

presence of the parties, &c., &c., open the sealed packets containing: (1.) the used ballot papers that have been counted; (2.) the rejected ballot papers; (3.) the spoiled ballot papers, and no other ballot papers. The duty of the Deputy-Returning Officer is pointed out in Sec. 10 of the same Act:—"All the ballot papers indicating the votes given for each candidate, respectively, shall be put into separate envelopes or parcels, and those rejected, those spoiled, and those unused shall each be put into a different envelope or parcel, and all those parcels being endorsed, so as to indicate their contents, shall be put back into the ballot box."

I gather from the affidavits that probably all those used, rejected, and spoiled ballots are in envelopes in the ballot-box, but not properly arranged or endorsed. I am asked to issue a Writ commanding the Judge to proceed and complete the re-count.

It is conceded that no precedent can be found for an interference by mandamus with any proceeding by officers entrusted with the execution and return of writs for the election of Members of Parliament.

It is urged that the Court has the right to order the performance of any act commanded to be done of a public nature by any Act of Parliament.

But I hesitate to apply for the first time this principle to proceedings of this character.

Generally speaking, the House of Commons may be assumed to have the control over the execution of writs for the election of its Members, and of enforcing returns thereto, and I presume that it can summon to its bar all persons answerable for the due execution thereof.

The Legislature has entrusted the trial of an election petition complaining of an undue return, or undue election of a Member, or of no return, or double election, or of any unlawful act by any candidate not returned, to the Courts of Justice.

The wording of this clause seems to warrant that a petition may be presented and be tried by the Courts complaining that no return has been made, and in that view it might be urged that the House had delegated to the judges the decision of the question whether a return to the Writ of Election had or had not been properly withheld.

I do not purpose to decide this question, nor do I purpose on my single authority to hold that the writ of mandamus now asked can or cannot be awarded.

I think my proper course is to leave it to the Court of Queen's Bench, in which Court the affidavits are entitled to decide—with the weight properly attachable to a decision *in banc*,—whether we are to interpose by mandamus in this case or in the numerous cases that may arise as to any alleged omission, neglect, or refusal to comply with any statutable directions in any Act of Parliament regulating the manner of executing the writs of election of representatives.

I think this is the proper course to take in a matter of such serious importance. The term is not distant, and no practical inconvenience need arise from the delay.

As matters now stand, if the learned Judge refuse to proceed with the re-count or to take any action in the case, it is not easy to see how the Returning Officer is to make his return to this writ.

The ballots, &c., have been all handed over to the judge, and by Sub-section 4 he is, after the re-count, to certify the result to the Returning Officer, who shall then declare to be elected the candidate having the highest number of votes, and (Sub-section 5) he shall proceed to make his return.

For my own part, I hardly see the necessity for creating this temporary "dead-lock."

On the papers before me, I do not see why the re-count may not be proceeded with and completed on the materials in the ballot-box. As I have already suggested, the probability is that all the ballot-papers used, rejected or spoiled are there, however irregularly certified or endorsed. Of course, if they be not there, then the necessary material for the full re-count may not be forthcoming, and no power seems to be given to the Judge to receive further evidence or material.