

to pass the law which did exempt these men from the operation of that section, there was not the same ground for including constables in the repeal, because and for the reason that they had never been disqualified. (Liberal applause.)

The Common Law of England.

Mr. Hardy then drew attention to the common law of England. In "Rogers on Elections," page 1, they would find this principle laid down:—"Dalton says that by the common law all free men of England had a voice in the election of these knights within the counties where they dwelt. The two qualifications were to be free men and to be resident." That was the common law of England; that was the law upon which was built all their election and franchise laws. And unless, therefore, there was some act passed since then, unless there was some law which took an entirely different course, which embodied an entirely different principle, which limited the right or limited the phraseology there employed—he did not say that under that act they could vote in Ontario, because they had a law of their own—but from all time, they could say from the time of the first election of the members of Parliament, away back in the dawn of Parliamentary history, in the early days of English civilization and English freedom, they found that two qualifications only were necessary: to be a free man and to be a resident of the borough or the county. That gave him a strong starting point, so that there was in this country, starting with its later law and later civilization and later occupation and later election laws, there was what might be called a natural right on the part of every man, from whom the franchise is not withdrawn, if he had the other qualifications, there was a natural right on his part to be a voter of the land, and therefore, as his hon. friend from West Huron argued the other day, there need be no disfranchisement by mere implication in a matter of that kind. (Liberal applause.)

The Constituencies Affected.

Now while I am on that point perhaps you will pardon me for a moment if I deal with that which has been dealt with perhaps before. We have seen it in the newspapers constantly repeated that it affects eight counties. Now no one can say what opinion the court may ultimately hold as to the effect of that vote, supposing it is found that the constables have not the right to vote. No one can say what the arguments may bring forth, as to what extent or how any election is affected by these bad votes. No one can tell until the last word has been said and the last argument presented whether it will affect those who have a majority greater than the number of constables employed and voting, or whether it will be wider in its operation. My own view is that it is simply a case of striking off votes, and that in that respect it would be simply a case for a scrutiny. I am not prepared to say that the court will hold that view any more than my hon. friend is prepared to say what opinion the court will hold upon the question of the constable vote.

Therefore I say it may be a broader question; but when it is urged in the press daily that it will be a turning point in eight cases I take issue with the statement and say it is not so. If you take it as applicable only to those cases where the majority is so small as to be cut away by these constables' votes, who have voted for the majority candidate, if their votes are disallowed, so far as I am advised it will only affect three or four cases at the most—(applause)—South Perth and West Huron—I cannot say as to Nipissing or Muskoka—but it cannot affect East Lambton, as there were only 33 constables all told sworn in there, and in South Norfolk there were only 21 constables. Nor can it affect West York, where the constables were far fewer, and where some of them were Conservatives. It is a vote that no one can tell; we have no information before us in this House. There is no way of obtaining that information at this session, so we cannot tell; we are only groping in the dark. (Cheers.) There are therefore no more than three or four cases that it will directly affect, provided that it is ever held that constables have not the right to vote.

Mr. Foy—How many were there in West York?

Hon. Mr. Hardy—There was a majority of 39 in West York, as I understand it, and there were only 35 constables, six of them Conservatives, as I understand. (Cheers.)

English Decisions.

One word now as to the decisions under the English law and under our own. The general words used under section 6 of the act, "any other person whatsoever," are the same as those used in the English act. Under the English act it has been decided that borough constables employed at an election who are paid by the borough are not disqualified. (Cook's and others' cases K. and O.). The votes of the city officers of the place who attended at the proclamation, and were paid by one of the candidates, were held to be good because they were present serving the public generally, and not the candidate who paid them specifically. (Barnes case.) So as to the election of Hastings, where the parties were employed by the returning officers but paid by the candidates. On both sides the vote was held to be good. (Page's case.) In a similar case where the voter received money from the candidate his vote was held to be bad; he was the Town Clerk. (Seeker's case.) In the Finsbury case Mr. Justice Cave held that the bill-poster employed and paid by one of the candidates only did work for both parties, and was not disqualified. Mr. Justice Williams, in the same case, concurred, and added that where such disqualifying words as "agent, canvasser, clerk, messenger or other like employment" are used the principle *e justum generis* applies, and the act did not therefore apply to bill-posters. (4 O. M. and H.) This case is of more weight and authority than that of an election committee, but our courts have frequently followed the decision of election committees where their decision has not been overruled by the courts. (Applause.)