

March 7, 1873

position to decide that the name of the one should be erased and the name of the other inserted.

Hon. Mr. DORION (Napierville) said the hon. gentleman opposite had not contended that there was no irregularity on the part of the returning officer in the case referred to. He had not dared for a single instant to say that the returning officer had a right to decide the question; on the other hand, all that was asked for in the motion of the hon. member for Durham West (Hon. Mr. Blake) was merely that the Clerk of the Crown in Chancery should do what the returning officer should have done, that is, declare the candidate elected who had a majority of votes, but leaving in the power of the electors or the other candidate the right to appeal.

This would be a simple set of justice. If the House refused to vote for the motion of the hon. member for Durham West (Hon. Mr. Blake) then it would be doing what was equal to granting the power to the returning officers to declare the candidate of the minority elected, leaving the question of the legality of that decision to go through the lengthy course of an enquiry by court, going on for one, two or perhaps three years; and during all that time a member who represented not only a constituency but the whole country would be voting and taking part in all the proceedings of this House without even the shadow of a right to do so.

The hon. gentleman had referred to the legislation of a hundred years ago, and laid a great deal of stress upon it. He had urged that it was necessary to inquire into all the particulars before any judgment could be pronounced, but the cases and precedents to which he referred were cases of alleged corruption and bribery and not at all similar to the case in point. The motion of the hon. member for Durham West (Hon. Mr. Blake) did not ask the House to decide who was entitled to the seat, but merely who had the right to be proclaimed duly elected, as returned to this House. There could be no doubt—and, as he had already observed the hon. gentleman opposite had not denied—that in this case the candidate having the minority of votes had been returned, while the candidate having the majority was rejected. If it was the opinion of the House that this view of the case was the correct one, it would be their duty to see that the returning officer who had been guilty of such a gross breach of duty should be punished, and to declare that his return was false and imperfect, which the Clerk of the Crown in Chancery should correct and amend.

As to the precedents brought forward by the hon. gentleman, he (Hon. Mr. Dorion) could find precedents on his side of the argument. He would refer to one memorable occasion on which a certain gentleman had acted as returning officer at his own election, declared himself elected and signed his own certificate of election and qualification. What was the conduct of the hon. gentleman who had just spoken in regard to this matter?

[Editor's Note: Edward Blake was elected in two constituencies: Durham West and Bruce South. He subsequently chose to sit for the latter constituency on the 20th of March 1873.]

He need not say that the election to which he referred was that of Mr. Timothée Brodeur. That gentleman had been brought to the bar of the House, and the House was asked to declare his election null and void. The hon. member for Cardwell (Hon. Mr. Cameron) had voted for that motion, and the whole proceedings were carried on under the direction of the then member for Frontenac. The motion for thus summarily disposing of this very interesting gentleman, Mr. Timothée Brodeur, was secured by the present Minister of Justice (Hon. Sir John A. Macdonald). Now, in plain terms, the effect of this was, that the Hon. Mr. Cameron was found in that case voting that a case in some measure similar to the present should be disposed of at once; and not merely that, but that the seat be declared vacant on the spot, without even referring to the matter to a Committee for investigation. On the strength of a petition resented to the House, Mr. Fenton had moved that an investigation be made by a Committee, upon which a division resulted; but the vote for the amendment was so exceedingly small that it was not recorded on the journals of the House. The motion to declare that Timothée Brodeur was not entitled to sit in the House had been carried by a majority of 69 to 40, the Government of the day voting for it. The motion declaring on the spot the illegality of the election had been carried by 62 to 43. That was a precedent of equal weight with any that could be brought forward on the other side and one which the hon. gentleman had given his assent and approval to. Let his vote and his own idea of the justice of the proceeding be taken, and it was found that they were both in direct contradiction to having such a matter referred to a Committee.

To him (Hon. Mr. Dorion) it would be perfectly satisfactory, even if there were no precedent, that to settle the present difficulty in accordance with the motion of Hon. Mr. Blake was a matter of simple justice. It was true that the hon. member for Durham had stated that it was a disputed fact whether any qualification had been asked in this case at all, but that gentleman had also said that no reference was required to be made to that matter at all on the present occasion. Take for granted, if it was the pleasure of the House, that the qualification had been properly demanded, he contended the returning officer had no right to say that a candidate should not be returned for non-compliance with that demand. If he had a majority of the votes of the electors the House was not asked to pronounce judgment in regard to the qualification at all. It was found that the returning officer had not done his duty, and it was simply asked that the Clerk of the Crown in Chancery should do that duty for him. He again asserted that this would be an act of simple justice.

A good deal had been said about the laws of the old Provinces not being the law of the Dominion; but the Controverted Elections Law in the Dominion was exactly the same as the law existing before Confederation, and by which the case to which he had referred had been tried and decided, and the precedent must of course hold good in the same degree. During the operation of that law, a returning officer had returned a candidate having only a minority of votes as compared with Mr. Cameron, who had a majority of votes. Mr. Richards, now Chief Justice of the Court of Queen's Bench, had moved that Mr. Cameron, should have been