, does not take away 35 H., C. 2, for trial of treason beyond sea."

This illustration is remarkably similar to the case we are now considering, because we have in the latter, first, the positive procedure laid down for the returning officer, who is to disregard the votes given for a person disqualified, and to return the person having the next number of votes, if otherwise eligible; while the Statute of 1873 merely gives a general prohibition against dual representation, without saying anything about the procedure to be adopted by the returning officer. It is the opinion of the Committee, therefore, that this Statute being in force, it was the duty of the returning officer to have disregarded the votes given to Mr. Robertson, and to have returned the person having the next largest number of votes. In the discussion which occurred in this House with reference to the duties of the returning officer, under the Act of 1874, it was strongly urged that his duties were purely ministerial, and not in any respect judicial. I think that reference to that Statute will show that, entirely independent of the discussion upon general principles and exceptional or supposed cases, it