

by his constituents after he had taken those steps, all of which had been taken with their cognizance, and it was after, first, his resignation, and then his election, and after all this had been done, that Parliament passed that Act, a declaratory Act, in which it is stated that the hon. gentleman, having taken all these precautions which are set out in the preamble of the Bill, has not vacated his seat.

Sir JOHN A. MACDONALD. This is the same Act.

Mr. MILLS. No; it is not the same Act. If the hon. gentleman could show that Sir Charles Tupper had accepted this position before he was elected as member for Cumberland, if he could show that he had tendered his resignation of the office, if he could show that there was some irregularity in the tendering of his resignation that was altogether beyond his control, if he could show that he had done everything in his power to divest himself of his office, and that, after he had done that, he was elected by the people for Cumberland, then he might quote that Statute in defence of what he proposes to do to-day; but that is not the case. Sir Charles Tupper was elected member for Cumberland; he was not disqualified at the time of his election. He has since accepted a disqualifying office by which his seat has become vacant, and, after that vacancy has arisen, the hon. gentleman proposes that a Parliament, in which a majority of the members sitting in this House are not members for Nova Scotia, shall elect a candidate for one of the constituencies of Nova Scotia. That, Sir, is the position the hon. gentleman has taken in this Bill. Now, I deny that the position is a sound one. I would like, however, briefly to allude to the observations made by the hon. member for Jacques Cartier (Mr. Girouard). That hon. gentleman reads a commission and says it is a valid commission.

Mr. GIROUARD. No; I say the commission is null.

Mr. MILLS. Then the hon. gentleman argues that there was no appointment at all, that Sir Charles Tupper was not High Commissioner, and that although he received \$5,000 for acting as Commissioner, nevertheless his seat has never become vacant by the acceptance of the office, because there was in law no valid acceptance. Well, Sir, as I understand the law with reference to the provision made by Act of Parliament for an appointment to any particular office, if the Government advises the Crown to make the appointment in accordance with the provision of that Act, and they attach a condition inconsistent with the Act, the condition is void, but the appointment is valid.

Mr. GIROUARD. Can you show that by authorities?

Mr. MILLS. The hon. gentleman can have no difficulty in finding any number of authorities in that sense. He knows very well, for instance, that two parties cannot agree upon a mode of settling a dispute between them which would divest a court of its jurisdiction. The same rule which applies in that case would apply in this, and if there is a provision made by Statute that there shall be a salary attached to a particular office, and an agreement is made between the Government and a candidate that he shall not receive that salary, it will not change the character of that office, it will not make any difference. Where the Crown, as a matter of prerogative, has the power of making an appointment and where there are certain emoluments, or fees, or allowances, which the Crown has the power to grant in connection with that office, it may separate the appointment from the particular office, as in the case of the appointment of Queen's Counsel or Queen's Sergeant, in such cases the Crown can make an appointment to an office without perquisites being attached to the office. But where the policy of Parliament is indicated by the provision of an Act of Parliament that a certain office shall be an office of emolument under the Crown, it is not in the power of Government to change the character of that office, and it does not

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depend upon the acceptance of a salary in order to vacate the seat, under the provisions of such an Act. Let me ask the hon. gentleman this question: If the office is accepted, when does the seat become vacant? How much salary must accrue? Is it not the very instant that acceptance takes place that the seat becomes vacant? Then the question arises, did that acceptance take place? Did it take place when the patent issued, or did it take place before? There are many cases in England where an agreement to accept office is regarded as an acceptance, and the writ issues accordingly. Now there are many instances of that sort. There is the case of Sir Henry Petty, who was appointed Chancellor of the Exchequer on the 4th of February, and he was elected for Cambridge on the 6th of February, but the patent did not issue till after the election; and if the view taken by the hon. gentleman was sound, the result would have been that the seat would have become vacant again. But it was held that the very moment he agreed to accept the office of Chancellor of the Exchequer his seat became vacant, and although the patent for the office did not issue till after his election, nevertheless, according to the view of the hon. gentleman his seat was not vacated, he was entitled to retain his seat, and a second election was wholly unnecessary. There was, too, the case of Mr. Addington. Mr. Addington had agreed to accept the office of Chancellor of the Exchequer, but the King became insane and the patent could not issue. Mr. Addington's seat was held, nevertheless, to be vacant, and he was obliged to go back for re-election, although after his re-election Mr. Pitt continued to hold the office of Chancellor of the Exchequer and proposed the Budget to Parliament and Mr. Addington did not, until some weeks afterwards, receive the appointment of Chancellor of the Exchequer. So that it is perfectly obvious that when Sir Charles Tupper agreed to accept this office he agreed to accept it subject to the provisions of the Statute, and we cannot look at the patent which he received for the purpose of ascertaining whether he was qualified or disqualified in this acceptance. The fact that there is not a salary provided, or the fact that the patent says that there shall be no salary, discloses nothing in regard to the matter. We look at the Statute itself. We see by the Statute that it is an office of emolument, that it is a disqualifying office by the Statute, and being an office of emolument and therefore a disqualifying office, the moment he agreed to accept it his seat in the House of Commons became vacant. Let me suppose a case. Suppose the hon. gentleman had appointed Sir Charles Tupper as Lieutenant-Governor of Ontario. There is a certain salary attached to the office. Suppose Sir Charles Tupper had agreed that in that office he would not accept the salary. Supposing that his patent had been issued, as it has been in this case, providing that he should be Lieutenant-Governor of Ontario without a salary. Does the hon. gentleman say he could have retained that office of Lieutenant-Governor and retained a seat in this House and remained Minister of the Crown? Does he pretend to say that by simply agreeing that something shall be done contrary to the provisions of the Statute, contrary to the policy of Parliament, that therefore the hon. gentleman can accept that particular office? Why, he could do the same thing with the Chief Justiceship. He might appoint the Minister of Justice, or one of his colleagues in this House—the Secretary of State, for instance, who is a member of the Bar—he might appoint him Chief Justice on the same principle, with the understanding that there shall be no salary attached to the office. He might issue a patent, and that hon. gentleman might sit in the court as Chief Justice and sit in this House as a member for his constituency. I say, Sir, that the proposition is a preposterous one; it is one that will not bear investigation; and it is perfectly obvious that the Government do not possess that dispensing power which the hon. gentleman says they do