

Queensland



Parliamentary Debates
[Hansard]

Legislative Assembly

TUESDAY, 4 MAY 1875

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ERRATA.

Page 63, column 1, sixth line—*omit* "*Omnia*."

Page 434, column 2, fifth line from bottom—*omit* the word "late" before "Cardinal Manning."

ported to him that those persons were both in attendance, and awaited the pleasure of the House. He further stated that, on the 30th ultimo, the Clerk received from the Returning Officer for the Electoral District of Logan a telegram, to which, with his (the Speaker's) approval, a reply was sent; and that, on the 1st instant, he received from the Returning Officer a letter dated the 28th ultimo.

Whereupon the Clerk of the Assembly, by direction of the Speaker, read the said correspondence, as follows:—

“COPY TELEGRAM.

“Beenleigh.

“Message for L. A. Bernays,

Clerk, Legislative Assembly, Brisbane.

“In Beenleigh to-day Shall I send you ballot papers of recent election? They are incomplete from absence of Elkana returns Have written you by to-day's mail Please reply as I am here to-day.

“JAMES GIBSON,

“R.O., Logan.”

“Copy of telegram transmitted from the Clerk of the Legislative Assembly, addressed to James Gibson, Esquire, Returning Officer for the Logan, Beenleigh.

“Re your telegram matter being in hands of the House I cannot express opinion I believe it to be your duty to come prepared to the Bar with all material connected with the election.

“ (Signed) LEWIS A. BERNAYS,

“Clerk of Legislative Assembly.”

“Stanmore, Yatala,

“28th April, 1875.

“SIR,—I do myself the honor to report that, having to-day read the account of yesterday's proceedings in Parliament and your remarks with reference to the receipt of the writ for this electorate, I enclosed the writ to the Colonial Secretary in a letter dated the 20th instant (the writ was signed by the Governor), which explained the cause of its non-endorsement.

“The cause given by me in that letter was:—
‘ . . . No member has been elected. In consequence of the absence of the poll returns from Elkana, one of the polling-places where a poll was taken, I am unable to ascertain the gross number of votes for each of the candidates.’

“I also referred him to a previous letter of mine, dated the 18th instant, which stated the nature of the irregularity, and my reasons for taking up the position I did.

“I naturally thought that when the writ should reach your hands, it would be accompanied by the letter which enclosed it, which, however, appears not to have been the case.

“I cannot help thinking that in this there was either an absence of due respect for your office, or some political purpose to serve, which I cannot discern.

“I was not aware that the writ itself should be endorsed to the effect that no member has been elected (when such happens to be the case), setting forth the cause, or I should have done so. The writ states, ‘You shall endorse hereon the

LEGISLATIVE ASSEMBLY.

Tuesday, 4 May, 1875.

Privilege—Writs to which no Returns have been made.—
Witnesses at the Bar.—Election for the Darling Downs.

PRIVILEGE—WRITS TO WHICH NO RETURNS HAVE BEEN MADE.

The SPEAKER informed the House that, in furtherance of the order made on the 28th ultimo, he had directed, in terms thereof, the attendance this day of George Affleck, Returning Officer for the Electoral District of Darling Downs, and of James Gibson, Returning Officer for the Electoral District of Logan; and that the Sergeant-at-Arms re-

name of the candidate elected ;' but says nothing about endorsement in the event of the reverse being the case.

"I have the honor to be,

"Sir,

"Your obedient servant,

"JAS. GIBSON,

"R.O., Logan.

"The Honorable the Speaker of the
Legislative Assembly of Queensland."

The COLONIAL SECRETARY said he had to lay before the House certain correspondence addressed to him as Colonial Secretary. He desired that it should be read by the Clerk, at the table.

The Clerk read the correspondence, as follows:—

No. 1.

"Beenleigh, Sunday afternoon,

"18th April, 1875.

"SIR,—I do myself the honor to inform you that an impediment has occurred to interrupt the due progress of the Logan election—an impediment which I consider thoroughly informal and serious, or I would not take the stand I have.

"The only outlet from the difficulty, to my mind, is in the 68th section of the Act:—'And the Governor with the advice aforesaid may adopt such measures as may be necessary for removing any obstacle of a merely formal nature by which the due course of any election might be impeded.' I therefore send an express messenger to you with this letter to-morrow morning, so that, as the writ is not returnable till the 24th instant, should the Executive deem the matter to be merely of a formal nature, there is time, by *Gazette* proclamation, still to give full effect to the present election.

"I have instructed the messenger to wait reply, if you should think it necessary to use that means of communicating with me.

"The circumstances are these, as shortly as I can explain:—

"The Elkana returns of the poll reached me without any statement of the poll signed by presiding officer and scrutineers; the parcel was in a most indescribable state of confusion—unsealed, papers in shreds, wet, and dirty; the presiding officer, who brought the parcel, was covered with mud from head to foot; all the surrounding circumstances of the unintelligible address, the condition of presiding officer and scrutineers, and the late arrival (about 11 p.m.) of the returns from a polling-place only four miles distant, showed me that it was an unfortunate case of drunkenness, and that it was possible the papers may have been tampered with. I therefore refused the returns, in consequence of the absence of the statement.

"The writ commands me to proceed *according to law* to the election of a member. Section 61 of the Act makes it imperative on the presiding officers to make out a written statement of the poll and a duplicate; section 63 makes it imperative on me to ascertain the number of votes from 'my own and such other statements;' this is anterior to section 61, which authorises me to 'examine and count all the ballot papers;' the importance of which appears to me to be to check the statements, thus rendering the *statements* primarily and absolutely necessary in point of law.

"It is not for me, by the Act, to entertain any formal defect or error of moment; that is beyond me: it is only the Governor in Council who can do this. Besides, I consider it a very *informal* defect in the present case; and, if such a matter were to be glossed over, it appears to me that such would open the door to further and more enlarged defects, and be sapping the very virtue and essence of the ballot system.

"I remained in Beenleigh all yesterday—day after polling-day—to see if the statement written out at the poll could be found, so as to proceed, if possible, with the election. Such has not reached me up till now.

"Yesterday a statement was concocted in Beenleigh and tendered to me, signed by the presiding officer and *one* of the scrutineers. This I refused, as it did not contain the signature of the other scrutineer.

"I then received the enclosed affidavit, which I decided to accept. This document, to my mind, clearly strengthens the position I have taken up: it shows an illegal act on the face of it, and confesses to a muddle in the making up of the poll; it also shows that both scrutineers signed and verified the original statement (Mr. Campen had no scrutineers at all).

"I shall remain in Beenleigh all to-morrow, to wait communications from you, either by wire or in any other way you may choose.

"I hope it is needless for me to state that no personal feelings or outer influences of any kind, beyond what I considered my strict duty, had the most remote effect with me in taking up the position I have.

"I have the honor to be,

"Sir,

"Your obedient servant,

"JAS. GIBSON,

"Returning Officer for the Logan.

"The Honorable
The Colonial Secretary, Brisbane."

(*Enclosure in No. 1.*)

"Deponent—W. B. Haussmann.

"Commissioner—W. H. Spencer.

"Beenleigh, the seventeenth day of April, A.D.
1875.

"I, William Benjamin Haussmann, of Bethesda, Albert River, in the Colony of Queensland, sugar-planter, being duly sworn, make oath, and say:—

"1. I was duly appointed and acted as presiding officer at the polling-place called Elkana, on the sixteenth day of April, one thousand eight hundred and seventy-five, the day appointed for the election of a member to represent the Logan electorate in the Parliament of Queensland.

"2. There were two scrutineers present at the said polling-place when the poll was being taken, namely, Mr. Thomas Andrew Ross, junior, who was acting as scrutineer for one of the candidates, Mr. Adam Black; and Mr. Hermann Mewing, who was acting as scrutineer for Mr. Theodor Lenneberg, another candidate.

"3. At the close of the poll, at four o'clock p.m., I made out the return required to be made* by the presiding officer, and the same was duly signed by myself and by the said scrutineers in my presence.

* No duplicate made.—J. G.

"4. The ballot papers were duly examined by me in the presence of the said scrutineers, and no objection was raised to any of them by either of the scrutineers.

"5. At the time when I left the said polling-place, I had the said return in my possession.

"6. Between the time when I left the said polling-place and the time when I reached the Returning Officer for the electorate, I lost the said return, and though I have since made diligent search, I have been unable to find the same.

"7. The number of votes recorded for each of the candidates, as mentioned in the said return, were:—Thirty-eight in favor of Mr. Theodor Lenneberg, eight in favor of Mr. Adam Black, none in favor of Mr. Charles Gerhard Campen, and one informal vote.

"8. I have, since the time when the said return was lost, gone through and examined the said ballot papers, and I find that in the said return a slight mistake had been made.*

"9. The number of votes recorded in favor of each of the candidates is as follows:—Thirty-nine in favor of Mr. Theodor Lenneberg, seven in favor of Mr. Adam Black, and none in favor of Mr. Charles Gerhard Campen, and one informal vote.

"10. I have since made out a correct return, which has been signed by myself and one of the scrutineers, Mr. Thomas Andrew Ross, junior.

"W. B. HAUSSMANN.

"Signed and sworn by the deponent, William Benjamin Haussmann, at Beenleigh, this seventeenth day of April, A.D. 1875, before me,

"W. H. SPENCER,

"A Commissioner for Affidavits.

"Received on Saturday, 17th April, in the afternoon.

"J. G.,

"R.O., Logan."

No. 2.

"COPY TELEGRAM.

"Brisbane, 19th April, 1875.

"James Gibson, Esquire,
Returning Officer, Beenleigh.

"I cannot advise you as to your duty No proclamation can be published under section 68 as you suggest until a return is made and then only in the event of the Returning Officer reporting some informality.

"A. MACALISTER."

No. 3.

"Stammore, Yatala,

"20th April, 1875.

"SIR,—I have the honor to forward you herewith the writ of election for the Logan unendorsed, as no member has been elected.

"In consequence of the absence of the poll returns from Elkana, one of the polling-places where a poll was taken, I am unable to ascertain the gross number of votes for each of the candidates.

"This irregularity has been already explained to you in my letter of the 18th instant, to which I would beg respectfully to refer you.

"The ballot papers from this polling-place, along with the statement which had been con-

cocted in Beenleigh, have been again tendered to, and refused by, me; and, as the same were thrown down on the table of the public sitting-room of the hotel by the presiding officer and Mr. Black's friends, and left there untended—where they have been ever since, as far as I know—it becomes, therefore, impossible for me, now, under any consideration, to receive such; consequently, it is useless delaying the return of the writ any longer.

"The enclosed protest from Mr. Lenneberg, one of the candidates, was sent in to me yesterday, which I may as well forward to you.

"I have the honor to be,

"Sir,

"Your most obedient servant,

"J. A. GIBSON,

"Returning Officer for Logan.

"The Honorable

The Colonial Secretary, Brisbane."

(Enclosure in No. 3.)

"Beenleigh, 19th April, 1875.

"James Gibson, Esquire,

Returning Officer for the Logan Electorate.

"SIR,—I hereby protest against the proceedings which have taken place at the late pollings in this electorate, and against your receiving any packet, sealed or otherwise, of ballot papers which may be tendered to you as the ballot papers used at Elkana. The sealed packet of ballot papers used at that polling-place has been illegally opened.

"And I also protest against your receiving any statement of the result of the poll at Elkana other than the statement which was made out and signed by the presiding officer and the two scrutineers immediately after the close of the poll.

"I have the honor to be,

"Sir,

"Your obedient servant,

"THEODOR LENNEBERG."

WITNESSES AT THE BAR.

The COLONIAL SECRETARY moved—

That Mr. James Gibson, the Returning Officer for the Logan, be called to the Bar of the House.

Question put and passed.

The SPEAKER said, before sending for Mr. Gibson, he might as well state to honorable members that the practice—or, rather, the theory of the practice—was, that all questions put to a witness at the Bar of the House were put through the Speaker. That, however, had not been carried out, but still the questions were supposed to be answered to the Speaker; and if honorable members would bear that in mind it would facilitate business. Honorable members would be allowed to ask questions, but the witness must be supposed to be addressing the Chair.

Whereupon, by order of the Speaker, the gentleman named in the motion was brought to the Bar by the Sergeant-at-Arms.

JAMES GIBSON, Esquire, examined.

1. *By the Speaker*: Mr. James Gibson—You were Returning Officer for the District of Logan at the last election? I was.

2. And, in consequence of an order of this House, you have attended this day —? I have.

* An illegal act.—J. G.

3. To give such evidence as you are called upon to give? I have.

4. *By the Attorney-General*: How many polling places were there for that election —? Eleven.

5. For the electoral district of Logan? Eleven.

6. Did you receive returns from all the polling places except Elkana? I did.

7. What were the numbers of votes for the respective candidates, exclusive of Elkana? I am not aware. I do not know without looking at my document: it is in the parcel of ballot papers.

8. Speak louder? I am not aware, without I look at my document, which is inside the parcel with the ballot papers; the official statement which I made up. [*Sealed parcel produced by the Sergeant and opened by witness.*]

9. Can you give the total numbers of votes, exclusive of Elkana? I can if I add them up; I have them all here.

10. Give them from each of the places, Mr. Gibson? [*Reading from paper*] Albert Bridge—Black, 13; Campen, 0; Lenneberg, 21; informal, 2. Beenleigh—Black, 86; Campen, 5; Lenneberg, 42; informal, 3. Brisbane—Black, 21; Campen, 0; Lenneberg 13; informal, 1. Coomera—Black, 36; Campen, 0; Lenneberg, 19. Nerang Creek—Black, 20; Campen, 0; Lenneberg, 24; informal, 6. Pimpama—Black, 5; Campen, 0; Lenneberg, 62; informal, 2. Tallebuggera—Black, 10; Campen, 0; Lenneberg, 7. Village of Logan—Black, 15; Campen, 0; Lenneberg, 8. Waterford—Black, 42; Campen, 0; Lenneberg, 11; informal, 1. Yatala—Black, 7; Campen, 1; Lenneberg, 13. Elkana—none at all.

11. Have you made no calculation of the totals? I have not, till now.

12. Be good enough to do so? [*Counting totals*] I make for Black, 255; Campen, 6; Lenneberg, 220; informal, 15.

13. What was the polling day? The polling day, 16th April.

14. Did you not see the presiding officer for Elkana at all on that day? I did.

15. Did he not bring you a parcel of papers? He did.

16. Ballot papers? Yes; ballot papers.

17. They were tied up, I believe, in a parcel? Yes; they were tied.

18. Did you open the parcel? I did.

19. Did he tell you what they were? No; he brought them as presiding officer.

20. He brought them as presiding officer? Yes.

21. Did you count them? I did.

22. How many votes were there for the respective candidates amongst them? I have not the slightest idea. That is, I counted them to see if the papers—to preserve his papers, valuable papers—

23. You have not the slightest idea?—In point of fact, you counted them? Yes;—

The SPEAKER: The witness must speak up, and address the Chair.

24. *By the Attorney-General*: Have you any means of refreshing your memory? No.

25. Did you see any statement made afterwards publicly, when the matter was fresh in your memory, which you could say was correct as to those numbers? No; none.

26. Did you not see statements made in the public newspapers, within a day or two afterwards, giving the numbers? Oh! yes; I saw that.

27. Were those statements correct? I do not know.

28. Did you know at the time when you saw them? No; I paid no attention to them, except merely reading them.

29. What did you do with the papers which the presiding officer at Elkana gave you? I folded them up in the same brown paper they were in when he gave me the parcel, put a little bit of tape round them, and put them on my bed in my bed-room, where all the other papers were.

30. Do you know how many ballot papers there were altogether in that parcel? I do not.

31. What did you do with them after you put them on your bed? Gave them back to the presiding officer.

32. What did he do with them? I am not aware.

33. Did he not return them to you? He offered them to me next morning.

34. Did he bring you, with the ballot papers, his certified copy of the roll? Yes; it was there.

35. Did you compare that roll with the number of ballot papers, to see that they agreed? I did.

36. Did they agree? They did. Yes.

37. Where is the roll? It went with the parcel—the same parcel that I returned.

38. You returned it to the presiding officer? I did.

39. Do you remember Mr. Haussmann's handing you a declaration on the 17th April? A declaration?

40. Yes; a declaration made before a magistrate——? Yes; I received that.

41. Or a commissioner for affidavits? Yes; I received that.

42. Did you read it? I did.

43. Was the statement of the numbers given in that correct? I have not the slightest idea.

44. What? I have no idea.

45. You say you added up the numbers when you counted them—you said you counted them? I took no note of them.

46. Did you count them? I counted them; but——

47. What did you do? I merely went over them to see that all the ballot papers were there—in consonance with the roll—for the preservation of the ballot papers, the valuable documents; but I took no note of it.

48. Did you read the declaration at the time? I did.

49. Were the statements in it correct——?

Mr. McILWRAITH: He answered that already.

Witness: I took no note of it.

50. *By the Attorney-General*: When you read it, did it appear to you that the statements in it were correct? With reference to the numbers?

51. Yes? I paid no attention to them.

52. Do you mean to say, you paid no attention whatever to the numbers? Not the slightest.

53. Have you any idea whether they were right or wrong? No; I have not. I saw in that statement, that there was a mistake confessed in it.

54. Is that the paper? [*Paper handed to Witness by the Sergeant.*] Yes; that is the paper.

55. And it contains memoranda of yours upon it? Yes.

56. Which were made, when? Immediately after receiving it;—no, not immediately after, but shortly after.

57. How long did you keep it? Till I sent it to the Colonial Secretary, on the 20th, I think. No; on the 18th, I sent it to the Colonial Secretary—the 18th day of April.

58. Was there anything missing from the papers—the parcel, that was given to you by the presiding officer at Elkana? Yes; the abstract statement.

59. That was merely a summary of the votes given? Yes.

60. Did he not afterwards tender you a statement, signed by himself?—Yes; the next morning, he tendered me a statement signed by himself and one of the scrutineers.

61. Have you that? I have not. I refused it.

62. Had you heard, before you opened the papers handed to you by the presiding officer at Elkana, what was the number of votes that had been polled there? I had not. I dare say it was mentioned; but I paid no attention to that. There was such a crowd of people talking about this and other things, that I paid no attention.

63. Can you say, how long you remembered the numbers you counted?—How long they remained in your mind?—You say you counted the papers: how long did you remember the numbers after you arrived at them? I think I may remark, Mr. Speaker, that when I said I counted them, I meant to state that I merely went over them to see that the numbers corresponded with the roll; but I paid no attention to the numbers at the time, not the slightest.

64. Can you say what was the gross number? No; I did not even ascertain the gross number.

65. How could you compare the total number of ballot papers with the total number of names marked on the roll without adding them up? The roll was ticked off. I went over them to see that there was a ballot paper for every tick.

66. You did not count them? I did not. I could have done so; but I did not do so.

67. Was any one present at the time when you counted the papers? Yes; Mr. Black's scrutineer, Mr. Leuneberg's scrutineer, and Mr. Campen.

68. Did they count them in your presence? Mr. Peitzker counted them.

69. Who was he? Mr. Black's scrutineer.

70. Did not Mr. Leuneberg's scrutineer count them also? No; I do not think so.

71. After the counting, were any numbers announced? No. I saw Mr. Pietzker taking a note on my blotting paper for himself. It was perfectly private, not for me.

72. He did not read it? No; it was perfectly private; it had nothing to do with me.

73. Did you read it? No. Might I explain, Mr. Speaker, that when I received this parcel, it was in such a state that I asked immediately for the statement. That being absent, I made up my mind at once to refuse, absolutely, the whole concern. When I say I reckoned these ballot papers, it was to see that they were in consonance with the roll. It was merely, as I said to the scrutineers—“Let us try to preserve the valuable documents,

if possible, as this statement may come in by-and-bye”—that I compared them. I did not do anything official with reference to making up the votes for each party. I have the statements here, all filled up, of the different polling-places, signed by the scrutineers themselves; but this one, though ready, is not filled up, because, the statement being absent, I paid no official attention to the matter.

74. Official attention! Did you pay any attention to the facts of this matter?—I want to call your memory generally to them, not your official memory? From my memory generally I have not the slightest idea what the number of votes were.

75. Have you the slightest idea as to who had the majority? No; I have not. I have not summed up, even in pencil, this document [*referring to tabular return before read*], even in pencil, till to-day.

76. Could you, at any time, when the matter was sufficiently fresh in your memory, say whether it was correct or not? No; I could not. I paid no attention to it.

77. *By Mr. McIlwraith:* Are the voting papers from Elkana in that parcel which you have just opened? They are not.

78. Where are they? They are about Beenleigh somewhere—I do not know—in a public house there.

79. Were they in such a state, when you received them, that you could not ascertain from the face of them what the votes were? They were. I could not take them into consideration at all.

80. And, looking at each voting paper, could you ascertain for whom each person voted? Each ballot paper?

81. Yes? Oh! that might have been done. I did not do so.

82. *By Mr. Palmer:* Did the presiding officer bring those papers himself? He did.

83. What condition was he in? Well; I thought that he did not look all right. I saw that his mind was confused.

84. Was he sober? I cannot say he was.

85. Was he drunk? No; he was not. He had recovered;—he was in a state of recovery.

86. *By the Attorney-General:* Have you any reason to doubt the correctness of the statements—of Mr. Haussmann's declaration? Oh, no, I have not; certainly not. I have no reason to doubt them;—I am not aware of any.

87. *By Mr. Douglas:* Were the returns from Elkana the last that came in? They were, except Brisbane, which came next morning.

88. Did the return from Elkana come in on the day of the election? Yes; on the evening of the election.

89. At what hour? About eleven o'clock, I believe, at night.

90. Did I understand you to say that you had not previously made up any return from the places which up to that time had been reported upon? I made up no return with the exception of those which I am bound by the Act to do. As they came in I checked every one, and made up this return [*producing separate tabular returns for each polling place*], which I got signed by the scrutineers, as it was made up.

91. Did you, at any time, attempt to sum up the total of those returns you had received? I never did till this moment.

92. You presided, I presume, yourself, at Beenleigh? Yes.

93. Did you announce the result of the poll at Beenleigh? Yes, I did; immediately after the poll.

94. Did it come under your notice, as the returns came in, that it was a matter of general report about you, how the election was going?—As the returns were coming in from the outlying polling-places, did it occur to you that the general results of the election were known up to that time? I have no doubt that the people knew it. I scarcely understand the effect of your question.

95. Were you in any way aware of the principal results of the election as the returns came in? Oh! yes; I heard people saying Black was so many a-head; Lenneberg was so many behind, or so many a-head; but I paid no attention.

96. Were those remarks repeated in your presence when the returns from Elkana came in? Including Elkana?

97. Yes? Not that I heard of. It was generally after the returns were made.

98. What do you mean by "after"? After the parcel was made up, and sealed, and put aside.

99. Was there any expectation on the part of those present when the returns from Elkana came in? I was not aware, because there were five or six arrived about the same time. I suppose I was in my room with the scrutineers about an hour, with other returns, when the Elkana returns came in.

100. There was a good deal of general desire as they came in? Yes.

101. You did not feel inclined to gratify that desire? Yes; every return, as it came in, I generally opened and let them know the result; but that was not the official declaration of the return.

102. The rough statement? I wished to be as agreeable as possible, doing what I did. When I got the statement, I said, so many for Black; so many for Lenneberg. Then I retired to my room to check the votes, and ———

103. Did you not feel an anxiety to gratify the electors with the rough statement, if not the official statement, of the returns from Elkana? No; because it arrived while we were in the room engaged with the other documents and parcels.

104. I presume it was brought at once to you? Yes; it was brought into my room.

105. There were electors round the room, and some little excitement, I suppose? Yes; there was considerable excitement.

106. Yet, you retained your equanimity, so that you were perfectly clear not to make a statement at the time? I had no statement from Elkana like the others.

107. Did you count the papers? I did not count them. I saw that the papers were in consonance with the roll.

108. You saw one of the scrutineers count them? I paid no attention to that. I had not the slightest idea of what it was.

109. Did not that scrutineer make any announcement to his friends as to the result of the election? I dare say he did.

110. You have no recollection? Not the slightest.

111. Not even a rough recollection? Not even a rough one. Mr. Speaker, I should like to explain. When we opened this parcel, the ballot papers were rolled up with a piece of cotton or something

round them. The outside of the parcel was in an extraordinary state. I said immediately to the scrutineers and to Mr. Campen, "There's some mistake; let us see if the valuable papers are here, in order that the thing may be right." The first thing I did was to pass those to Mr. Pietzker, to check the initials on the ballot papers. We then turned up every one to see that they all corresponded with the marks on the roll. He was taking the numbers. I did not do that. I would not do so officially. I would not confuse my mind about it.

112. *By Mr. King*: Did the scrutineers arrive with the presiding officer for Elkana—in his company? They did not come to my room. I did not see them at all.

113. Did you tell the presiding officer what was the reason you refused to take those ballot papers? I did.

114. What reason did you give him? The absence of the statement.

115. *By Mr. Ivory*: Mr. Speaker—as I understand Mr. Gibson [*addressing witness*—you gave us to understand that this parcel from Elkana came to you while you were busy with the previous ones? Just so.

116. *By Mr. Thompson*: I understand that the presiding officer gave you the packet? He did.

117. Not sealed? Not sealed.

118. What did that contain?—Ballot papers, you have already said? Shall I describe the complete parcel?

119. Just tell us what it contained? First, a handkerchief; inside of that, a large lot of brown paper; inside of that, foolscap, note paper, envelopes, blotting paper, all in shreds and patches; inside of that, again, foolscap paper containing the ballot papers and the roll, and tied with what I called before the scrutineers a woman's garter.

120. Was it a sealed packet? It was not sealed.

121. Neither inside nor outside the handkerchief? No; it had been sealed but the seal was broken.

122. Where was the mark of the seal? On the piece of brown paper in which I put up the papers afterwards.

123. There was a mark of a seal? Yes, a large mark, where the seal had been.

124. Was the book which was kept by the presiding officer given to you on that occasion? There was nothing in the parcel but ballot papers and the roll, and what I have said.

125. Was the roll signed by the presiding officer and the poll clerks? I cannot say. I paid no attention to it. I dismissed the thing as an informal matter. I cannot remember that.

126. *By Mr. Douglas*: Have you presided before as returning officer, Mr. Gibson? I have.

127. In the Logan district? I have, in the Logan electorate.

128. In any other electorate? Yes; Maranoa electorate.

129. Have you found any difficulty on previous occasions in making a return? No; not such a difficulty as this.

130. Have your returns ever been made the subject of investigation by the Elections Committee? Once before, in reference to the Maranoa election.

131. And in reference to the Logan electorate? Oh! yes; in reference to the Logan electorate—Mr. Nind's case.

132. So that on two occasions petitions have been presented against your returns? They have.

133. *By Mr. Morehead*: With reference to a late Logan election, was the petition in consequence of any action of yours, or the action of a presiding officer? The action of a presiding officer.

The witness was ordered to withdraw, but to remain in attendance; and he withdrew accordingly.

The COLONIAL SECRETARY then moved—

That Mr. George Affleck, the Returning Officer for the Logan, be called to the Bar of the House.

Question put and passed.

George Affleck was then called to the Bar and examined:—

1. *By Mr. Speaker*: Mr. Affleck, you are Returning Officer for the Electoral District of Darling Downs? I am.

2. And you acted as such at the election recently? I did.

3. You received a writ from the Governor of the colony? I have.

4. And you have failed to return that Writ with any endorsement? Yes; I have not returned it.

5. But you have sent to the Clerk of this House the ballot papers in connection with that election? I have.

6. *By the Attorney-General*: Mr. Affleck, you received, I believe, the returns from all the polling-places in the Electorate of Darling Downs? Yes, I did.

7. That is, from all the presiding officers? Yes, from all the presiding officers.

8. And you acted as Presiding Officer yourself, where? At Leyburn.

9. Were all the returns that you received from the presiding officers accompanied by statements of the number of votes polled? They were.

10. And also by the certified copies of the electoral roll supplied by you to the presiding officers? I found on examining—

11. No; I only ask if you got back from them the certified copies of the roll as well as the ballot papers? I did.

12. Did you compare the ballot papers with the rolls sent to you by the presiding officers? I did.

13. In each instance? In all cases.

14. Did you find anything wrong—anything out of the way? I found in the return from Warwick that I had one more ballot paper than names marked off the roll as having voted; also, in the case of the Yandilla returns, I found three ballot papers in excess of the number of names marked off the roll from there.

15. Who were the candidates? Mr. Douglas and Mr. Graham.

16. Mr. William Graham? Mr. William Graham.

17. What was the number of votes from the ballot papers for these candidates respectively? The numbers according to the ballot papers, were: Mr. Graham, 284; Mr. Douglas, 280.

18. I understand you to say there were four more ballot papers than names marked off on the roll; is that inclusive of informal votes? The numbers were 284 and 280; were there informal votes besides? There were informal votes as well.

19. There were more ballot papers than names ticked off on the aggregate rolls, by four, I understand you to say? Yes.

20. Why did you not return the writ? Because I considered the election had not been conducted according to the Act; consequently I sent no return.

21. Have you the writ? I have the writ.

22. Have you it with you? Yes.

23. Did you send all the ballot papers received by you from the presiding officers, together with those received by yourself at Leyburn, to the Clerk of this House? I did.

24. *By Mr. McIlwraith*: Are you aware if that is according to the Act? Yes.

25. *By Mr. Groom*: You received the writ, I believe, from His Excellency the Governor? I did.

26. Were the polling-places for the Electoral District of Darling Downs enumerated in that writ? There were six polling-places in the electorate.

27. Specified in the writ? Yes.

28. Were there any polling districts specified in the writ? No.

29. You were Presiding Officer, I believe, at Leyburn? Yes.

30. Is it a fact that you compelled some ten or fifteen electors who presented themselves to vote at the polling-place at Leyburn, to vote openly? Yes.

31. Can you tell the exact number? No; I could not tell the exact number.

32. On what authority did you compel these electors to vote openly? By the Act; as set down by the Act.

33. By the Act? It is set down by the Act that such should be done.

34. I understand you to say that in the writ you received from His Excellency the Governor, there were no polling districts proclaimed in that electorate—no polling districts ordered to be proclaimed in that writ. Are you not aware, as a returning officer, that before you can compel an elector to vote openly, the polling district must be proclaimed under the 53rd section of the Act? No; I was not aware of that.

35. You are not aware; are you not further aware that unless that proclamation was issued, you have no power to compel an elector to vote openly? One section of the Act states, if an elector chooses to vote out of his own police district, it is the duty of the Returning Officer, or Presiding Officer, as the case may be, to call upon him to vote openly.

36. That is your reading of the Act? Yes.

37. But are you not aware that that reading could only apply to places in the polling districts proclaimed before the issue of the writ, and the polling-places must be named in the writ, and you have to gazette them at the same time you gazette the polling-places—are you aware of that? No, I was not.

38. Were there any other polling-places, within your knowledge, where electors were compelled to vote openly on that occasion? Yes, I believe there were.

Mr. MOREHEAD said he did not know whether he was right, but he rose to a point of order. He thought the honorable member for Toowoomba had no right to travel away from the point at issue as he was doing, and

putting questions which ought to be put before the Committee of Elections and Qualifications. He did not think such questions should be asked by the honorable member; they had nothing to do with the subject upon which the witness was called to be examined.

Mr. PECHAY rose to address the House, when

The SPEAKER said, if there was to be any debate, the witness would have to withdraw. At the same time, he might state that he thought the honorable member for Too-woomba was slightly wandering from the matter under investigation by the House, but he did not choose to interfere himself.

Mr. GROOM said he would put no more questions on the point.

Examination resumed:—

39. *By Mr. Thompson:* Had you any other reason besides that you have stated for not returning the writ? No other reasons.

40. The discrepancies in the number of ticks? Yes.

41. Under what clause of the Act do you conceive it to be your duty to count the ticks, and compare them with the ballot papers? Can you say under what clause you were proceeding? The 48th section of the Act—Can I be allowed to read that section?

42. You say under the 48th section? Yes.

43. That is the clause under which you take your stand? Yes.

44. For the action you have taken? Yes.

45. You were the Returning Officer? Yes.

46. Not Presiding Officer? Not Presiding Officer.

47. Where did you preside? At Leyburn.

48. It was not at the place you presided that these discrepancies took place? No, it was not.

49. Then how do you explain that you had anything to do with that, under the 48th section? It is set down, I think, in the 55th section.

50. Do you see anything there that affects the matter? It states, as I said, in the 48th section, that a mark should be made "against the name of such elector which mark shall be *prima facie* evidence of the identity of such elector with the person whose name shall be so marked on the electoral roll and of the fact of his having voted at such election." I found this had not been done in four cases.

51. Yes; what induced you to look into the matter at all?—What part of the Act says it shall be your duty to compare the ticks with the ballot papers? The 55th.

52. The 55th says nothing about it. Do I understand you that you only rely on the two sections you have named? Yes.

53. *By Mr. Ivory:* Did you look over the ballot papers you received from these two places where the discrepancies occurred between the number of ballot papers received and the ticks on the electoral roll? I did.

54. Did you find the ballot papers themselves in proper order according to the Act? I did.

55. Were they properly initialled? Yes.

56. And everything was in proper form except this ticking off? Yes.

57. *By Mr. McIlwraith:* You wrote a letter to the Speaker on the 7th of April last, stating

the difficulty, and asking for his consideration of the matter? Yes.

58. Did you receive a telegram in reply? I did.

59. Was this the telegram:—"The Speaker is of opinion that you should return the writ duly endorsed. Any difficulties or irregularities might be stated in an accompanying letter, and the House would then deal with the matter as it saw fit." Is that the telegram? Yes.

60. Did you take any notice of that telegram—Did you act on it? No.

61. You submitted this matter to the Speaker for consideration and advice, and having received that advice, you do not act upon it? He stated he was of opinion; I do not take that as instructions to act; had I been instructed to declare, I should have done so.

62. You asked for the Speaker's opinion and did not act upon his opinion. Did you write a letter to the Colonial Secretary or the Attorney-General on the same subject? I wrote a letter to the Colonial Secretary.

63. Do you consider that a public document that I can ask you to give the contents of? Yes.

64. It is a public document. Have you got that letter—have you got a copy of the letter you wrote to the Colonial Secretary? Yes.

65. Will you produce it and the reply, please?

Witness produces a letter, which is read by the Clerk, by direction of the Speaker as follows:—

"Leyburn, 25th March, 1875.

"To the Honorable the Colonial Secretary,
Brisbane.

"HONORABLE SIR,—I find that, on comparing the ballot papers with the electoral roll that I received from Yandilla, there are (3) three more ballot papers than names of electors ticked off, as having voted; also one more ballot paper than names ticked off from Warwick, which makes four in the whole. I, therefore, have not declared the poll here, but have sent you the particulars for your information, and also request your advice upon the subject, and how I am to act. By this post I have sent the whole of the papers and books, &c., in connection therewith to the Clerk of the Assembly. The poll stands thus:—

"W. Graham ... 281.

"J. Douglas ... 280.

"I remain,

"Your obedient servant,

"J. AFFLECK."

66. *By the Attorney-General:* Have you the answer to that letter, Mr. Affleck? I have not.

67. Do you remember what it was? Yes.

68. What? The Colonial Secretary could not advise in the matter.

69. Do you know by whom the open votes were given at Leyburn—that you have spoken of? Yes.

70. Do you know how many there were altogether; can you say whether there were as many as six or seven? Yes; more than that.

71. How near can you go to the number? There might have been five-and-twenty.

72. Were there as many as ten? More than ten.

73. How near can you go to it, Mr. Affleck? I should say between five and twenty and thirty, as near as I can go to it.

74. Do you know how many were given on each side? About even numbers, I think, or very nearly so.

On the motion of the Honorable the COLONIAL SECRETARY, the witness was ordered to withdraw, and remain in attendance.

The COLONIAL SECRETARY then said he thought the House was now in a position to deal with this question. The object of calling these gentlemen to the bar of the House was to give their reasons why the writs had not been properly endorsed and returned; and he thought every honorable member of that House would agree with him that nothing could be more clear than the Act passed last session, which distinctly specified that the writ should be returned and should have the name of the candidate elected endorsed thereon. In the case of the election for the Logan the conduct of the Returning Officer appeared to have been of the most extraordinary character he had ever heard of. It seemed that this was the third occasion on which that gentleman had been engaged in elections which had been set aside, and he thought, under all the circumstances, the sooner he ceased to discharge the duties of returning officer the better. He did not wish to occupy the time of the House by taking any notice of the observation made by Mr. Gibson in reference to his (the Colonial Secretary's) conduct being called in question; but he would state that his conduct was perfectly above board—as the House was perfectly aware—in every step that had been taken with regard to these matters, so that to introduce his name into the question at all, and more especially to say that he must be influenced by some political motive, was impertinent and utterly uncalled for. This gentleman appeared to have utterly disregarded the law in every respect. He admitted having got the ballot papers into his possession; that he ticked them off and compared them with the roll, and he either did that in virtue of his office as Returning Officer or he did not; he was either carrying out a legal act, or committing an illegal act, and, according to his own statement, he must have been acting illegally. Notwithstanding that he admitted the ballot papers were laid before him; notwithstanding the fact that it appeared the ballot papers were compared with the roll to ascertain if they were correct; and notwithstanding that the candidates and scrutineers were present and were anxious to ascertain the result of the election, the Returning Officer now told the House it was impossible to tell how many there were—that he never counted them; that he sent them back. And why did he send them back? Because there was no statement. There was no dispute with regard to the ballot papers, and, as far as he could understand, the defence was simply this:—That the ballot papers were not accompanied by a statement. Now he was not aware that the absence of a statement of the kind referred to was sufficient to render an election void. It

was an informality which could be cured, and it was not for the Returning Officer to say whether it was right or wrong. That was a question to be tried by a competent tribunal, who assumed the functions of a jury, and it was not for the Returning Officer to say what the law was. The Act laid down his duty distinctly—that he was to count these papers and make a return; and, fortunately, they had evidence before them as to the number of votes polled, and to show what course of action should be taken. This gentleman said he had been forwarded a declaration by the presiding officer of Elkana; that should be kept in view. They had now got the number of votes polled at the other polling places for the respective candidates, and he found for Mr. Black 255, and for Mr. Lenneberg 220, showing a majority, up to the time the Elkana returns arrived, of no less than thirty-five votes. Now when they came to look at Mr. Haussmann's declaration, they found that at Elkana Mr. Lenneberg polled thirty-nine votes, and Mr. Black polled seven; and the Returning Officer, when he was examined at the Bar of the House, admitted that he had no reason to doubt for one moment that this return was correct—none whatever, although he did not, as he said, count the papers. That gentleman had no reason to doubt that Mr. Haussmann's declaration was true; and if it were true, they had the state of the poll at once; they knew it to be 259 for Lenneberg, and 262 for Black. There it was as clear on the face of it as it was possible for evidence to make it; there was the state of the poll by the Returning Officer at all the other polling places except Elkana, and they had Mr. Haussmann's declaration, which the Returning Officer was not in a position to dispute—in fact which he said he had no reason to doubt.

Mr. McILWRAITH: He said he knew nothing about it.

The COLONIAL SECRETARY: He was not to be interrupted. It was in proof; there was the declaration of Mr. Haussmann that it was correct.

Mr. THOMPSON rose to a point of order. It appeared to him that the honorable the Colonial Secretary was travelling out of the question before the House. He was endeavoring to demonstrate to the House who had to be returned in the writ—that a certain man was to be returned.

The COLONIAL SECRETARY: He was about to make a motion, to which it would be found his observations were strictly applicable; and he wished to justify himself with the House for making that motion. Now, the votes for the Logan election stood thus:—Black, 262; Lenneberg, 259; showing a majority for Black of three; and if the Returning Officer was to be ordered to make the return, it seemed to him it would be well that the House should come to a conclusion as to whether that return was to have the slightest effect. But as they had this evidence before

them, he did not think he would be justified in the eyes of the House if he did not propose this motion:—

That the Returning Officer for the Logan be ordered to correct the Return to the Writ of Election for that electoral district, by certifying that Adam Black, Esquire, was duly chosen as member for the said electoral district.

He might also state, that with regard to the election of the Darling Downs, he intended to move a similar motion.

Mr. PALMER thought the honorable the Colonial Secretary had made a great mistake in the motion he had just submitted to the House, and he thought also that the manner in which he submitted it was utterly uncalled for. They had heard a great deal of fire, and froth, and fury, to very little purpose, levelled against the head of this devoted Returning Officer. Why, a stranger entering the House would have thought the person spoken of in such terms had committed felony, or possibly something worse! He did not suppose that any independent member of the House, looking at the matter dispassionately, would say more than this—That the Returning Officer had committed an error of judgment. He was perfectly prepared to say that, in his opinion, he had committed an error of judgment; but he thought that, if returning officers were to be visited with such denunciation as had been lavished upon the gentleman in question by the honorable the Colonial Secretary, they would have great difficulty in getting gentlemen to act as returning officers at all. He considered the remarks of the honorable the Colonial Secretary, with respect to the conduct of the Returning Officer, utterly uncalled for. With regard to the motion the honorable gentleman had made, he certainly hoped the members of that House would pause and think very deeply before they committed themselves to such a motion—before they, by their votes, enabled such an Algerine motion to be carried into execution. Why, if that motion were carried, the electors of the Logan would not be the people who returned Mr. Black to that House at all; it would be a majority of that House.

HONORABLE MEMBERS on the Opposition benches: Hear, hear.

Mr. PALMER: They were actually asked to return a member to that House! He said it was monstrous that such a motion should be made; it was a most dangerous precedent if a majority of that House declared a certain gentleman to be the sitting member, more particularly after a petition had been received from that gentleman, which had been referred to the Committee of Elections and Qualifications. He repeated that, if the House pursued such a course, they would establish a precedent which they would bitterly regret before many years were over. He sincerely hoped the motion would not be carried by that House. So far as he was concerned, he must utterly disclaim any knowledge of either candidate, and therefore he spoke quite dis-

passionately on the subject. He did not know on which side either of them would sit if elected; he did not know, until he came into the House, who would have had the greatest number of votes if the returns had been sent in properly; and he maintained it was not within the province of that House—nor was the House in the possession of information at present, so far as he could judge—to say for whom the greater number of votes had been polled. With regard to the Returning Officer having been found fault with, in the way in which he had been attacked by the honorable the Colonial Secretary, he thought if that honorable gentleman had levelled some of his indignation at the Presiding Officer who sent in the return from Elkana in such a disgraceful state, there would have been some justification for it; but, for reasons best known to that honorable member, he never said a word about the *laches* of the presiding officer. All the vials of his wrath were expended on the head of this devoted Returning Officer, who, he felt perfectly certain—and he felt sure many, if not every independent member of the House, would join with him in thinking—had committed nothing more than an error of judgment. That he had done so, he (Mr. Palmer) firmly believed. He thought it was the duty of that officer, and the duty of every returning officer, to make a return; and it could not be laid down too emphatically by that House that returning officers were not to decide as to who was the sitting member, as some of them seemed to think they ought to—to decide by their *ipse dixit* who was to be the sitting member for the district. The duty of a returning officer, as laid down in the Act, was, to his mind, a very plain one; he was to return the writ according to the greatest number of votes polled; and once a man registered his vote, and the matter passed the presiding officer, the returning officer had nothing further to do than to report any irregularities which might have come under his notice. It was not his province to return a member any further than to declare for whom the majority of votes appeared to have been polled. He certainly hoped that no majority of that House would take upon themselves to decide who ought to be the sitting member for the Logan or any other district, more particularly under the circumstances of this case. He considered it was monstrous that the honorable the Colonial Secretary, who himself proposed that the petition of Mr. Black, with respect to this election, should be referred to the Committee of Elections and Qualifications, and on whose motion that resolution was carried, should now propose such a resolution as the one now submitted. He should move, as an amendment—

That the Question be amended by the omission of all the words after the word "That," with a view to the insertion in their place of the words, "The Returning Officer for the Electorate of the Logan be ordered to endorse the writ of election

with the name of the party who polled the greater number of votes."

Question—That the words proposed to be omitted stand part of the question.

Mr. PECHÉY was much surprised at the remarks which had fallen from the honorable member for Port Curtis on this subject, because he thought that, to a great extent, the latter portion of his remarks negatived the former portion. If the course proposed by the honorable the Colonial Secretary were carried out, it did not follow at all that that House had, by a majority of its members, returned a member for the Logan; it was still open for the defeated candidate, or supposed defeated candidate, to petition the House, and for his petition to go before the Committee of Elections and Qualifications; and in all cases of that kind, it was most desirable that the Returning Officer should not arrogate to himself the functions and duties of the Committee of Elections and Qualifications. If that were allowed, no constituency would be safe. If a returning officer were to appoint himself judge as to different little points of law—why, it followed that if he had political proclivities on either one side or the other, and was sufficiently wanting in honor to act on those proclivities, the constituency of which he was appointed returning officer, would be entirely at his mercy. He thought that, in this case, they had quite sufficient not only to bear out the remarks which had fallen from the Colonial Secretary with regard to this gentleman who had acted as Returning Officer for the Logan, but, he himself thought, and he believed every unbiased member of the House would agree with him—for, to a certain extent, they were now sitting as a jury to hear the evidence of witnesses—that that gentleman, in giving his evidence, had done so in a very prevaricating way. The fact of his having compared the ballot papers with the roll, and yet not being able to state what was the number of ballot papers, although in the earlier portion of his evidence he distinctly said he counted them, certainly looked to him, to a very great extent, like prevarication; and he fully endorsed the remarks of the honorable the Colonial Secretary with regard to the matter. He thought also the facts elicited by the honorable member for Maryborough would back up the House in following the course marked out by the honorable the Colonial Secretary. That was not the first time this gentleman had been connected with similar difficulties. According to the evidence, it was the third time he had made a mull of the election which had been carried on under his supervision. Now, putting all these facts together, he certainly thought the House would be justified in directing that the writ should be filled up in the manner in which the honorable the Colonial Secretary had proposed; and he did not see that, by so doing, they would be in any way imposing a

member upon the Logan electorate, because it was still open for any person feeling himself aggrieved, to have the matter brought in proper form before the Elections and Qualifications Committee. In fact, the motion of the honorable the Colonial Secretary really placed things in train for having the matter brought before that committee. At the present moment they had no member at all for the Logan, and unless some action were taken, similar to that proposed by the honorable the Colonial Secretary, the district might remain unrepresented throughout the session, and perhaps until there was another general election. He thought, under these circumstances, the House would act wisely in passing the resolution proposed by the Premier.

Mr. MOREHEAD said he wished to make a few remarks in reply to the honorable member who had just sat down. His argument amounted to this:—That after the House had arrived at a decision, it was to refer its decision to an inferior tribunal; that was to say that, after the Legislative Assembly had seated a member for the Logan, they were to refer the question whether he held a seat in the House to the Committee of Elections and Qualifications, and nothing, in his opinion, could be more absurd. The honorable member must have been very badly advised; he did not know who his legal advisers were in this case, but it seemed to him that he had made a great mistake, and he (Mr. Morehead) was sorry, for that honorable member's own sake, that he had done so. That honorable member went on to speak in disparaging and highly improper terms of the Returning Officer for the Logan electorate; he went on in a most improper way to assert what he must have known, from the evidence given before the House that evening, was not the case. He said there were three cases—

Mr. PECHÉY rose to a point of order. The honorable member said he asserted what was not the case. He did not think that was Parliamentary language.

Mr. MOREHEAD said, if the honorable member objected to the expression, he would withdraw it; but he must say, the honorable member said that which, to his (Mr. Morehead's) mind at any rate, was not the case. He stated that this was the third time this gentleman made a—he used the classic word "mull"—of the election carried on by him. Of the first election, he (Mr. Morehead) knew nothing; he might have made a "mull" of it or not; but in reference to the second, he happened to know a little about it, as he was a member of the Committee of Elections and Qualifications which dealt with the petition which eventuated in upsetting the election, and putting Mr. Nind out for a short time. In regard to that election, he had no hesitation in saying that Mr. Gibson had no more to do with the failure of the return than he had, and every member of the Elections and Qualifications Committee would bear him out

in that statement. The fault rested entirely with the presiding officer, and the honorable member for Aubigny might have obtained that information if he had read the evidence brought before the committee; and he thought it was very improper for that honorable member to take advantage of his position in that House and attack a gentleman behind his back when he had no opportunity of replying, and making the sub-stratum of that attack a mis-statement. With reference to the action of the Returning Officer in the present case, he considered that he had committed an error of judgment, and how he committed that error of judgment was, he thought, a matter which the House might consider. Perhaps his error arose from his being too conscientious, and reading the Act more strictly and stringently than he should have done; and that appeared to be the greatest amount of blame that could be attached to his conduct, according to his (Mr. Morehead's) way of thinking. The honorable member for Maryborough, with his usual disingenuousness, asked Mr. Gibson if he had "a rough recollection" of the number. Now, he would like to have some explanation as to what a "rough recollection" might be: it might be a very good thing in a political point of view; but for a man of the world, who wanted to go through the world properly and straightforwardly, it would, in his opinion, be a very dangerous recollection to have. The whole question narrowed itself down to this: Whether Mr. Haussmann's declaration as to the numbers was to seat Mr. Adam Black? That was what it really amounted to, because the effect of the motion would be to say his figures were correct, and Mr. Black had a majority. There was nothing in the ballot papers; there was no record before the House—no endorsement on the writ to show that Mr. Black had a majority, and he thought the House would be very wrong indeed if they followed such a course. It would be a most dangerous precedent. Any Minister might appoint returning officers who would make all sorts of errors, and he would then be able to return any member he pleased. He had no doubt there had been Ministers—they might have Ministers, and probably would have Ministers, who would adopt such a course. There might be some honorable members who had not considered that, from what the House did on this occasion, there could be no appeal to an inferior tribunal, and he would therefore ask them to consider well before they passed such a motion. He sincerely hoped the honorable the Colonial Secretary would see his way to accept the amendment of the honorable member for Port Curtis; and, if the question did come to a vote, he trusted honorable members would see that their vote now would be irrevocable; that they were taking upon themselves the functions of the Elections and Qualifications Committee, and declaring that the numbers given by Mr. Haussmann were

correct, and, in fact, deciding who was the sitting member, on that gentleman's declaration. He hoped the honorable the Premier would withdraw his motion, and accept that made by the honorable member for Port Curtis, because it would result in the same thing—if Mr. Haussmann's figures were correct the name of Adam Black would be endorsed on the writ. The name must be on the writ, and he was sure the honorable the Premier did not, for one moment, intend to put in the name of a gentleman who had not the majority, and consequently he could see no earthly reason why he should not accept the amendment. He would strongly impress upon honorable members to accept the amendment, because, in this one case, if they voted for the motion as moved by the honorable the Premier, and carried it, they would irrevocably seat Mr. Black; of course, if they were prepared to go to that extent, well and good—so be it; but, in the other case, by adopting the amendment, they would leave the matter open for appeal to the Committee of Elections and Qualifications. As far as regarded the gentlemen who were candidates, he knew nothing of them personally, and he was therefore quite dispassionate on the question. He did not care a straw which gentleman was seated, or on which side he would sit; but he would seriously ask the House not to create this dangerous precedent of a majority arrogating to themselves the right—the absolute right—of electing a member for any constituency in that House.

Mr. MILES said it was not often he could agree with the course pursued by the honorable the Colonial Secretary, but on this occasion he was quite prepared to give him his support on the motion he had just proposed. He would point out, and perhaps it would be in the recollection of the honorable member for Port Curtis, that this was not the first occasion on which a similar course had been adopted. It would, no doubt, be in the recollection of some honorable members that, on one occasion, he took exception to Mr. Pring sitting in that House on the ground that he was, at the time, in the receipt of emolument from the Government; in fact, that he was at that time appointed as commissioner to bring up a report for the purpose of drafting a Bill with reference to the gold fields. He then raised the question as one of privilege, and Mr. Pring was unseated. He appealed to his constituency, and he was returned again; but still the same impediment existed as before, and when Mr. Pring walked up to the House to be sworn in, he (Mr. Miles) raised a point of order, and took the same objection as he did previously. What was the result? It was moved that the honorable member be sworn in, and that motion was carried. Then, he believed the opposing candidate on that occasion petitioned the House against the return, and the petition was referred to the Committee of Elections and Qualifications, and Mr. Pring was confirmed in his seat.

There was a case in point, and he thought the honorable member for Port Curtis went too far when he said the majority of the House wanted to dictate and force a member on the Logan electorate who had not been returned. Any of the candidates at the last Logan election could petition the House, and have the petition referred to the Committee of Elections and Qualifications. In fact, he did not see what other course they could adopt, and he thought the motion of the honorable the Colonial Secretary put the matter in proper form, so that either of the candidates could petition against the return of Mr. Black. He believed that was the proper course, and he, for one, would vote for that course. With regard to the remarks of the honorable the Colonial Secretary, in connection with the Returning Officer, he was sure he regretted those remarks. He (Mr. Miles) had known the gentleman referred to for a number of years as a returning officer; and, although the honorable gentleman for Aubigny said he had made a mull of three elections, he had not the slightest hesitation in saying he believed him to be thoroughly conscientious, and that, if he had committed an error, it was an error of judgment. He might also say that he was somewhat crotchety, and sometimes held extraordinary opinions. He knew, on one occasion, when Mr. Gibson was returning officer for the Maranoa, and he (Mr. Miles) was a candidate—and he had reason to know, because he was put to a good deal of trouble and annoyance at the time—Mr. Gibson actually prepared an electoral roll for himself. He acted in a very extraordinary manner on that occasion, and he (Mr. Miles) thought, if the honorable the Colonial Secretary had taken a little trouble to point out what were the duties of returning officers, he would have done a great deal more good for the country than by using the very offensive language he did. He had no hesitation in saying that, whatever error the Returning Officer had committed, it arose from his desire to act properly and conscientiously. At the time he referred to, when that gentleman prepared the roll for himself, he said he had received instructions from the Colonial Secretary that he was to use the roll of the previous year, and he (Mr. Miles) was quite unable to convince him of his error. He only hoped the honorable the Colonial Secretary would make a similar motion when the next case with reference to the Darling Downs election came before the House, because he would then put all parties on an equal footing; and, if there were any persons aggrieved or dissatisfied, they could approach the House by petition, which would be referred to the Committee of Elections and Qualifications, which would decide the matter. For these reasons, he thought he was perfectly justified in voting for the motion.

Mr. DOUGLAS said he did not feel very warmly on this question, but the honorable

member for Port Curtis had expressed himself in somewhat decided terms respecting it. In the first place, that honorable gentleman complained of the "fire, and fume, and fury" of his honorable friend the Colonial Secretary; but he, in his simple judgment, seemed to recognise somewhat more of those qualities in the honorable gentleman opposite than he did in the statements of his honorable friend at the head of the Government. That honorable gentleman took some exception, and, he thought, justly, to a statement, and he understood his remarks specially to refer to that statement, which was in a letter, addressed to the honorable the Speaker by this gentleman, and which seemed to imply that the Colonial Secretary had misused his office; that he had shown some disrespect to the Speaker; and that, in his course of action, he was actuated by political motives. This, which was recorded in an official document from a returning officer, and addressed to the Speaker of the House, was a very serious imputation on the honorable gentleman at the head of the Government—such an imputation as he thought that honorable gentleman was justified in taking exception to; and when this Returning Officer so readily implied political motives in others, it was quite possible to infer that those ideas might be uppermost in his own mind. Now, it seemed to him almost immaterial which motion they adopted; the main matter for them to consider was, what was the attitude which the House should take up upon a very important, and he thought he might say, a very unprecedented case. It was very natural in these cases, when they could not refer to a single precedent, that they should be somewhat at a loss as to how to proceed. He believed that even the Speaker could not lay down positively, at any rate—so far as precedent was concerned—the precise course they would be justified in following. He thought it was, therefore, pardonable that they should find some slight difficulty in coming to a conclusion. But what he most desired was, by a reasonable expression of opinion on the part of the House, to convey to returning officers throughout the colony, when called upon to discharge their duties, the sense of that House—which had been expressed to some extent, and which was certainly entertained—that it was their duty, if possible, to make a return. Their duty, it seemed to him, was, if possible, to arrive at a result. That, it was true, might be only from *prima facie* evidence; there might be defects which were known to the returning officer, but it would, he thought, be deplorable if a sort of epidemic of over-conscientiousness should break out amongst returning officers which might result in really serious inconvenience; and, as they had seen, when these sort of epidemics broke out, they carried with them a certain amount of contagion. In the first instance, there was the result, or rather the no-result of the election for the Darling Downs; and then the

next returning officer, who had an opportunity of also declaring no-result, indulged in that exhibition of his judgment. He thought it would be a most deplorable thing if that were to pervade the constituencies generally, and that the opinion of the House, that it was the duty of the returning officer to make a return, should be made known. They knew there were ample means provided in the statute for correcting any evils or any defects which might arise out of the return. So long as the returning officers discharged their duties conscientiously from *prima facie* evidence, to that extent, he was sure the Parliament, and the honorable the Speaker, as the appointed head of Parliament in such matters, would be satisfied. They knew they possessed a tribunal which was capable of correcting these defects; that they had provided, and in their hands, machinery in order to do so. It was also a matter of indifference to him whether they declared the determination of the House in the form of the motion of the honorable the Colonial Secretary, or of the amendment of the honorable member opposite; but he thought it was advisable that they should consider the matter thoroughly, and take care that they should put it in a shape which would redound to their credit as a deliberative assembly. It was not a question of a party nature; it was to be judged from the facts disclosed, and what they had to do was to say that a certain gentleman had been returned by a majority of votes. They would then have arrived at what he might presume to call a rough decision on this subject. Exception had been taken to the use of the term "rough" by the honorable member for the Mitchell, and he must here remark that he merely made use of the expression because it had been supplied in the statements by the Returning Officer, when he was at the Bar of the House, and had previously crept in during the process of examination. He felt called upon to take exception to the term applied to him by the honorable gentleman whom he was privileged to call his friend—the honorable member for the Mitchell. That honorable member, referring to something that had occurred in the course of the examination—he meant to the few, perhaps not very important, questions which he (Mr. Douglas) put to the Returning Officer—referred to him as having put them in his usual disingenuous manner. Now, he did not know whether that honorable gentleman had had any opportunity of gauging his disingenuousness. It was true, he was now almost new to what he might call this second term of political life; he had been a private member of society for a considerable period, and perhaps the honorable gentleman's recollection would carry him back to a period when he (Mr. Douglas) was especially distinguished for disingenuousness. He must confess that his recollection, at any rate, carried him back to a period when that gentleman

was a very youthful member of society; at any rate, he could carry the recollection with him, that his conduct, whatever it was, certainly had a very decided impression upon the honorable member's youthful mind at that time. And now, after a lapse of years, that honorable gentleman came forward and told him, although he had been very little in public life of late, that he was distinguished for disingenuousness. He hoped the honorable member would correct his opinion of him (Mr. Douglas) in that respect; he could not accuse himself of it, and he could only hope that whatever had led him to that opinion, it would not, at any rate, be perpetuated in his mind. He thought there was no necessity for the very decided expression of warm feeling on the matter by honorable members opposite. The honorable member for Port Curtis spoke of the motion as exceedingly Algerine and monstrous. These were two exceedingly strong epithets, and he thought they were not applicable to either one resolution or the other. He had no desire that either should be looked upon as Algerine; but he thought it most desirable that the dignity of the House should be vindicated, and that they should adopt the best means possible, under the exceedingly unprecedented circumstances of the case, to conserve that dignity.

Mr. STEWART said it was not his intention to take part in the debate, but his name was included in the warrant for the appointment of the members of the Elections and Qualifications Committee, and he found that several members whose names were on that warrant had already spoken. The honorable member for the Mitchell had also appealed to the members who were on that committee last session to substantiate a statement he had made in reference to an answer that had been given by the Returning Officer for the Logan, at the Bar of the House, to the effect that it was not the fault of that gentleman, but of the presiding officer, that led to the reasons by which the last Logan election was declared void. Now, he wished to point to the report of the Committee of Elections and Qualifications on this election last session, which was :—

"The Committee of Elections and Qualifications, duly appointed on the 2nd of April, 1874, to whom was referred, on the 25th of March, 1874, a petition from Henry Jordan, of Tygum, in the Logan district, praying that, for reasons in such petition set forth, the election and return of Phillip Henry Nind, Esquire, may be declared null and void—have determined, and do hereby accordingly declare—That the said election was wholly void."

Now, the seventh paragraph of the petition on which the committee held the election to be void stated :—

"That, at Beenleigh, one of the places at which the poll was taken at the said election, one vote was received after four o'clock in the afternoon of the day of the said election, and that your peti-

tioner has been informed and verily believes that such vote was given for the said Phillip Henry Nind."

Now, when he stated to the House that the poll clerk was also the returning officer, Mr. Gibson, who acted at Beenleigh in that capacity, it would be seen how the matter stood, and the remark that the fault was that of the polling clerk was very apt to mislead the House. There were other reasons set forth in the petition, but it was not stated in the report, nor was there any evidence from which any member, or the whole of the members, could state the ground upon which the election was declared void.

Mr. MOREHEAD: I can.

Mr. STEWART: He, along with other members who had spoken, deprecated the course taken by the Returning Officer very much. He thought if such proceedings were allowed to pass unchallenged, or unless some more active steps were now taken to prevent such occurrences, they would have the elections entirely in the hands of the returning officers, who would no doubt become political partisans of the Ministry of the day; and there was nothing, in his opinion, which would tend more to destroy the independence of the House and the purity of elections than this course which had been adopted by the returning officers. The honorable member for Port Curtis took exception to the motion made by the honorable the Colonial Secretary on the ground that it would be the House and not the electors of the Logan who would return the member. Now, he would point out to the House that the Committee of Elections and Qualifications was simply an off-shoot of the House appointed to investigate and dispose of disputed cases of the return of a member; and he took it that if the House was in a position to decide the case, it had no right to be sent to the Committee of Elections. If they had the evidence before them, they were the tribunal by which it ought to be decided, the Elections and Qualifications Committee being merely appointed for convenience of numbers, to receive evidence and deal with the cases submitted to it. It appeared to him that the amendment was very much to the same effect as the motion, and he did not think, with the evidence they had before them, they would be travelling out of the province of the House by passing the motion. The amendment was, that the name of the person who had polled the most votes should be put in the return; but he thought, from the examination they had had at the Bar, and the remark in the letter from the Returning Officer to the honorable the Speaker—which he considered most impertinent, and to which exception ought to be taken whether it was in reference to the honorable the Colonial Secretary or any other member of the House—the return they would have made would be almost certain to be, that he did not know who had polled the most

votes. That, he believed, would be the return they would have.

Mr. MOREHEAD rose in explanation, and said the honorable member knew perfectly well that the statement of what took place at Beenleigh had as much to do with the decision of the Committee of Elections and Qualifications, in the case referred to, as the fifth wheel of a coach.

Mr. STEWART rose to make an explanation. The honorable member for Mitchell had stated that he (Mr. Stewart) no more believed that the action of the Returning Officer at Beenleigh had anything to do with the upsetting of the election—with reference to the paragraph in the petition of Mr. Henry Jordan—than had the fifth wheel of a coach. He had no grounds for such a statement.

An HONORABLE MEMBER: That was no explanation.

Mr. IVORY observed that, as far as regarded the propriety of a return not having been made in the present case, the opinion of the House was unanimous; so he should make no remarks upon that. The course proposed in the amendment of the honorable member for Port Curtis was the one the House ought to adopt, simply to remit the matter to the Returning Officer to return the party who had the majority of votes; and not that moved by the Colonial Secretary, which would commit them to a declaration of the name of the party to be returned. There was a material difference in the two proposals. The House were not supposed to have sufficient knowledge of the votes that had been recorded in the electorate of Logan to show who should be returned; and he thought it would be going beyond their province to tell the Returning Officer the name of the person to be endorsed by him on the writ. There was another argument which influenced him very strongly, that if the House passed such a resolution, no action of the Committee of Elections and Qualifications could upset it; they would absolutely commit themselves to a course of action which could not be upset by any committee of the House. With regard to the case cited by the honorable member for Carnarvon, there was no analogy between it and the present case. In the former case, a member had actually been returned—the writ had been endorsed properly; and an objection was made to the gentleman taking his seat. It was just and fair for the Elections Committee to deal with. In the present case, no return was made. He was very much pleased to hear the honorable member for Carnarvon vouch for the integrity of the Returning Officer whose conduct was the subject of the present debate. At first, he (Mr. Ivory) was afraid that Mr. Gibson was one of those unfortunate gentlemen who had, on some previous occasion, done the honorable member an injury. Although he had some notion that the honorable member had a grudge against the Returning Officer, yet the honorable member, evidently knowing Mr.

Gibson intimately, had come forward and vouched for his honor and integrity. He was the more pleased at that, because the honorable member for Aubigny had accused the Returning Officer of prevaricating and not giving his evidence in a straightforward manner. Any straightforward man, hearing the Returning Officer giving his evidence, would give him credit for giving every particle of information possessed by him. The Returning Officer had, in the first place, stated that he had counted the ballot papers; and, then, he had qualified that by stating that he had simply ticked them off, and had no idea whatever of the number of votes connected with the election. To his (Mr. Ivory's) mind, it seemed a very simple matter indeed. He ventured to say that if the honorable member for Aubigny would himself take a number of papers and a list of names, and compare one with the other, ticking them off, if he got to the length of a hundred, he would have a confused idea of the actual number of the votes he had counted. Under the circumstance, he could quite conceive that the Returning Officer had not the numbers in his memory, though he might have made a rough guess. He ventured to affirm that the answers of the Returning Officer were straightforward and honest; and that the remarks of the honorable member for Aubigny and the Colonial Secretary were uncalled for and decidedly out of place. He felt bound to support the amendment. Honorable members were all at one in the matter, that the writ should be returned. The question was not a party question, and the House should adopt the course proposed by the honorable member for Port Curtis.

Mr. THOMPSON said he thought the House was hardly aware of the importance of the question. It was extremely important, and about the most important that could possibly arise. If the House carried the motion of the Colonial Secretary, they struck at the root of the Constitution. Now, before he proceeded to that matter, he should like to say something in defence of Mr. Gibson, who, it appeared to him, had been somewhat wantonly attacked. He did not use the term offensively in any way, but the Colonial Secretary rather exceeded what might have been due to the dignity of his office when the honorable gentleman ventured to make such a virulent attack for so small a matter as that Mr. Gibson had used one or two incautious words. It had never been pointed out what Mr. Gibson's stand was. By section 63 of "*The Elections Act of 1874*"—

"As soon as possible after the returning officer shall have received from the several presiding officers the sealed parcels transmitted to him as aforesaid containing the ballot papers taken at the polling-places at which such presiding officers respectively presided and the several statements of the numbers of votes transmitted by them as aforesaid"

he had to do something. Now, Mr. Gibson's contention was, that he never was put in a

position to deal with a "sealed" parcel, but that the parcel had been absolutely tampered with, and that there was no "statement" of the number of votes. On logical grounds the gentleman was right. It was scarcely honorable for honorable members, when Mr. Gibson had no chance of defending himself, to attack him as he had been attacked. It was impossible in his view for him to make a return, inasmuch as the required material specified in the 63rd section was not in his hands. There was not only no sealed parcel, but the seal on the paper had actually been broken, and the whole thing had been tampered with. Mr. Gibson had a very good ground of defence for his conduct. Now, he (Mr. Thompson) should come to the more important point. What were the House asked to do? To direct the Returning Officer, who had a solemn duty to perform, if he had any at all, to put a certain name on the back of the writ. Such a proposition was perfectly monstrous. It was in violation of the Constitution, and quite foreign to the modern practice of the House of Commons:—

"Before the year 1770, controverted elections were tried and determined by the whole House of Commons as mere party questions, upon which the strength of contending factions might be tested. Thus, in 1741, Sir Robert Walpole, after repeated attacks upon his Government, resigned at last, in consequence of an adverse vote upon the Chippendale petition. 'Instead of trusting to the merits of their respective causes,' said Mr. Grenville, in proposing the measure which has since borne his name, 'the principal dependence of both parties is their private interest among us; and it is scandalously notorious that we are earnestly canvassed to attend in favor of the opposite sides, as if we were wholly self-elective, and not bound to act by the principle of justice, but by the discretionary impulse of our own inclinations; nay, it is well known that in every contested election, many members of this House, who are ultimately to judge in a kind of judicial capacity between the competitors, enlist themselves as parties in the contention, and take upon themselves the partial management of the very business upon which they should determine with the strictest impartiality.'"

Now, here was the very mischief which Grenville's Act aimed to cure. What did he (Mr. Thompson) find? Neither the Constitution Act nor the Legislative Assembly Act gave the House all the powers of the House of Commons; neither of them expressly said that the Legislative Assembly of Queensland had all those powers. If it could be shown otherwise, he was not aware of it; so that the House could not deal with such a case. Both the statutes that comprised the Constitution of the House were silent on the subject. But, in the Legislative Assembly Act, sections 15 to 23, the machinery was provided by which the case was to be decided—the Committee of Elections and Qualifications. He saw no other machinery by which it could be dealt with, unless the House stepped outside the Con-

stitution and arrogated powers which they did not possess. The only, the supreme, tribunal was appointed by the Act, and the decision of the Committee of Elections and Qualifications on such a case was final as against the House. *Omnis expressum facit cessare tacitum*. How, then, could the House step outside the limits of the Constitution? If honorable members on the Ministerial side were in the position of the Opposition, all sorts of allegations would be heard about bribery and corruption on such a proposal as that made by the Colonial Secretary. Why such a disastrous precedent was to be put on the records of the House, he (Mr. Thompson) really could not imagine. It would be well to inquire what was the position of the case, owing to there being no return. Impediments of a formal nature, and delay in making the return, were amply provided for in the Elections Act, and they could be set right by a proclamation in the *Gazette*. But it was outside the province of the House to direct that a return should contain a certain thing. It not only struck at the root of the Constitution, but it put the Returning Officer in a very improper and degraded position. He did not think the Returning Officer should be told by the House that a certain name should be endorsed on the writ. There were cases in the House of Commons in which a return to a writ could be amended, but that was after it had gone through the Committee of Elections and Qualifications, and it could be in no other way after Grenville's Act had commenced. The House of Commons had given up their privileges with great unwillingness, whether right or not, and the powers they had previously exercised of deciding contested elections, prior to that Act. It was one of the weaknesses of human nature not to wish to part with powers, though they might be detrimental to the public welfare. But the amending of a return after it had been decided to be in error was not analogous to the case put before the House now. The machinery of the House of Commons for deciding upon elections was very different from what was provided for the Legislative Assembly, and honorable members could hardly apply the incidents of the proceedings. For instance, there was a Clerk of the Crown, an officer the Assembly did not know at all; and, indeed, they could not follow out the usage for a precedent. But the House had their Constitution Statutes, which told them precisely what to do. The matter might be set right by the writ being returned at any time when the House might choose it should be returned; and Mr. Gibson must obey their order by returning the writ. He (Mr. Thompson) was not going into the question of how far the House would exercise their powers if the Returning Officer should not choose to obey their order: they could summon him and commit him for contempt, and so on. But he could see nothing to touch Mr. Gibson, if the

House directed him to do such a thing as he was required to do by the motion of the Colonial Secretary; and, indeed, he very much doubted whether they could order him to make such a return as the honorable gentleman wished. The House could order Mr. Gibson to return the writ; and it did not matter that it would be out of time, because that could be cured by proclamation under the Elections Act. If the House once submitted to the motion of the Colonial Secretary, they must every session look forward to the incompetent and the corrupt of returning officers making purposely failure of returns, in order that elections must become party questions in the House to be decided by the strongest side. Now, if that were once understood, honorable members would know what to do. They would collect all their forces on such occasions. But the Colonial Secretary had taken them at a disadvantage. He would seat Mr. Black—to whom he (Mr. Thompson) had no objection personally, and whom he should be glad to see come into the House; and, because of the few words said by the Returning Officer at the table, the honorable gentleman considered he had all the material required to declare Mr. Black the sitting member for Logan. Well, that did not get rid of all the difficulty. The question of the Logan election had been already referred to the Committee of Elections and Qualifications, upon the petition of Mr. Black himself. The House were now asked to re-decide it by dealing with it, after that reference. Suppose it was decided by the House, they could not refer it to the inferior tribunal; so that there was a difficulty that they could not get out of. They were in a "mull," or a muddle, as had been said—perhaps the former word was short for the latter—and the only way out of it was to adopt the amendment of the honorable member for Port Curtis, which he had been speaking to, and which he would support.

Mr. ROXES observed that he rose to speak because of what had been said about the preceding Logan election. His recollection of what took place in the committee, he having been a member, was perfectly clear. He had also refreshed his memory by referring to last year's "Votes," and had mentioned the matter, since, to two other members of the committee, who coincided with him. The committee having taken evidence for a considerable time with regard to the vote said to have been taken after the hour of four o'clock, at last told the gentleman who appeared for Mr. Nind that they did not require any fresh evidence on that subject; they had all made up their minds. Any one looking through the evidence carefully would be quite satisfied that the weight of it was strongly against the allegation put forward in the petition.

Mr. STEWART: No.

Mr. GROOM said this was the first time in the history of the Queensland Parliament that such a case as was now before the House had arisen; and, while perfectly agreeing that it

was necessary that returning officers should understand that the purity of election must be preserved as far as they were concerned, the Assembly must look after their own privileges. The Government might by a majority, to-day, carry any resolution, to do as they pleased; but, to-morrow, the reverse might take place. Before the House established a precedent, they should be perfectly satisfied that the course they were taking was right. The point brought forward by the honorable member for Bremer had occurred to himself (Mr. Groom), and he had mentioned it to two or three honorable members, as to the practice in controverted elections, after the passing of Grenville's Act, of referring the petition to a committee. But there was no case, as far as he had consulted "May's Practice" and "Hatsell's Precedents," that met the present one, except where, in "May," he found:—

"If no return be made to a writ in due course, the Clerk of the Crown is ordered to attend and explain the omission; when, if it should appear that the returning officer, or any other person, has been concerned in the delay, he will be summoned to attend the House; and such other proceedings will be adopted as the House may think fit."

Now, it became a question whether the course proposed by the Colonial Secretary or the amendment of the honorable member for Port Curtis was exactly that which the House should take; and he should very much like to have the Speaker's ruling upon this point of Parliamentary practice:—"Whether, a petition having been presented by the Premier to this House, and having been referred to the Elections and Qualifications Committee, this House can undertake to decide for itself what course it shall take in reference to that petition?" It was the first time the point had been raised here, and there was no case, even in English history, of the House of Commons having undertaken to decide it. He should like the Speaker's ruling, whether the House could pass either the motion or the amendment. When honorable members were going to establish a Parliamentary precedent for those who would come after them, they should be most careful. If they regarded the practice of the House of Commons, they would find that a precedent was not established unless after very grave and anxious deliberation. He should not say anything of the conduct of the Returning Officer in this case. He had known the gentleman a long time, and, notwithstanding the remarks of the Premier, he believed that he had acted from perfectly conscientious motives; and, from his knowledge of him, he did not believe he would act in a corrupt way in his official position as Returning Officer. That gentleman might have committed an error of judgment; and that was the gravamen of all that had been said, or could be charged against him. He might have made an incautious remark upon the Premier in a letter to the Speaker, but any one was

liable to do that. The House should not visit him with any penalty on that account.

The SECRETARY FOR PUBLIC WORKS expressed his intention of saying only a few words on the subject. The honorable member for Port Curtis objected to the motion naming the member who was to be returned, and contended that the House by passing it would decide a question which was only for the electors of the Logan. The House intended nothing like that; because they had heard evidence of the will of the electors as shown by the way they had voted for the respective candidates. The amendment was brought forward simply to baffle the choice which the electors of Logan had already made, and which they had demonstrated by their votes. The House had taken evidence, and already knew, from that evidence, the number of votes polled, and they had no right to leave the choice of the electors to be baffled. The honorable member for Toowoomba had talked about privilege. It was a strange way of maintaining the privileges of the House, if, after they had ascertained that the majority of votes had been polled by Mr. Black, they referred his election for some other decision. There was also the affidavit of Mr. Haussmann, the presiding officer for Elkana, to show that, besides the majority admitted by the Returning Officer to have been recorded elsewhere in favor of Mr. Black, there was a majority for him counting the votes recorded at the polling-place which the Returning Officer did not receive. But there was negative evidence, which was perhaps the best in this case. The declaration of the poll at Elkana had been made public for some weeks, and no one, neither candidates nor scrutineers, had ventured to deny that the figures were correct. Every newspaper in the southern districts of the colony had published the result of the ballot, and it had been the subject of much talk, but its correctness was never challenged. Therefore, the House were justified in believing Mr. Haussmann's declaration. They had proof before them that a majority of votes had been polled in favor of Mr. Black, if not in one place, in all the district.

Mr. J. SCOTT observed that there was one difficulty in the proposal of the Colonial Secretary, if it should be carried. According to the 56th Standing Order—

"No question or amendment shall be proposed which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative."

Now, he did not know that the honorable gentleman intended that the door should be shut against any petition in the case before the House; but if the motion should be carried, the door would be absolutely shut, for the simple reason that, under the Standing Orders, a report from the Elections Committee could not be dealt with by the House, this session. He could hardly think that was the

reason of the honorable gentleman bringing forward such a motion. The only way out of the difficulty was to adopt the amendment, which would leave the case still open to be dealt with by the House.

The ATTORNEY-GENERAL: The one great objection which seemed to press upon the minds of honorable members more than any other, was, that if the motion was carried, the return could not be touched by any proceeding of the Elections Committee. The result of the motion being carried would be, that the writ would be returned endorsed with the name of Adam Black, as member for Logan; and the position would then be just the same as if the return had been made at the proper time. The return might then be objected to and petitioned against at any time and upon any ground, the same as if there had been no delay—as if this case had not arisen. If he thought for a moment that the motion was an endeavor to confirm the election as against the Elections and Qualifications Committee, he should not be in the place he occupied to advocate it. The writ should have been returned in due course with the name endorsed of the member elect, or the candidate who had polled the largest number of votes. If no candidates had appeared, or if no votes had been given, the Returning Officer would have been justified in making no return. But he was bound to return the writ with the name of the candidate who had the majority of votes. Now he knew that, as far as he had counted the votes, there was a majority of 35 votes in favor of Mr. Black; and therefore, according to his statement before the House, Mr. Black was entitled to be returned as member elect. Whether Mr. Black got that majority lawfully or not was a matter with which the Returning Officer had nothing to do. If the Returning Officer chose, in violation of his duty, to reject the Elkana ballot papers, that was no reason why he should not return the results of the poll upon the papers that he had received. That was important to the House, if the Returning Officer could not show that the papers which he had rejected would make the return the other way. If it could have been shown that the rejected votes would, if received, cause the return of another candidate, then the House might hold their hand and hesitate about passing such a motion as they were asked to agree to. That was important to the consideration of the question. It had been stated that there was no precedent for the House dealing with the question. There was the case of John Mitchell, lately. So soon as the writ was laid on the table of the House of Commons, the Premier—representing not a party of which he was the head, but being for the time the spokesman of the House, and representing the dignity of the House—moved “that the return is void”; and, in so doing, he occupied an analogous position to that of his honorable colleague the Colonial Secretary, to-day. The honorable member for Bremer

said motions like the present were never made until after the case had been before the Elections and Qualifications Committee; but in John Mitchell's case the motion was made within forty-eight hours after the election in Ireland; if not before the writ was received, immediately on the return of the writ to the House of Commons. Under those circumstances there was certainly a precedent.

Mr. THOMPSON: It was a precedent for expelling a member.

The ATTORNEY-GENERAL: No; it was a question of privilege, as was the case before the House now. Honorable members said the passing of the motion would be doing something which could not be set aside by the Elections Committee. A petition upon the election for Logan was already referred to that committee. The question of privilege was, whether a returning officer was entitled, in the face of the House, to decline to return a writ; which was a very different thing from the question of Mr. Black's rights. Suppose Mr. Lenneberg, or Mr. Campen had sent in a petition: it would be competent for the House, apart from the petition, on a question of privilege, to see that the numbers of the Assembly were not shorn by a returning officer neglecting to make a return of the writ. The evidence of the Returning Officer, and the ballot papers on the table, showed that Mr. Black had polled a majority of 35 votes over his next opponent. That was certain. The votes which Mr. Gibson had reckoned, and those that he did not reckon, taken together or separately, showed no difference in the position of Mr. Black; the result, so far as he was concerned, was not affected. Well, those were the facts before the House; and upon those facts the opinion of every honorable member who had spoken, except the honorable member for Bremer, thought that the House were bound to take some action; because, both the motion and the amendment called for action by the House. Perhaps the amendment was advanced in the hope that the return would not be endorsed as it ought to be, or that the Returning Officer would come to the House and repeat the statement made to-day, and upon the accuracy of which every honorable member who had heard him could form an opinion—that though he had counted the votes, yet he could not say who had the majority. He (the Attorney-General) did not know whether the honorable member for Port Curtis had any idea that the Returning Officer would return some other name than that of Adam Black; or if it was anticipated by him that the Returning Officer would make a return, that he did not know who had the majority of votes. But, if that should be, the House would only have some other hours of debate to go through, in order to get done what might as well be done at once. The House might order, afterwards, that the name be filled in. Under the circumstances, and having such a remarkable returning officer to

deal with, they might just as well include in the one order both that the return be made and that the name Adam Black be endorsed on the writ, and accept the motion of the Colonial Secretary. Now, he (the Attorney-General) should say one word about the stereotyped attack made on his honorable friend at the head of the Government, about fire and fury. It had been already pointed out that the Colonial Secretary presided over that department of the Government which included the returning officers of the colony. A returning officer addressing a letter to the Speaker which abused the Colonial Secretary was naturally commented upon by him; but the doing so should not subject his honorable friend to blame. If blame there might be, the only fault to be found with his honorable friend was that he was angry where he ought to have been contemptuous. But he confessed it was enough almost to make one angry, to have a returning officer writing to the Speaker that he

"really could not help thinking that in this there was either an absence of due respect for your office, or some political purpose to serve,"

which he could not discern. The House should assert that where there was an actual election, after candidates had been duly nominated, and votes had been taken, it was the Returning Officer's duty to return on the writ the name of the candidate who in fact had received most votes; whether lawfully or not was entirely for the Elections and Qualifications Committee.

Mr. MACROSSAN said he was glad to see, in the absence of fire and fury since seven o'clock, that the House were about to decide the question in a calm manner. He trusted every honorable member would take notice of what had been stated by the honorable member for Toowoomba. They were about to make a precedent. If the question should be decided according to party tactics instead of by the law of the country, it might lead to confusion. He had risen to correct the honorable and learned Attorney-General, who had brought forward the case of John Mitchell as analogous to the issue now before the House. The Premier, in the House of Commons, called upon the proper authorities to produce the records of John Mitchell's conviction, and also of his escape from custody; so that it was proved to the House that John Mitchell was a convicted felon who had not served his sentence, and therefore disqualified by law, and not able therefore to take a seat in the Parliament of Great Britain. The case was quite a different one from this altogether. As the honorable member for Maryborough had said, one thing the House should not overlook: they should act so that their decision should afford guidance and be a warning to future returning officers in the mode of endorsing writs. If they took upon themselves to say that the Returning Officer should endorse the writ with a name, as the

motion before the House directed him, that would not be a warning; if they told him to do so in accordance with the amendment of the honorable member for Port Curtis, to endorse the writ with the name of the candidate who had polled the largest number of votes in the election, every returning officer in the country would take that as a guide for the future, and would not allow himself to be directed by conscientious motives, as Mr. Gibson was; he would make the return of the writ in favor of the candidate who had the greatest number of votes polled in the election. If the House adopted the Premier's motion, every returning officer would make the same mistake as the Returning Officer for Logan, and not from the same motives perhaps, but from corrupt and party motives. That was the great difference between the motion of the Premier and the amendment of the honorable member for Port Curtis. The House were taking upon themselves to do what the returning officer should do. Only last session, they passed a certain law, that returning officers should do a certain thing; and now they were called upon by the Premier to pass a resolution which would actually defeat the very object for which that law was made. He should give his hearty support to the amendment; and he hoped that every member of the Ministerial side of the House would decide according to his conscience and not be guided by party motives.

Mr. HODGKINSON said that, were it not that he thought the question ought not to go forward with his silent vote, he should not speak; because he felt that he could not add anything to the precedents given, nor was he sufficiently acquainted with Parliamentary practice to be able to offer anything new. The question should be decided independent of anything affecting the Returning Officer or any of the candidates who sought a seat in the House. It was a novel and an important one that would hereafter stand as a precedent. Whatever arguments might be used, the general public outside would prefer that the question should be impartially decided upon according to the facts and true merits of the case, without the decision being based too much upon Parliamentary text books. The public would not stay to peruse the arguments of the honorable member for Port Curtis, or the Colonial Secretary; but, upon seeing their names, people would know immediately which side of the question the honorable gentlemen had taken, and whatever impartiality they exercised, they would not get credit for it. The public would say they could not have voted otherwise, nor could their meagre followers attempt to do anything but what they did. But there was a considerable section of the House, honorable members who sat on the cross benches, who, whatever might be their political proclivities, would look at the question impartially, and not take their guidance from the leader of either side of the House. It might be his

misfortune not to support all the measures brought forward on the Ministerial side of the House; but his convictions were not so strong as to accept the declarations of any Minister for his political belief, when he felt that in supporting a Minister he should be led to sanction a determination which ought to be the result of deliberate and conscientious inquiry. The Committee of Elections and Qualifications were the tribunal to deal with the subject brought before the House. If the powers of the committee were insufficient to compel every returning officer in the colony to do his duty, they should be extended. The House were not to inquire whether Mr. Gibson had done his duty or not. He (Mr. Hodgkinson) never before heard of the gentleman, and should not indulge in any criticism upon his conduct. If the House voted hastily upon the question, this evening, and decided a matter with which a considerable section of honorable members were unacquainted, and if they voted according to their sectional politics, they would create an impression in the public mind that the Logan election was not settled on its merits; but that it was made the subject of a preliminary trial of strength between the Ministerial and the Opposition sides. He should support the amendment of the leader of the Opposition. He concurred in the view of his honorable friend the member for Kennedy, who, he was happy to have observed, had corrected the honorable and learned Attorney-General in his citation of the case of John Mitchell. There was not the slightest analogy between that case and the present, except to a very imaginative individual. John Mitchell was never qualified for election as a member of the House of Commons; his election was void, being in violation of law. There was no question of misconduct on the part of a subordinate officer, as in the case now before the House. He (Mr. Hodgkinson) did not know on which side of the House any of the candidates would sit; but he should not support the Government in interfering with a body especially charged with the conduct of inquiries into controverted elections, who were placed by law in a position in which they could learn every circumstance attending such elections. The discussion all the evening had been very much beside the question; and honorable members who were not gifted with legal knowledge or practice, or learned in precedents, were much in the position of a shuttlecock between the legal luminaries on both sides of the House. But no honorable member could go wrong, if he recognised the fact that, should the motion of the Colonial Secretary be carried, every controverted election would be virtually a trial of strength between the two parties in the House. As the Opposition got weaker and weaker, as it must if the Government were allowed to succeed in taking all power unto themselves—there would soon be no Opposition at all; those who now sup-

ported the Government on independent principles would soon find their occupation gone; for the Government would dispense with them. So, let the House not back up the Ministry in their self-aggrandisement. Consequently they could be dispensed with, and the Ministry would include in its ranks not only one side of the House but the whole House; and they would be in a worse position than even the autocrat of the Russias, who, when on a visit to England not long ago, so much admired Parliamentary government that he expressed his intention to a nobleman, high in office, of not only having Parliamentary government but an Opposition as well. If the honorable the Colonial Secretary would carry out his view that a disputed election was to be decided by the majority at the time being, there would be no Opposition at all, and that side of the House, strong as it was now, would then be the whole House. There would be nothing else, and if they wanted an Opposition to keep up appearances, they must evolve it from their own consciences.

The COLONIAL SECRETARY said he rose for the purpose of making one or two observations in reply, and he did so more for the purpose of offering an explanation than of answering some of the arguments which had been advanced during the course of the evening. But he must at once disavow any intention on the part of the Government to make this a party question in any shape; in fact, so much so, that the honorable the Speaker was made aware of what his intention was. When the arrangements with regard to the question were arrived at that evening, he thought he intimated to the House that, in order that there might be no mistake, and that no injustice might be done to one of the candidates as compared with the other, he intended to take both writs, and make the same motion with regard to each. He must also warn the House that this question had not been brought forward with a view of preventing either case from being brought before the Committee of Elections and Qualifications. There was nothing whatever that House could do, by way of a solution of the difficulty, that could prevent either candidate from appealing to that court; so that the argument founded on that assertion—that they were attempting to take the matter out of the hands of the Elections and Qualifications Committee—fell entirely to the ground. The object the Government had in view was simply this: that the return of members to that House should not be at the mercy of any returning officer; that every electorate in the colony should, as soon as Parliament met in session, have its representative there; and if any one felt that injustice had been done, he should have the Committee of Elections and Qualifications to go to. And as they had had different opinions from several members of that committee to-night, he thought he was justified in saying that the

defeated candidate would receive no injustice at their hands. Now, probably his honorable colleague the Attorney-General was right, that he ought to have made no reference to the letter addressed by the Returning Officer to the honorable the Speaker, but it was simply on that account he made the observation; because the other day, when speaking of these returning officers, he expressly stated he believed that they had acted conscientiously, however illegal their action might have been. But he did think there was certain evidence in the case of the Logan election that would induce him to look at the matter more closely than he did the other night. According to Mr. Gibson's own statement, there was nothing whatever to justify him in refusing to endorse on the writ the name of the candidate who had the largest number of votes, which votes would be regarded as evidence; because, as he had said, if any injustice were done to the defeated candidate, he would have ample opportunity of appealing to the House and going before the Committee of Elections and Qualifications. Another reason was this: So far as the Government were concerned, it made not the slightest difference which of the candidates was returned; they had both announced themselves as supporters of the present Government, so that the Government could have no feeling of a partial nature in bringing forward the motion. The only object was to vindicate the dignity and the rules of that House, and, in adopting the course proposed and agreeing with the motion he had submitted, they would attain that point. He believed, also, that in future it would have the effect of inducing returning officers not to interpret the law for themselves, and refuse to carry out what the law especially enjoined, and to be more careful in making a return of some kind, leaving it to a higher power than themselves to set it right if there should be any dispute about it. His honorable friend, the member for the Bremer, had advanced some extraordinary arguments which, if he understood him properly, were to the effect that there were circumstances in the case favorable to the course Mr. Gibson had adopted—that he had no means of making a proper return as to who had been elected. There was no doubt that was that gentleman's answer at the Bar of the House, but what was the argument if it were carried to the proper length? That they should order a fresh writ to issue. It was not as the honorable member put it—that the question was one which should go before the Committee of Elections and Qualifications; it was a perfect nullity of the election, and that a new writ ought to be ordered. But that, he submitted, was beside the question now before the House, which was this:—They had a certain number of ballot papers before them; they had evidence with respect to what took place at the polling-place in question—evidence which the Returning Officer

did not dispute—that one candidate had a majority over the other; and he maintained that, looking at all these facts, that gentleman should be required to return the name of the candidate who, according to his own evidence, had the greatest number of votes. He should be very sorry to suppose for one moment that any honorable member was impressed with the idea that the Government had any desire to make this a party question; but he warned the House that, if the amendment of the honorable member for Port Curtis were carried, it would have the appearance of a party question.

HONORABLE MEMBERS: No, no.

The COLONIAL SECRETARY: He was not disposed to argue the matter to-night, but he believed he could see a little further than some honorable members gave him credit for, and he knew what would be the result of the amendment. He had no desire that honorable members should do otherwise than as they thought best. It was not a question of a party character, and he believed the course which had been adopted on this occasion had the approbation of the head of that House. If they had no precedent for it, they must lay down one for themselves, and teach returning officers that they had a duty to perform, and that that House expected them to perform it.

Question—That the words proposed to be omitted stand part of the question—put, and the House divided with the following result:—

AYES, 20.

Messrs. Macalister, Stephens, Hemmant, Griffith, King, Morgan, Low, Dickson, Edmundstone, Fraser, Groom, Beattie, Fryar, J. Thorn, W. Scott, Miles, Foote, Pechey, Stewart, and Douglas.

NOES, 11.

Messrs. Palmer, Thompson, Morehead, J. Scott, Royds, Macrossan, Bailey, Hodgkinson, McIlwraith, Buzacott, and Ivory.

Mr. THOMPSON said he rose in the fond hope that he might be able to induce the honorable the Colonial Secretary to reconsider the very serious position in which he had placed the House. He had a majority at his back; but the greater portion of that majority, not being lawyers, did not understand the point in dispute. They were bound to follow their leader; and it only threw upon the honorable the Colonial Secretary the whole weight of the responsibility in this matter, which, he meant to say, was the most serious invasion of the privileges of the House and the country that had yet taken place or been attempted. What did they find? That the motion was totally unnecessary. The 24th section of the Act provided that a question of no return might be referred to the Committee of Elections and Qualifications; so they were asked to seat Mr. Black by a vote of that House on insufficient material, when there was sufficient machinery provided for seating him. They were going beyond

the mere question before the House—the question of privilege, to show the returning officers that they could not disobey the law in relation to writs; they were going beyond that, and were about to seat a man who might have no right whatever to that seat. There might be fifty other reasons why Mr. Black should not be seated; but once seated by that House, he was seated for good. Mr. Lenneberg might not have funds, Mr. Campen might not have funds; and there might be a thousand reasons for not seating Mr. Black. It might be very true, as stated by the honorable the Colonial Secretary, that both candidates were Government supporters; but what had that to do with the question? The question was a most serious and vital one; and he rose to throw the responsibility of such a disastrous precedent—

The COLONIAL SECRETARY rose to order. He wished to know to what question the honorable member was speaking.

MR. THOMPSON: He was speaking to the main question. He had previously spoken to the amendment.

The COLONIAL SECRETARY submitted that, having spoken to the amendment, the honorable member had spoken to the main question.

MR. THOMPSON said he guarded himself when speaking previously, by speaking to the amendment; and he was now speaking to the main question. He repeated that the question was one of the most important that had ever been before the House and the country; and that it would be a most disastrous precedent if they allowed this proceeding to appear on the records of the House—that when no return came in, they could take the bull by the horns, and say Mr. So-and-so shall be the member. Why, by that means the Government could seat anybody they pleased. They could get an incompetent returning officer who returned nobody, and they then seated whoever they liked. They now proposed to seat Mr. Black on the most insufficient evidence it was possible to conceive. He had little doubt Mr. Black would be seated, but it was still an arguable point whether Mr. Gibson was not perfectly right in taking the course he did—whether he was right not to count papers which were not in a sealed packet, when the Act said he should count only those under seal. He cast upon the Government and their party the responsibility of putting this most disastrous precedent on the records of the House, if it were carried out. Now, what did they find? That they were the creatures of a certain Act of Parliament, which gave them certain ample powers to protect themselves and the constituencies which they represented, or which were unrepresented by any mistake; and what were they asked to do? They were asked to go outside that constitution and arrogate to themselves powers which they did not possess, and seat a man without rhyme or reason—powers which the House of Commons abolished in 1770, because it was always made a party

question. They were asked to revive this effete, abandoned system of corruption, in order to seat a member when there was, to say the least, doubt on the subject. So seriously did he view this proposal, that if there were any means of doing it, he would be inclined to resort to factious opposition—a thing he was by no means fond of, and did not feel inclined for. It was contended incidentally, when he was speaking to the amendment, that the House of Commons sometimes acted without the report of the Committee of Elections and Qualifications. More than one honorable member seemed to have relied on this authority in “May”—

“When it has been determined that the sitting member was not duly elected, and that some other candidate was duly elected, and ought to have been returned, the Clerk of the Crown is ordered to attend and amend the return, which he accordingly does, at the table of the House.”

It had been contended that that meant when the House had come to a determination; but, on looking at 212, Commons Journals, 364—

MR. DOUGLAS rose to a point of order. He said he had hoped the honorable member would have concluded with a few words, but it appeared, now, they were going to have an elaborate argument, and he held that the honorable member was really out of order. He had already addressed the House on the amendment, and, having done so, he (Mr. Douglas) held that he had spoken to the main question. That, he believed, was the practice, that when an amendment was moved, and an honorable member addressed the House afterwards, he forfeited his privilege of speaking to the original motion, because the original motion and the amendment were then involved in one, and, having addressed the House on the amendment, he must be taken to have spoken on the original motion.

The SPEAKER said the honorable member was wrong. The honorable member for the Bremer having spoken only to the amendment, was fully entitled to speak on the main question.

MR. THOMPSON: That was the second time he had been interrupted and thrown off his balance, but it would give him time to recover his breath. At page 364 of 212, and in two or three following pages, Commons Journals, they would find this sort of thing:—

“Sir John Yarde Buller, from the Select Committees appointed to try and determine the matter of the petitions complaining of the undue election and return for the borough of Sligo, informed the House, that the committee had determined—

“That John Patrick Somers, Esquire, is not duly elected a Burgess to serve in the present Parliament for the borough of Sligo.

“That the Right Honorable John Arthur Wynne is duly elected, and ought to have been returned a Burgess to serve in the present Parliament for the borough of Sligo.”

This was the report from the Select Committee, and what was ordered on that? First, "that the report do lie on the table;" and then, "that the Clerk of the Crown do attend this House on Monday next, with the last return for the borough of Sligo, and amend the same, by rasing out the name of John Patrick Somers, Esquire, and inserting the name of the Right Honorable John Arthur Wynne, instead thereof." So that the whole thing went before the Committee of Elections and Qualifications, before the amendment of the return was made. That was what was referred to at page 607 of "May," and which seemed to have misled some honorable members, because it had been taken for granted that the determination mentioned meant the determination of the House, but he understood it to be the determination of the House when they had the report of the committee, and not before then. Something of this kind occurred once before in the history of this colony. A writ was issued for an electorate near Ipswich, and the Returning Officer, Mr. North, he thought, failed to make a return. The case would be found in the Votes and Proceedings of New South Wales for 1858, page 907; it was referred to the Committee of Elections and Qualifications, and what did they report? They reported in favor of the Returning Officer, amending the return by the return of the candidate who had the greatest number of votes, but they did not presume to take upon themselves the functions of the Returning Officer, and say who it should be. They simply made an order similar to that in the amendment of the honorable member for Port Curtis, and the effect of that, if carried, would be that the person who had the greatest number of votes should have been returned. Now, finding, as he said before, that they were travelling outside their Constitution, which was contained in two remarkable short Acts—the Constitution Act and the Legislative Assembly Act—finding that they were travelling outside their Constitution by this motion, and arrogating to themselves powers which they did not possess; and finding, further, that there was ample provision in the Constitution—that the 24th section of the Legislative Assembly Act gave ample power to the Committee of Elections and Qualifications to deal with questions of no return—he contended that it would be most disastrous if it should appear on the records of the House that they adopted this motion. Why, it was introducing one of the very worst features of American politics, which decided everything by party tactics, and nothing on common sense and justice. Looking at the Committee of Elections and Qualifications, they found it was not a creature of that House as other committees were, and that it was supreme; and they found, further, that the Speaker had the appointment of it, the House having only the veto. And although they had this machinery for dealing

with such cases, they were asked to decide this case in violation of the Constitution, and, by so doing, to establish a most abominable precedent. He hoped it would not be done, and that some course would be seen out of the difficulty, by which it would not appear on the records of the House. He did not urge this in the fear that any harm would arise now; but a few years hence, if this motion appeared on the records of the House, it would, to his mind, be a very sorrowful event indeed for the House and the colony.

Mr. MORGAN claimed the right of making a few remarks in reply to the observation of the honorable member for the Bremer. He did not know what that honorable member meant by expressing regret that a certain motion should be adopted. He (Mr. Morgan) took it that the motion of the honorable the Premier had been passed.

HONORABLE MEMBERS: No, no.

Mr. MORGAN: The amendment had been rejected. The objection raised by the honorable member for the Bremer was that the House was arrogating to itself too much power; that, in his view, the proper tribunal to try questions of disputed elections was the Committee of Elections and Qualifications.

Mr. THOMPSON: Hear, hear.

Mr. MORGAN: Now, he took it that the Committee of Elections and Qualifications was a creation of that House.

Mr. THOMPSON: No; it is not.

Mr. MORGAN: It was appointed by the honorable the Speaker, and sanctioned by that House, and if there were any truth in the axiom that the whole included the part, he took it that any resolution arrived at by that House would override anything that the Elections Committee could do.

HONORABLE MEMBERS on the Opposition benches: Hear, hear; exactly.

Mr. MORGAN: He contended that the House was thoroughly justified in passing a resolution of that kind quite irrespective of the powers vested in the Committee of Elections and Qualifications. He had nothing to fear from any result that might be arrived at that evening. He believed the gentlemen who were named, and who would probably be declared elected, would prove themselves worthy representatives in that House. He did not look at the question at all from a party point of view, but he thought it was quite within the province of the House to declare these gentlemen duly elected, and to order the Returning Officer, in this instance, to make the return accordingly. He should support the motion of the honorable the Colonial Secretary.

Mr. BAILEY said he looked upon the question in a very dispassionate sort of way. They had heard a great many legal arguments; but, after all, he thought it was a very common-sense question—a question not for to-day, but one which would come before the House, perhaps, in another shape, over and over again, in the course of a few years, if they allowed the

motion to pass. Supposing that instead of the present honorable and upright Ministry they had now in power, they had a corrupt Ministry; and, supposing that that corrupt Ministry should influence corrupt returning officers, he would ask the House, whether the Government benches would not be crowded by mere creatures of the Ministry? They might, perhaps, be removed by the Committee of Elections and Qualifications; but by the time that committee had done its duty, the corrupt Ministry might have carried their own measures, even in spite of the wishes of the electors and the wishes of the country. He looked upon the question as not of to-day; it was not a party question now, but it might be made so by a corrupt Ministry.

THE SECRETARY FOR PUBLIC WORKS said he wished to answer a few remarks which the honorable member for the Bremer let fall just now. He said that a majority of that House, if this precedent were established, would be able to seat, by a party vote, any number of members, provided the returning officer made no return; and in reply he would point out that the Committee of Elections and Qualifications was able to unseat any number of members who might be seated by a party vote. He submitted that the whole House had a perfect right to deal with the matter, and he was perfectly satisfied that they were much more likely to get an impartial vote from the whole House than from a small committee. When the Bill of 1872 was brought forward, he proposed that they should follow the example of the old country in these matters, and why did not the honorable member for the Bremer propose to follow that precedent now, and allow all election petitions to be referred to the judges?

MR. THOMPSON: I do not object to it.

THE SECRETARY FOR PUBLIC WORKS: It was objected to by honorable members sitting at that time on the Ministerial benches; who, having a majority at their backs, were able to carry the Bill, leaving to the Committee of Elections and Qualifications the power to deal with disputed elections. As he said before, if a committee of that House, in which parties were allowed to act as they pleased, was competent to deal with the question, he could not see why the House should not be allowed to do so.

MR. MOREHEAD said he must congratulate the honorable member for Ravenswood upon having gone back to something like his old form. He reminded him of the time he used to stand about where he (Mr. Morehead) was now standing, pouring forth his invectives and abuse something after the manner he had done to-night. Now, he first stated that the Committee of Elections and Qualifications was supreme, and he then went on to argue that the House was the supreme power; and he further said that he proposed some amendment in the Act of 1872 which would have relegated to the judges of the Supreme Court all petitions or dealings with disputed elections, and that

the members sitting on that side of the House opposed it. Well, he (Mr. Morehead) was sitting on that side of the House at the time—he did not know whether he was present on the particular occasion referred to—but he must say that he had always looked with considerable suspicion upon any proposition coming from the honorable the Minister for Public Works, and he still looked with suspicion upon any proposition made by that honorable member. He remembered when that honorable member made a proposition to amend the Land Act of 1869, and he sat alone in support of the amendment and some twenty or thirty members, including the members of the Government, were opposed to him; so that, on that occasion, his proposed amendment did not carry much weight in the House, or the House, as then constituted, did not think very highly of it. He was very much astonished that the honorable member for Warwick, who was Chairman of Committees, seemed to be altogether wrong even on points of order concerning the mode of conducting the business of the House. He was much surprised at that, and he was also surprised to hear that honorable member advocating what had been directly advocated by honorable members on the Opposition side of the House, which was that that House was the supreme tribunal.

HONORABLE MEMBERS: No, no.

MR. MOREHEAD: He repeated that he heard the honorable member say that that House was the——

MR. MORGAN: His contention was that the whole was greater than a part, and that the House had much more power than any creation of the House, such as a committee.

MR. MOREHEAD was quite satisfied with that explanation, and was prepared to stand or fall by it. As he held that opinion, he was surprised to hear it come from the other side of the House; and he would warn honorable members to be very careful of what they were doing in this case. Some legal gentlemen were of opinion that the decision by the House in this case would be final—would be without appeal. That opinion had been expressed also by other honorable members on that side of the House, and he again warned honorable members that they were not dealing only with this particular case, but that they were creating a precedent for all cases that might arise in the future; and he sincerely trusted that the warnings they had had from honorable members who usually sit on the other side of the House, as their supporters, would meet with due consideration. He hoped the honorable the Premier would see his way out of the difficulty, and that he would not push the matter further; more especially as the question had been referred by petition to the Committee of Elections and Qualifications, that petition having been relegated to that body, on the motion of the honorable gentleman at the head of the Government. He therefore trusted that things would be

allowed to take their usual course, and that the whole matter would be left in the hands of that committee. He did not care, as he said before, which of the gentlemen had a seat in the House; all he wished was that a dangerous precedent would not be established. He was astonished at the *ad misericordiam* plea of the honorable the Premier, who, almost weeping, assured his two supporters that it was not a party question. He said it was not a party question, that they might vote as they pleased; but, if the amendment were carried, it would be a party question. Practically, he told them that they could go and do as they liked; but, if they opposed the motion, he would treat it as a party question.

The COLONIAL SECRETARY: The honorable member draws on his imagination.

Mr. MOREHEAD: The honorable gentleman did worse than that sometimes. That honorable gentleman distinctly stated he would consider it as a party question.

The COLONIAL SECRETARY: Quite the reverse.

Mr. MOREHEAD: He distinctly understood the honorable gentleman to say so.

The COLONIAL SECRETARY said he did not know how the honorable member could understand anything of the sort; his understanding seemed to be of a peculiar character. He (the Colonial Secretary) distinctly stated that he would not view it as a party question.

Mr. MOREHEAD: The honorable gentleman made a distinction without a difference. He said, if the amendment were carried, he would treat it as a party question.

The COLONIAL SECRETARY: I did not.

The SPEAKER: The honorable member having denied the statement, it should not be repeated.

Mr. MOREHEAD: He would modify his expression by saying, the honorable gentleman said he would look upon it as a party question. The inference was obvious, and he was sorry the honorable member should have put it so strongly, because he was sure honorable members on that side of the House did not consider it as a party question. It was much greater than a party question. It was a question of privilege seriously affecting the rights and constitution of that House, and one which ought not to be lightly decided. He had no party feeling in the matter, nor had any honorable members to whom he had spoken on the subject; but what they desired was, that they should not have a precedent established which, though it might do little harm in the present, might result in very great harm to those who succeeded them.

Mr. FRASER said the honorable member for the Bremer seemed to regret very much that they were not all lawyers; but it had often been regretted that they had so many lawyers in the House, and he believed that on this, as upon many other occasions, their

course of proceeding and their conclusions would be much more simple, much more practical, and much more in accordance with common sense, if they had fewer of that profession in the House. In this he was not reflecting in any way upon the profession; and he should not have intruded upon the House at all that evening but to protest, and emphatically protest, against some remarks of the honorable member for the Bremer. He submitted that that honorable member had no right to accuse any other honorable member of being compelled to follow the honorable gentleman at the head of the Government in any course he might choose to pursue; and he thought, moreover, that honorable member had had examples and evidence that when they did not agree with what was proposed, they were perfectly independent and quite prepared to pursue their own course in the matter. He presumed that the honorable member, like other honorable members, had been drawing inferences from his own practice when on that side of the House. He maintained that they had nothing at all to do with whether Mr. Lenneberg, Mr. Black, or Mr. Campen had means to take the matter before the Committee of Elections and Qualifications. They had to deal with the question in a simple form; and he thought with regard to the course proposed by the honorable gentleman at the head of the Government, that the reasons he had recently assigned were sufficient to satisfy every reasonable man that it was the simplest, the fairest, and the most satisfactory mode of dealing with it. He had not heard the evidence, but he understood that the Returning Officer confessed that he was not able to make a return; and he thought it came quite within the province of the House to decide the question in its present form. Did he think they would preclude a disappointed candidate from appealing to the Committee of Elections and Qualifications, he would hesitate before voting on that side of the House on the question. But he did not believe that the course proposed would have any such effect. In fact, he believed they were placing the matter in a far simpler form; they were to decide who was the elected candidate for the Logan district; and if the disappointed candidates, or either of them, considered that they had cause to feel aggrieved, it would be perfectly competent for him to petition the House in the usual way, and receive the usual redress. Now, a good deal had been made of the legal authorities which had been quoted; they had been referred to a certain page in "May," but there was another page in "May" which he thought had a distinct bearing on the case before the House. At page 591, it said:—

"If no return be made to a writ in due course, the Clerk of the Crown—

—it might be pointed out that they had no Clerk of the Crown here, but that was a mere

matter of detail, which had nothing at all to do with the principles involved in this paragraph—

—is ordered to attend and explain the omission; when, if it should appear that the returning officer, or any other person, has been concerned in the delay, he will be summoned to attend the House; and such other proceedings will be adopted as the House may think fit.”

Now in every stage of this proposal that provision had been attended to. There had been no return made; the Returning Officer had been before the House; the House had his evidence, and now it was for the House to pursue such a course as it thought proper. If the majority thought the proper course was to carry the motion proposed by the honorable the Premier, that, he would take to be the course that the House thought proper to take; and that would be carrying out the very provision laid down in “May.” For that reason, without trespassing further on the time of the House, and as so much had been said on the subject, he should support the motion of the honorable gentleman at the head of the Government. And he should do so without being in the slightest degree afraid of having attached to him anything in the way of being compelled to follow the Government in any way they might choose to lead. They had had held out to them as a great bugbear the danger of precedent; they were expected to follow in the most slavish manner the practice adopted in other parts of the world, which could have very little practical effect or utility, so far as that House and the circumstances of their colony were concerned. He thought, so long as they kept within proper limits and proper bounds, they were old and experienced enough in matters of this kind to cut out and shape their own precedents, without being in the slightest degree alarmed by what the consequences might be subsequently.

Mr. STEWART thought the question before the House involved two questions, and only two:—Firstly, was there sufficient evidence before the House to decide whose name should be put on the writ to be returned? and secondly, whether it was the duty of the House to order such name to be put on the writ? Now, he thought, so far as regarded the evidence as to the name that should be put on the writ, if they took the Returning Officer's own statement at the Bar of the House, either that he rejected the Elkana votes altogether as irregular, or that he took the presiding officer's sworn statement as to the result of the Elkana votes, in either case the name of Mr. Black must be inserted on the writ. With regard to the duty of the House, as to whether the name should be so inserted, it had been argued that the matter having been remitted to the Committee of Elections and Qualifications, the House had no power to deal with it; but he remembered last session evidence was brought before the House, and on that evidence it was declared who was the

member who should occupy the seat—who was the sitting member. He thought the House had power to deal with any question until it had been remitted to the Committee of Elections and Qualifications. Now, what had been referred to that committee? Simply a petition from Mr. Adam Black; they had not remitted any part of the question now before the House, which was outside the petition altogether. The petition was from a private individual; and he thought, on these and other grounds, the House had the power, and that it was their duty to determine whose name should go on the writ, and afterwards let the Committee of Elections and Qualifications deal with the question, if it were remitted to them. There was one more remark he wished to make, in reply to the honorable member for the Bremer, who said honorable members on that side of the House were bound to follow their leader. Now he wished most emphatically to state that, in any question of this kind, he would not be bound to follow any leader, and he did not think such remarks were becoming in any member of the House. It was implying that they had no independence, simply because they happened to sit on that side of the House and were numerically larger than honorable members opposite. It was not a party question; they had been told so by the leaders on both sides of the House, and he did not think private members should endeavor to make it so.

Mr. IVORY said he really hoped they could manage to get some amendment to the motion, so that they should not be committed to the course of procedure proposed. He had an amendment he would merely throw out as a suggestion, and he did not know how far he was in order in regard to the matter. He proposed that this amendment should be added as a rider:—

The matter having been already referred to the Committee of Elections and Qualifications, further procedure cannot take place before this House.

The SPEAKER: Do I understand the honorable member's amendment to be that the matter be referred to the Committee of Elections and Qualifications? I rule that such an amendment cannot be put, because the House has already decided it shall not be so.

Mr. MOREHEAD: Do I understand that it cannot be so dealt with at any future time?

The SPEAKER: That is not my ruling. I rule that the honorable member cannot now move an amendment to that effect.

Mr. GROOM said he desired to state at once that he could not vote for the motion of the honorable the Premier. He sympathised with the honorable member for the Bremer in thinking that they would be establishing a most dangerous precedent in adopting the motion—a precedent that he could not reconcile himself to establish; and, as an old member of the House he would not accede to it. He voted against the amendment of the honorable member for Port Curtis because he could see very little difference between it and

the motion now before the House. He believed that in either case they would be establishing a most dangerous precedent, and he, for one, could not consent to vote for it.

Original question put. The House divided:—

AYES, 19.

Messrs. Macalister, Stephens, Hemmant, Griffith, King, Morgan, Miles, Foote, Fryar, Beattie, J. Thorn, Fraser, Edmondstone, Dickson, Low, Stewart, Douglas, Peehey, and W. Scott.

NOES, 11.

Messrs. Palmer, Morehead, Thompson, Ivory, J. Scott, Royds, Bailey, Hodgkinson, McIlwraith, Macrossan, and Groom.

The COLONIAL SECRETARY then moved—

That the Returning Officer for the Logan be called back to the Bar, and that the writ be handed to him by the Clerk, for endorsement, in terms of the resolution of this House.

In answer to Mr. PALMER,

The SPEAKER said the honorable the Colonial Secretary had amended his motion in this form. He presumed there could be no objection to that:—

That the Returning Officer for the Logan be called back to the Bar, and that the writ be handed to him by the Clerk, for endorsement, in terms of the resolution of this House.

Mr. McILWRAITH: Before the House proceeded to execution in this matter, he should like to hear from the Colonial Secretary or the Attorney-General what powers they had.

The ATTORNEY-GENERAL rose to order. He saw the Returning Officer within the precincts of the House. Before the honorable member for Maranoa made certain suggestions to him, he (the Attorney-General) thought the Returning Officer should be called upon to withdraw, so as not to be within hearing of the suggestions of the honorable member.

Mr. MOREHEAD objected.

Mr. McILWRAITH wished to state that he was not the adviser of Mr. Gibson in any form.

Mr. MOREHEAD: The Returning Officer was, by order of the House, not to leave the precincts of the House.

The ATTORNEY-GENERAL: He should not be within hearing of the honorable member;—of course, he could remain within the precincts of the House. He should withdraw.

Mr. MOREHEAD: He was present by order of the House. It would be a pretty thing if, after that, he could be removed upon the *ipse dixit* of the Attorney-General. Things would come to a pretty pass.

The SPEAKER: If anything should arise from the debate, it was quite right that the Returning Officer should be removed from hearing the House.

The Sergeant was instructed to require Mr. Gibson to withdraw, and the witness accordingly retired from the Chamber.

Mr. IVORY then claimed that the Returning Officer for Darling Downs should be removed from the House.

The order was given to the Sergeant, that Mr. Affleck was required to withdraw, who also retired.

Mr. McILWRAITH said he had paid very great attention to the evidence given by the Returning Officer for Logan when being examined and cross-examined by the Attorney-General, and the result of the examination satisfied him that that man could not conscientiously endorse the writ that a certain person was duly elected as the member for Logan. The gist of his evidence was—in fact, he distinctly answered, two or three times—that he did not know who had the greatest number of votes. Seeing the probability of that Returning Officer taking up the position, when called upon to endorse the writ, in which he (Mr. McIlwraith) considered him perfectly justified, that he could not conscientiously say he believed that Mr. Black had been elected; what could the House gain by calling upon him to endorse the writ? What could they do further? The Returning Officer would be quite justified in telling the House that he could not endorse the writ, in spite of their order. They could not call upon a man to say that was true which he did not conscientiously believe to be true.

The SPEAKER: The honorable member was, he thought, out of order. The House had already decided what the Returning Officer was to do—to certify that Mr. Adam Black was duly chosen as a member for the Logan, to serve in the Legislative Assembly. The honorable member could not now raise objections to the carrying out of that resolution.

Mr. McILWRAITH: He was speaking to the motion before the House, which was distinct, that the Returning Officer be called to the Bar and asked to do a certain thing, which he had told the House he could not do conscientiously. Now, he wanted information upon the matter before the House committed themselves too far. He did not wish to see the House stultifying themselves. What position would they be in if the Returning Officer actually refused to obey the order by certifying to the return of Mr. Black? Could honorable members see their way out of the difficulty? He wanted information from the legal luminaries as to what the House could do. The giving effect to the resolution might put the House in a very ridiculous position.

Mr. THOMPSON said he had been going to ask the same question as the honorable member for Maranoa. Speaking distinctly to the motion before the House, he said he saw the fix they were about to put themselves in. They were asked to make an order which they could not enforce. By the Constitution they had full power to summon a witness to the House, and to compel him to produce documents and to give evidence; and, if he would not do so, they could punish him—it was not stated distinctly how—for contempt; and a witness in contempt would have to pay

a lot of fines. Outside of that, the House could not make him do anything—unless he challenged a member or assaulted him, or obstructed him in the performance of his duties to the country. The House had no power to enforce the order they had made. They had already stultified themselves in making it. And, now, they were about to put the thing to the test, by ordering a man to do what he conscientiously could not do—what he had already stated that he could not do. He was to be brought to the Bar, and a pen was to be put into his hand, and he was to endorse the writ. That was the first motion of the Colonial Secretary, but the honorable gentleman had since altered it: and, now, according to the motion as put from the Chair, it was to be left to the option of the Returning Officer—the writ was to be handed to him for endorsement. He (Mr. Thompson) did not know but what Mr. Gibson had had the best legal advice before this, from the leading barristers of the colony.

Mr. IVORY called upon the Minister at the head of affairs to pause, even at this late stage of the debate, to consider the serious position in which he had placed the House and himself. The honorable member for Bremer had put it clearly before the House. If the gentleman who was to be again called to the Bar should refuse to comply with the order made, the position would be very awkward; and the House would have stultified themselves in the eyes of the country, by the making of an order which they were unable to carry out. Let the honorable gentleman at the head of the Government look at it honestly and straightforwardly. No doubt, he had a strong majority at his back, and could carry anything that he proposed, at present; but the matter now before the House concerned future generations, and it would be cited as a precedent of great import.

Mr. MOREHEAD: It seemed very much like compelling a man to take an oath, calling upon him to sign something that he did not believe to be true, or did not know to be true. But he did not know that there was any power left to the House to do anything to the gentleman, if he refused to obey the order that had been made. He thought that the Returning Officer ought not to be asked to do anything further; he had given his evidence at the Bar in a straightforward way, and the House knew all that he could tell them, and why he had not made a return.

Mr. MILES: The question was a narrow one, and now the House were straw-splitting. The amendment of the honorable member for Port Curtis asked the Returning Officer to endorse the writ with the name of the party who had the largest number of votes. The House had virtually asserted that from the evidence before them, Mr. Black had the largest number of votes, and was chosen as member for Logan. That being so, the Re-

turning Officer was to be called upon to endorse the writ in terms of that resolution. It was perfectly indifferent, now, to oppose the carrying out of the wish of the House to get the writ endorsed in the name of the member for Logan.

The SECRETARY FOR PUBLIC WORKS said he did not think the conscience of the Returning Officer would be hurt by his obeying the order of the House. Mr. Gibson had not at first any distinct idea as to which of the candidates had the largest number of votes; but, when he added up the numbers returned to him, he found that Mr. Black had 35 more than the next candidate. He had been sufficiently well instructed that he need not trouble himself about the legality of the return. He had simply to endorse upon the writ the name of the candidate who had received the largest number of votes in the election; and he knew now who that candidate was. That was undisputed. He could leave out Elkana, which he had declined to receive; though the House had evidence before them, which the Returning Officer did not dispute, that even the votes at that place did not alter Mr. Black's position. All the Returning Officer had to do was to endorse the writ with the name of the candidate whom he knew to have received the greatest number of formal votes. No matter what advice he had received, the Returning Officer had good sense, and would not act upon the advice of honorable members opposite, who did not seem to have much respect for the House.

Mr. PALMER said his experience had taught him that, when the House had got into a muddle or a fog, the best plan was to adjourn. The Colonial Secretary having got his team into a muddle, should adjourn the House and let honorable members sleep over it. Now, he (Mr. Palmer) maintained that the House had no power to order the Returning Officer to make a return to the writ in accordance with their own resolution, as they called upon him to do. He did not, of course, know whether the Returning Officer would feel justified or not in obeying that order. He knew, if he were in his place, what he would do: he would obey the dictates of his own conscience, and not the commands of the Legislative Assembly. He would remember that he was a returning officer, duly sworn to make a correct return. The matter had been stretched too far. If he had had any idea of what were the intentions of the Colonial Secretary before he heard the astounding motion now put before the House by the honorable gentleman, he should have hesitated before moving the amendment that he did move. He moved it without giving much attention to it, but having had time since to think further over the matter, he felt that had he given it full consideration before, he should not have moved that amendment, but that the whole subject should be referred to the Elections and Qualifications Committee. He admitted that he was wrong in

moving that amendment; and if the Colonial Secretary would have the candour, not to follow his example, but to do now as he would be ready to do in a few weeks, admit that he too was wrong, it would be very much to the honorable gentleman's credit and honor, and redound very much to his fame in the House and before the country.

Mr. PECHÉY said he should like to show honorable members opposite that the House had some power to deal with the matter. The 45th section of the Constitution Act laid down the offences which Parliament was empowered to punish by imprisonment or fine; and amongst them was—

“Disobedience to any order of either House or of any committee duly authorised in that behalf to attend or to produce papers books records or other documents before the House or such committee unless excused by the House in manner aforesaid.”

Now, the words “other documents” entirely covered the matter of the present case. The House required the Returning Officer to produce a certain document. What was that document? The writ of election for Logan, with the name of Adam Black endorsed upon it as the member for the electorate. The House called upon the Returning Officer to produce that writ; and if he should not do so, he would be guilty of contempt.

Question put. The House divided:—

AYES, 19.

Messrs. Macalister, Stephens, Griffith, Hemmant, King, Miles, W. Scott, Foote, Beattie, J. Thorn, Morgan, Fryar, Fraser, Edmondstone, Dickson, Low, Stewart, Douglas, and Pechey.

NOES, 12.

Messrs. Palmer, Thompson, Groom, McIlwraith, Buzacott, Hodgkinson, Macrossan, Ivory, Royds, Bailey, J. Scott, and Morehead.

Resolved in the affirmative.

And the Returning Officer for Logan being again at the Bar,

Mr. IVORY said: Before the gentleman signed the paper, he rose to a point of order—

HONORABLE MEMBERS: Order, order.

The SPEAKER: If the honorable member was about to raise a debate, the witness must withdraw.

Mr. IVORY: He rose to ask for the Speaker's decision, whether the Returning Officer was bound to sign the return—whether his signing was compulsory or not?

HONORABLE MEMBERS: Order, order, order.

The SPEAKER: While there was a debate, no stranger could be on the floor of the House.

Mr. IVORY continued to address the Chair, amidst loud cries by

HONORABLE MEMBERS: Chair; Order, order, order.

The SPEAKER was understood to say that the only answer he had to give to the honorable member was that, in obedience to the order of the House, it was the duty of the Returning Officer to endorse the writ.

Order being restored,

The SPEAKER said: Mr. Gibson, I have to inform you that this House has come to the following resolution:—

“That the Returning Officer for the Logan be called back to the Bar, and that the writ be handed to him by the Clerk, for endorsement, in terms of the resolution of this House.”

The Clerk of the House will hand to you the writ, for you to obey the order of the House.

Mr. IVORY rose to order. The Returning Officer was on his oath, and was he to make a return that he could not conscientiously say was correct?—

HONORABLE MEMBERS: Order, order, order; and Chair.

Witness: Am I allowed to speak, Mr. Speaker?

The SPEAKER: No.

The Clerk then handed the writ to the witness, at the Bar.

Mr. THOMPSON: The order of the House was obeyed. The writ had been handed to the Returning Officer. He moved—

That the Returning Officer be allowed to retire.

Mr. IVORY seconded the motion.

The SPEAKER: I feel it to be my duty to explain to you, Mr. Gibson, that this order of the House must be obeyed. I do not think it commits you to anything. You are, in signing it, carrying out the order of the House. If the order is of that nature that you cannot agree, that you cannot endorse the writ conscientiously, still, in complying with the order of the House, I believe you are absolved, so far as your office is concerned, by obeying that order.

Witness: I should like to remark that I am under a solemn declaration with reference to my office.

The SPEAKER: I tell you that the House is fully aware of that, and that it is your duty to obey the order of the House.

Mr. IVORY rose to address the House, and was interrupted by

HONORABLE MEMBERS: Chair; Order.

Witness: I should not like to offer such an indignity to this honorable body as to refuse, but if I do certify the writ, I shall do it without regard to conscience.

Mr. THOMPSON: He objected to this proceeding.

HONORABLE MEMBERS: Order, order.

Mr. MOREHEAD: Privilege.

HONORABLE MEMBERS: Order; Privilege; Chair.

Witness: This writ commands me to proceed to the election of a member according to law.

The SPEAKER: That is not a question to be discussed here. Your duty is to obey the order of the House.

Mr. MOREHEAD: He raised a question of privilege, which took precedence of every thing else.

HONORABLE MEMBERS: Question.

Mr. MOREHEAD called attention to the presence of Mr. Gibson in the House. He

should proceed, although honorable members might bawl themselves black in the face.

MR. IVORY (amid loud cries of "order") said it was not in the resolution that the writ was to be signed within the precincts of the House; it did not mention anywhere or any time, yet the Returning Officer was brought into the body of the House to sign. He (Mr. Ivory) pressed the question of privilege.

MR. MACROSSAN said he thought honorable members on the Ministerial side of the House might act like men, and not like howling wolves.

THE SPEAKER: There is no question before the House. Will the Returning Officer endorse that writ?

MR. THOMPSON: I raise a question of privilege.

THE SPEAKER: Mr. Gibson must retire.

THE COLONIAL SECRETARY observed that honorable members would do well to restrain themselves while an endeavour was made to obey the order of the House. It was a perfectly new precedent they were establishing.

MR. IVORY: Oh! yes; perfectly new to the honorable gentleman, as well as to himself.

HONORABLE MEMBERS: Order, order.

THE COLONIAL SECRETARY: He considered that there would be no hesitation in carrying out the resolution of the House.

MR. PALMER: Was the Colonial Secretary the only one to make a speech? If another honorable member got up to speak he was howled down.

MR. HODGKINSON: There was no right in the House to compel a man to violate his conscience; and that contention he should uphold.

MR. THOMPSON: Did he understand that he was not to speak, or that Mr. Gibson was to retire?

THE SPEAKER: If there is to be a debate, the Returning Officer must retire.

Witness withdrew according to direction.

MR. THOMPSON: The question he wanted to raise was, that though Mr. Gibson had been ordered to make a certain return, and that the writ should be handed to him, yet there was nothing said about his certifying to the election of a member in the House. He, therefore, protested against anybody signing anything or making any return in the body of the House—there, under the nose of the Colonial Secretary.

MR. IVORY: Backed by a howling majority.

MR. THOMPSON: The time might come when the two sides of the House would be in different positions; and he trusted that the party with whom he acted would not proceed in the way that honorable members on the Ministerial side of the House were acting.

MR. MORREHEAD: The House has seen Mr. Gibson, and heard him declare that he could not conscientiously sign that document. Was it really to go before the people of the colony that a man was to be compelled by a majority of the House to do a thing that he could not

conscientiously do? After he had taken an oath that he considered he should violate, if he signed a certain document which was put into his hands, were the House to ask him to act in a way in which no honorable man could or would do?

MR. DOUGLAS regretted that the Speaker had been interrupted, as the whole matter would have been better left in his hands. The Speaker had impressed properly on the Returning Officer that if he considered the voice of the House, it was his duty to obey. The sooner a decision was arrived at the better.

MR. HODGKINSON twitted the honorable member for Maryborough with having cautioned the House, in his first address, against over-conscientiousness.

THE SPEAKER said the honorable member should understand that the question was one of privilege.

MR. HODGKINSON: The expression passed at the time, because it was presumed to be a verbal strain; but judged by the light of subsequent events, and by the votes of the majority with whom he had sometimes the privilege of sitting, he could understand what was meant by a caution against being too conscientious. A man was brought before the House to do a certain thing, after he had stated he could not conscientiously do it. Then he was told that he was to take the Speaker's absolution.

MR. DOUGLAS denied that he had said anything of the kind. He said it was a pity if they could not arrive at a decision; but he did not say that the Returning Officer was to violate his conscience.

MR. HODGKINSON: He was paying more attention to the incoherent address—perhaps more than the honorable member himself. He could not see how the House could condone one offence by making an individual commit another. That was the point. The Returning Officer for Logan, before he could obey the order of the House, must violate an oath. The House had been told that that action by the House was necessary, in order that returning officers should be shown their proper position, and that there was a controlling power over them that had the ability to make them discharge their duties properly. Well, they were taking a singular way to do it, and a very strange view of their power. They started by relieving a man from the sole preventative to impropriety in his office. A returning officer was restrained by no pecuniary consideration or emolument. Everything that could be done had been done to prevent the return of members to the House improperly; every influence of an improper nature was removed from the conduct of elections by recent legislation. And, now, a majority distinctly told the country that a returning officer might violate the oath he took to perform his duties faithfully! No effort on the Opposition side of the House would alter the state of things, now; but he

confessed that, long as he had sat on the Ministerial side of the House, and satisfactorily as he had hitherto supported the Government measures, he would not longer embark under any chief who thought it his duty to ask another man to break his sacred word. They knew perfectly well that, for the Speaker to tell that man to relieve his conscience, that he was to act in accordance with the dictates of the House, would be no relief. Was a man to be compelled by terror to make an affirmation that his conscience could not approve? If there was only one other honorable member to sit with him, he would divide the House on the question.

The ATTORNEY-GENERAL said he could not see any reason for what had been said by the honorable member who last addressed the House, and it seemed to him that the honorable member had been imposed upon by some other persons who had their own purpose to serve. The terms of the declaration which a Returning Officer had to make were as follow:—

“I ——— do thereby declare that I accept the office of returning officer for the electoral district of ——— and I do hereby promise and declare that I will faithfully perform the duties of my office to the best of my understanding and ability and that I will not attempt to ascertain for whom any elector shall vote and that I will not by any word or action directly or indirectly aid in the discovery of the same and that I will keep secret all knowledge of the mode in which any elector has voted which I may obtain in the exercise of my office unless in answer to any question which I am legally bound to answer.”

What on earth was there inconsistent in that with the Returning Officer obeying the orders of the House, if he had faithfully performed the duties of his office to the best of his understanding and ability? It appeared that the Returning Officer had made an error, which he was now ordered by the House to correct. How a man who had honestly acted to the best of his understanding and ability, and had made a mistake, and who was afterwards asked by a competent authority to correct it, could say that violence was done to his conscience, passed his (the Attorney-General's) comprehension. He should now take the opportunity of saying that the conduct of the honorable member for Burnett was certainly not creditable to any member of the House. It was the duty of every honorable member to bow to the decisions and orders of the House, and not to get up in his place, and suggest to a man just called in to obey the order of the House, to disobey. That was what the honorable member had done. If honorable members on the Ministerial side, in their indignation at seeing the House insulted by the honorable member for Burnett, bawled and declined to hear him, it was the usual practice, in the House of Commons and elsewhere, when an honorable member was disgracing the Assembly, to prevent him being heard. The honorable member

alone, and not those honorable members who had interrupted him, was to blame.

Mr. IVORY rose to order. Really, if he had a proper estimation of the Speaker, in his capacity of Chairman of the House, he was sure that, if he had transgressed the rules of the House, he should have been called to order. The honorable and learned Attorney-General was going too far.

The ATTORNEY-GENERAL: It was when the honorable member for Burnett was called to order by the Speaker, and refused to obey, that honorable members on the other side of the House called out.

Mr. MOREHEAD: The honorable and learned Attorney-General had said that the honorable member for Burnett was “disgracing the Assembly.” Those words should be withdrawn, or they should be taken down by the Clerk.

The SPEAKER: The honorable member should have taken notice of the words at the time they were spoken.

Mr. MOREHEAD supposed that was the only way the honorable member could get out of it.

The ATTORNEY-GENERAL: He had endeavored to be particularly moderate. Every one thought that, but for the extraordinary and unseemly interruptions of the honorable member for Burnett, the order of the House would have been obeyed.

The SECRETARY FOR PUBLIC WORKS: With reference to the remarks of the honorable member for Burke——

The SPEAKER: The question is a question of privilege. This discussion is very unseemly and disorderly.

Mr. THOMPSON: The order was, that the document should be handed to Mr. Gibson. That was done. But there was no order that Mr. Gibson should sign it in the House.

The SPEAKER: The order of the House is, that he do so. If the honorable member will permit me, the order is that the Returning Officer of the Logan shall endorse the writ in pursuance of the resolution of the House. The only construction that I can put upon it is, that he do it at the Bar.

The SECRETARY FOR PUBLIC WORKS wished to say a few words on the question of privilege; and, as other honorable members had been allowed to travel beyond the question, if he, in the course of his remarks, should refer to other matters, he hoped that he might do so. A great deal had been said about violence done to the conscience of the Returning Officer by calling upon him to obey the order of the House, as if it was a command that he must obey under penalty. It was worthy the attention of the House that there was no penalty; and that it was perfectly open to the Returning Officer to say, “I cannot conscientiously do as you require me.”

An HONORABLE MEMBER: He has said so.

The SECRETARY FOR PUBLIC WORKS: He hoped he might be allowed to proceed without

interruption. The Speaker and honorable members were aware that the witness had not declined to endorse the writ after the Speaker's explanation to him; he did not say that he declined to obey the order. If he had said so, the thing would have ended, so far as he was concerned. But, until the Returning Officer had refused to sign the writ, the House was at a standstill. They must either have his signature or his refusal. He (the Secretary for Public Works) failed to see that the House had put a strain on the conscience of the Returning Officer, who had been called upon to say whether he would obey the order or not. If it were not for the honorable member for Burnett rising the moment the Returning Officer returned to the Bar, the whole thing would have been concluded some time ago.

Mr. PALMER: The question should be, whether the Speaker of the House was entitled to grant absolution to a man for doing what he said he could not conscientiously do. The Speaker's ruling rather tended to mislead the Returning Officer. He (Mr. Palmer) did not think the Speaker could absolve him—neither the Speaker nor any other power under the sun could do so. He had endeavored to stop the proceedings as long as he could; and now he must say that they seemed to be forgetting their functions and resolving into an inquisition. If the Returning Officer could not conscientiously do what he was asked to do—to obey the order of the House by certifying to the return of Mr. Black—the House had no power to compel him.

By direction of the Speaker, Mr. Gibson was again brought to the bar.

Witness: Mr. Speaker—I cannot conscientiously obey the order.

By direction, Mr. Gibson again withdrew. The COLONIAL SECRETARY: Do I understand, Mr. Speaker, that you do not take the answer which the Returning Officer last gave as a refusal to comply with the decision of the House?—I move that he be recalled until the Speaker ask him distinctly if he will comply with the order, or if he refuse absolutely to obey.

Question put. The House divided.

AYES, 20.

Messrs. Macalister, Hemmant, Stephens, Griffith, King, Morgan, W. Scott, Fryar, Beattie, J. Thorn, Groom, Fraser, Edmondstone, Stewart, Dickson, Low, Douglas, Pechey, Miles, and Foote.

NOES, 11.

Messrs. Palmer, Thompson, Ivory, J. Scott, Royds, Macrossan, Bailey, Hodgkinson, Morehead, Buzacott, and McIlwraith.

Resolved in the affirmative.

The Returning Officer having been conducted to the Bar,

The COLONIAL SECRETARY said: I understood, sir, the answer given by Mr. Gibson to your question was that he could not con-

scientiously fill up this return. I do not understand that that is a refusal to do it; and therefore I should like very much that you should put the question again in such a way that there will be no mistake about it.

The SPEAKER: I think it my duty to tell Mr. Gibson that the order of the House is not that he shall conscientiously sign it, but that he shall sign it; and I should recommend him to obey that order of the House. It is my duty to do so standing in the position I do as the representative of the House on this occasion.

Witness: I have got to sign that a member has been duly chosen: I cannot do so.

Mr. IVORY moved that the gentleman be allowed to retire.

The SPEAKER: I understand the gentleman to refuse to obey the order of the House?

Witness: It must be so.

The SPEAKER: Do I understand the gentleman that he refuses to obey the order of the House conveyed to him by the Speaker?

Witness: I do not wish to do it rudely, but I really must.

Mr. IVORY moved that the gentleman retire.

The COLONIAL SECRETARY: I have no objection to the gentleman going outside the Bar, but he must not quit the House. I have not done with him yet.

Question put and passed.

The witness having withdrawn,

The COLONIAL SECRETARY said, after the time that had been occupied by the House in investigating the facts connected with this election; after having had the Returning Officer in the House, and examined him, and after they had been told that they had no power to deal with the question, he thought it would be beneath the dignity of the House if they did not take some steps to put themselves in a proper position with the country. He thought they should make a gross blunder if they did not remedy the defect which they had found to exist in these two elections with regard to the Returning Officers making no return in one case, and returning the writ without endorsement in the other; and the course he now proposed to the House was the course which had always been adopted by the House of Commons when there had been any error or mistake in the return of writs. The Returning Officer had stated that he could not conscientiously make a return to the writ. He (the Colonial Secretary) gave him full credit for being conscientiously inclined, but he had no doubt that if the question had been put to him half-an-hour earlier he might have filled it up; as he had not done so, he should now submit the following motion:—

That it having been proved to the satisfaction of this House, that Adam Black, Esquire, received a majority of votes at the late election of a member to serve in this present Parliament for the Electoral District of the Logan, and it having been ordered by this House that the Returning

Officer for the said electoral district should correct the return to the writ of election by certifying that the said Adam Black, Esquire, was duly chosen as member for the said electoral district, and the said Returning Officer having refused so to do, the said Adam Black, Esquire, be called to the Table and sworn as member for the said district.

Mr. THOMPSON said he rose in great surprise and certainly quite unprepared to meet such an unprecedented motion. He thought the whole proceeding, politically and Parliamentarily considered, was extremely unfair. They, in the first place, asked the Returning Officer to put Mr. Black's name on the back of the writ, although they had no power to compel him to do anything of the sort. He refused, and they then said "Oh, it's all right,—we'll have him at the Bar of the House and swear him in." He would like to know where they discovered the power to do this; he could not see any. He did not think the honorable the Premier should take such a course at a moment's notice; he ought to give honorable members some time to consider matters like this. They must have time to consider it, and if the honorable the Premier would not give them time, they must only get some means of securing it according to the forms of the House, and then see what it all meant. At the present time he was in such a state of surprise over the motion that he really did not know what to say to it, but he was quite sure it was wrong. There might be something in some Act which said that a gentleman who had not been returned as a member should be sworn in, but if there was such a provision, he was not aware of it. He was not going to talk against time, because he did not think they could afford it. And it required a man with a calm mind to do so; but he was so thoroughly taken by surprise, that he had not had time to form any conception of the subject except that he knew it was wrong, and nothing could be found to justify it. He doubted very much whether such a motion could be put from the Chair. He would ask for the Speaker's ruling, as to whether a gentleman who had not been returned could be called to the Bar of the House and sworn in? Perhaps the honorable the Premier would not mind showing the House under what power he did it? If it was only by his will, he (Mr. Thompson) should object.

The COLONIAL SECRETARY: Power!—Yes.

Mr. THOMPSON: Would the honorable member show them where it was derived;—the Act was not long; the two Acts were not long.

The SPEAKER: I think the motion can be put.

Mr. IVORY: Are we to understand, Mr. Speaker, that a gentleman, with regard to whom no writ has been returned, according to the Acts in force for that purpose—that a member, who has not been returned in due

form, can, by a simple motion of the Premier, be taken to the Table and sworn.

The SPEAKER: It is not my duty to interpret the laws, but simply the practice of Parliament; and I know of no instance where a question of privilege is raised—

Mr. IVORY: I did not understand that the honorable gentleman at the head of the Government raised it as a question of privilege.

The COLONIAL SECRETARY: It has been a question of privilege all through.

Mr. PALMER said, at that late hour, he must implore independent members to pause before they committed the House to such a course as that suggested by the honorable gentleman at the head of the Government. He thought, if they agreed to this motion, they would degrade the Parliament of Queensland—that portion of the Parliament of Queensland to such an extent, that it would take years to recover their character. He believed, at that late hour of the evening, honorable members on that side of the House—on all sides of the House, in fact—must have supposed, when the honorable gentleman got on his legs, it was to propound some dire penalty against the Returning Officer who dared to disobey an order of that House. He believed they expected something of that sort, but to have such a question, dealing with the whole privilege of Parliament, involving questions which they ought to have days to consider, proposed without a moment's notice—he said such a course of procedure was totally unprecedented, and it would, if carried, entail everlasting condemnation on that Assembly. He could hardly believe his ears when he heard the motion with which the honorable member at the head of the Government concluded. If this was the action of a liberal Government, he would like to know what tyranny really was. If the honorable the Premier, with a majority—yes, he would call it "a servile majority" if they followed such a course—at his beck and call, could, without a moment's notice, call in any one, as in this case he would be doing, and have him sworn in as a member, he said constitutional government was at an end, and the sooner they reverted to a tyranny the better, and let them choose their own tyrant and know what they had got. He said it was the most disgraceful motion he had ever heard of in the annals of Parliamentary government. He sincerely hoped there was sufficient self-respect in the members on both sides of the House to insist, at all events, that the House should have time for consideration before they committed themselves to such a motion as this. He said, and he repeated it again, that he would be no party to it; he would vote against it, if by voting anything could be done to prevent such a base proposition being carried; but failing that, he should feel it his duty to retire from the House, and take no part in the consideration of such a subject. There was no precedent for it; the honorable member at the head of

the Government had not endeavored to sustain his motion by the slightest argument. Without time for a moment's consideration, he put before the House a resolution, which he (Mr. Palmer) could hardly find words to describe. Well, he should appeal from that honorable gentleman's majority to the country, and they would see what the country would say to such a style of proceeding as he was trying to carry out here; to the judgment of the country he should appeal.

Mr. STEWART said it seemed to him that this question really at issue was whether the Returning Officer for the Logan or that House was to have the mastery. It appeared that the Returning Officer had decided that Mr. Adam Black should not be the sitting member. They had evidence before them, given at the Bar of the House, in which he distinctly stated the rolls he had gave Mr. Black the preponderance, and he could not deny, and said he had no reason to doubt, the correctness of the declaration made by the presiding officer at the polling-place from which the returns had not been properly sent in; and he took it that if any returning officer was to have power to keep members out of that House when important questions were to be decided, they would be entirely at the mercy of the returning officers, and the sooner they had the machinery altered the better. He thought the style of speeches, which had been made by honorable members on the other side of the House, had been of rather a peculiar character. There was one honorable member who insisted, while the honorable the Speaker was on his feet, in, he should say, coaching up the Returning Officer at the Bar of the House, and he thought that was a most undignified position for any honorable member to take. He was sorry to hear the honorable the leader of the Opposition talk about a servile majority. He held that he had no right to call honorable members on that side of the House a servile majority, and he thought the expression was quite unparliamentary.

Mr. PALMER: I said if they followed a certain course I would call them servile.

Mr. STEWART: A certain course might be followed without honorable members being servile, and he did not see what right the honorable member for Port Curtis had to designate any honorable members as servile. And if they were to have the style of speeches of the honorable members for the Burnett and Mitchell, he thought they had got something quite new in Parliamentary debating. As to a servile majority, they had only to look back to a short time ago, when the honorable member for Port Curtis was at the head of Government, to see what a servile majority was,—if the expression could be used.

Mr. MACROSSAN said he did not think the question was whether the Returning Officer or the House was to be master. It was a question whether the legal machinery for the election of members of Parliament had broken

down, perhaps as much through the action of the Premier to-night as from any other cause, and whether they were to allow him to put a member into that House by illegal machinery. As to the exception that had been taken to the speeches on that side of the House, he usually sat on the other side of the House, and he had spoken against the motion as strongly as any member; and he might tell all honorable members that the speech of the honorable member for the Bremer had not been answered yet by any honorable member on the other side, nor had there been any attempt to answer it. And he said also, with the honorable member for Port Curtis, that, if honorable members backed up the Premier in this course, they would deserve the term "servile" being applied to them—thoroughly deserving of it; and he hoped, as the honorable member for Port Curtis had said, the independent members on that side of the House would not be led away from what was clearly their duty by the honorable member at the head of the Government. He trusted that the dignity of the House would be maintained, and if there were no other means of discovering who was the member for the Logan, let another election take place. But there was another means, the means pointed out by the honorable member for Port Curtis—by allowing the whole matter to go before the Committee of Elections and Qualifications; let that committee decide and not the honorable member at the head of the Government.

Mr. DICKSON said he must say that, when the honorable member for Port Curtis proposed his amendment, in the early part of the evening, he was disposed to give it every consideration and to vote for it; but, when he heard the honorable members for the Burnett and the Mitchell resorting to such extraordinary arguments as they did—arguments which he considered most erroneous—he resolved to vote against it. He thought it had been rather unseemly that four honorable members who were on the Committee for Elections and Qualifications should have been the first to express themselves so very decidedly concerning the merits of this election, which, had the course advocated been pursued, would have been referred to them, and it might be thought that they were prejudiced.

Mr. MOREHEAD said, as a member of the Committee of Elections and Qualifications, he took the remarks of the honorable member as a direct personal charge, and he rose in explanation. He distinctly disclaimed the slightest prejudice in the matter. As he said before, he did not care one straw which candidate was elected, and the honorable member was as disingenuous as other honorable members on that side of the House.

Mr. IVORY said he was not aware that there was an Elections and Qualifications Committee. Since he had been in the House he had not heard them sworn in.

Mr. DICKSON thought he was not out of order, because the warrant for the appointment of the Committee of Elections and Qualifications had been laid upon the Table of the House, and the names were well known as being the names of the honorable members to whom he had referred.

The SPEAKER: I think the honorable member is out of order in referring to that committee. Those names have not yet taken the course of law, and therefore it is a question still pending before the House.

Mr. DICKSON regretted having fallen into error in referring to the matter. He thought the House having gone so far in order to maintain its dignity, as a necessary consequence, the resolution of the honorable the Premier was one to which he, as an independent member, felt called upon to give his support, and in doing so he believed he was acting in the true interests of the country. Notwithstanding any opprobrious epithets the other side might choose to apply, he would give it his full support, and he hoped other honorable members on that side would do the same.

Question put. The House divided:—

AYES, 19.

Messrs. Foote, Beattie, Fryar, Thorn, Groom, Pechey, Stewart, Low, Dickson, Douglas, Morgan, Miles, King, Stephens, Hemmant, Griffith, Macalister, Fraser, and Edmondstone.

NOES, 11.

Messrs. Palmer, Thompson, Morehead, J. Scott, Roys, Macrossan, Buzacott, McIlwraith, Ivory, Bailey, and Hodgkinson.

Mr. BLACK was then introduced by Mr. Dickson and Mr. Fryar, and on entering the House,

Mr. THOMPSON said: I object, sir. There is a stranger in the House. I make the objection.

Mr. MOREHEAD: Objection has been taken.

The SPEAKER: It being an order of the House, it is my duty to swear him in.

Mr. IVORY: I ask, have you any proof that this is Mr. Black?

[Mr. BLACK having taken and subscribed the oath, took his seat as member for the Logan.]

ELECTION FOR THE DARLING DOWNS.

The COLONIAL SECRETARY said they had been occupied for some time in dealing with the Logan election, and it was his intention to adopt precisely the same course with regard to the election for the Darling Downs. He therefore moved—

That the Returning Officer shall be ordered to return the writ duly endorsed.

Mr. PALMER said the course he meant to pursue was not exactly the same as he did in the previous case. He had grown a little wiser by experience, and he was not going to move the same amendment that he did in the case of the Logan election. The amendment

he moved was:—that the question be referred to the Committee of Elections and Qualifications. He saw no difference between this and the last case, except that the Returning Officer had no justification whatever for retaining the writ in this instance—none whatever; and he thought that, if the honorable the Colonial Secretary had vented a little of his indignation upon the stupidity of the Returning Officer for the Darling Downs which he vented on the Returning Officer for the Logan, he would have shown a good deal more common sense, and much sounder judgment. From the evidence of the Returning Officer for the Darling Downs, it was quite evident that he retained the writ without the least legal authority; even according to his own showing, there was nothing whatever in the clauses of the Act on which he relied to justify him for one moment in not making a return that Mr. Graham was duly elected the member for this electorate. But, the Returning Officer not having done so, the same question arose that had arisen in the election for the Logan, which, he considered, had been most unjustly decided by a majority of that House. The question was still the same; and it was not settled by the vote of a majority of that House. Although the honorable the Speaker had, by an order of the House, sworn a gentleman in as member for the Logan, he was sure the question was by no means settled. They had been overwhelmed by a majority of the House to-night, and he believed a most illegal action had been done in swearing in this honorable member. He had hoped that that honorable gentleman would have had some friends who might have cautioned him against the action he had taken, and the liabilities he had perhaps incurred by being sworn in and taking his seat in that House without being duly returned. As he said before, they had been so completely taken by surprise; they had had so little time for the consideration of the subject that it was impossible for them to argue it to-night. The whole question had been rushed through the House, and the result would have been exactly the same if the proper constitutional course had been taken, and the question of the election for the Logan had been, as it ought to have been, referred to the Committee of Elections and Qualifications. He had no doubt that, had that course been pursued, the honorable member who had been sworn in would have taken his seat legally and constitutionally. He must, with great respect—or with such respect as could be expected from him for the opinion of the majority who carried the question—express his doubts whether that gentleman was even a member of that House at that moment; and further, he very much doubted whether, if he voted on any question, it would not invalidate that question if it became the law of the land. They had been so hurried by the action of the honorable the Premier; they had been so completely

bamboozled, believing there was a lion in the skin they heard roaring, and that some action would be taken against the Returning Officer for the Logan, who dared to have a conscience of his own, who dared to think for himself, and who dared to refuse to do an utterly illegal order; but, when they heard the braying which came from that lion's skin, putting this disobedient Returning Officer completely on one side and not taking the slightest notice of him; when they heard a motion so utterly distinct from anything they were led to imagine was coming, it was no wonder that they were taken by surprise, and that it was absolutely impossible to bring forward authorities on the subject. But they could not be always in a state of surprise; they could take time to think over it, and he was sure the country would think over it and give a very decisive opinion on the subject, and one very much against the wish of the honorable member at the head of the present majority. The question as to who was to be the member had nothing whatever to do with his opinion on the subject. As he stated before, in objecting to the course taken by the Government, he did not even know the gentlemen who were candidates, nor did he know on which side either of them would sit, if elected. And, notwithstanding that it was insinuated by the honorable the Minister for Works, in his usual style, which did not seem to have improved since he was picked from amongst the wash dirt, and placed by the honorable the Colonial Secretary in the position he so unworthily filled—and insinuated too by the Colonial Secretary in his reply, when he knew he (Mr. Palmer) had no possible power of replying—that he was making it a party question, he now repeated that although there was every probability of Mr. Graham sitting on that side of the House, it made no difference whatever to him. He had not looked at these matters at all in the light of party questions. He had endeavored, as far as possible, by his action to preserve the privileges of that House intact. He had endeavored to confine its action to the action of a Legislative Assembly; and not to permit the action by which it had degenerated into the position of an inquisition, as he before observed. He moved as an amendment—

That the question be referred to the Committee of Elections and Qualifications.*

The ATTORNEY-GENERAL thought the honorable member for Port Curtis had not exactly considered the effect of the amendment. He did not know on what authority the Committee of Elections and Qualifications could investigate the question. They had power under the 21st section of the Legislative Assembly Act—

“To inquire into and determine upon all election petitions and upon all questions which may be referred to them by the Legislative Assembly respecting the validity of any election or return of any member to serve in the Assembly.”

Now, in this case, there was no question of the validity of the election; no member had been returned; and there was another serious objection to refer the question to the Committee of Elections and Qualifications—a very serious objection indeed. They knew that, after the disclosures that had been made, some person might desire to petition against the return of Mr. Graham for the Electoral District of Darling Downs; and if so, the petitioner would have a right to be heard before that committee, and that raised the objection that, if the matter were referred to them now, there would be no parties to the dispute; no one would be entitled to appear and take objection to the validity of the election. The only question to be referred to them would be, whether Mr. Graham had, in point of fact, a majority of votes; they could only report whether he was or was not duly elected; and any person desiring to test the validity of the election would be excluded from doing so. Another sufficient reason was that the House had already decided what was the proper course to adopt. There was no petition, because a petition must be after the return was made; until there was a return, there could be no petition; and the amendment seemed to exclude the right of petition on the part of any elector of the district who desired to object. It had been suggested to him by his honorable friend that, as it appeared to be considered desirable that time should be given to look into the matter, the debate should be adjourned; and he, therefore, moved—

That the debate be adjourned.

Mr. GROOM said there was one point on which he considered that both the honorable the Speaker and the House ought to be informed. If he understood rightly, Mr. Affleck appeared within the precincts of the House in obedience to an order of the House, made a few days ago; and he (Mr. Groom) had been given to understand that that gentleman had been served, within the precincts of the House, with a writ for £200, in connection with this very election. He thought the House ought to be made aware of this proceeding, and that it was not proper to serve a writ on a gentleman when in attendance on that House in obedience to its order. With regard to the question itself, he thought the sooner it was settled the better. He, at one time, was inclined to support the amendment of the honorable member for Port Curtis; but he knew there would be one or two petitions sent down from the Darling Downs, in consequence of the irregularities that had taken place, and he would therefore support the motion of the Premier—that the Returning Officer be called upon to make a return. He hoped there would be no adjournment, but that they would decide the question to-night.

The ATTORNEY-GENERAL said, with the permission of the House, he would withdraw his motion for the adjournment of the debate.

Mr. MOREHEAD: I object.

Mr. GROOM asked for the ruling of the Speaker as to whether a person who was within the precincts of the House, in obedience to an order of the House, could be served with a legal process of the Supreme Court while the question was pending before the House?

The SPEAKER: I think that is more a matter for the Attorney-General to consider than the Speaker of this House.

Mr. GROOM said the Returning Officer was present to answer for his conduct and certain irregularities, and he thought it hardly proper that any person should come to that House and serve a writ for £200 damages, before the House had come to a determination on the question.

The SPEAKER: Unless it can be shown that he is being prosecuted in consequence of being ordered to attend the House, I do not see how the House can interfere.

Mr. MORGAN said, with regard to the remark made by an honorable member opposite, as to the stupidity of the Returning Officer of the Darling Downs, he thought that gentleman's conduct at the Bar of the House to-day, was quite sufficient to exclude him from any charge of that kind; and he protested against such unjustifiable remarks being applied to him by honorable members opposite.

Mr. MOREHEAD having withdrawn his objection, the motion for the adjournment of the debate was withdrawn.

Mr. BUZACOTT said he had been extremely surprised at the course of procedure to-night. The first thing the honorable the Colonial Secretary did was to move a motion by which the House was required to call upon the Returning Officer to endorse the writ with the name of Mr. Adam Black as having been duly returned. After a long discussion, the motion was carried against the strong protestations of the minority; and now, immediately after, he found that the honorable the Colonial Secretary submitted a resolution with regard to the Darling Downs election precisely similar to the amendment moved by an honorable member on that side of the House, which they previously refused to accept.

HONORABLE MEMBERS on the Government benches: No, no.

Mr. BUZACOTT: So far as he understood it, the motion of the honorable the Colonial Secretary with regard to the Darling Downs election, was precisely the same as the amendment of the honorable member for Port Curtis with respect to the Logan election.

HONORABLE MEMBERS on the Government benches: No, no.

Mr. BUZACOTT: Well, he was very seriously mistaken if it were not. It did not say that the name of the candidate who polled the larger number of votes should be inserted, but merely that the Returning Officer should be called upon to fill in the return to the writ.

He made that distinction. In the one case the writ had been returned, and in the other it had not been returned. He wished to point out that if the honorable the Colonial Secretary had, in the first instance, moved that the Returning Officer be requested to perform his duty, the discussion to-night would not have occurred, and they would have been able to proceed with other business which ought to have been transacted by the House that evening. The Colonial Secretary displayed a desire to force a measure upon the House, which was distasteful to honorable members; and it was inexcusable in him. He (Mr. Buzacott) could not refrain from protesting against such precipitate motions.

Question—That the words proposed to be omitted stand part of the question—put and affirmed.

Original question then put and passed.

And the Returning Officer for Darling Downs having been recalled to the Bar,

The SPEAKER said: I have to inform you, Mr. Affleck, that the House has come to the following resolution:—

That the Returning Officer for Darling Downs be ordered to return the writ for that electorate duly endorsed.

I have now to request you, in the name of the House, to return that writ duly endorsed.

Witness: Mr. Speaker, may I put a question?—It is, have I to endorse on this writ the return of the candidate who has received the greatest number of votes?

The SPEAKER was understood to express assent.

And the Returning Officer endorsed the writ.

On the motion of the COLONIAL SECRETARY, the Returning Officer was allowed to retire.

The SPEAKER then reported that, in obedience to the order of the House, the Returning Officer for Darling Downs had endorsed the writ of election for that district to this effect:—

"I hereby certify that William Graham has been duly chosen as member for the Electoral District of Darling Downs, to serve in the Legislative Assembly of Queensland. Given under my hand, at Brisbane, this 4th day of April, 1875."

There was an obvious error, which should be corrected to "May."

The Returning Officer was recalled, and made the necessary correction in his endorsement.

The COLONIAL SECRETARY: It was necessary that he should explain to the House that it would be necessary to take certain measures in the matter of the last return; and that there was a difference between the writ for Darling Downs and the writ for Logan. The writ for Logan was returned within the time prescribed by law, which was not the case of the writ for Darling Downs, which was delayed until after the time prescribed. The consequence of this was that, under the 47th

clause of the Elections Act, a proclamation must be issued :—

“ No election for any electoral district shall be void in consequence solely of any delay in the holding of the election at the time appointed or in the taking of the poll or in the return of the writ or in consequence of any impediment of a merely formal nature. And the Governor with the advice aforesaid may adopt such measures as may be necessary for removing any obstacle of a merely formal nature by which the due course of any election might be impeded. Provided that the validity of such election and the measures so taken shall be forthwith declared by the Governor by a proclamation for that purpose published in the *Gazette*.”

He had consulted his honorable colleague, the Attorney-General, who agreed with him that, until the proclamation was issued, the member for Darling Downs could not be sworn in. He should advise His Excellency the Governor to issue an extraordinary *Gazette* to-morrow morning, so that the honorable member would take his seat at the next sitting of the House.

HONORABLE MEMBERS: Hear, hear.

The COLONIAL SECRETARY then moved—

That the returning officers for Darling Downs and Logan be discharged from further attendance on this House.

Question put and passed.