

Commissioner. They are, "The High Commissioner shall receive a salary," &c.

Mr. MILLS. Hear, hear.

Mr. GIROUARD. Yes; in order that the commission shall be valid, the salary must be mentioned in the commission. The words of the Statute are imperative. There is a very well known rule regarding the interpretation of the Statutes, that when the Statute declares that something "shall" be done, the language is imperative and the thing must be done. But here the thing was not done. The Government had no right to do it in that way. Honourable gentlemen opposite admit that. How can we say the commission is valid when the commission is against the provision of the Statute; and according to the authority which I have mentioned, that of Lord Tenterden, the first condition required in order to subject the nominee to the penalty specified in the Independence of Parliament Act is, that you must show upon its face complete and valid appointment. This was not a valid appointment.

Mr. MILLS. The appointment is valid, but the condition is void.

Mr. GIROUARD. The whole paper is void.

Some hon. MEMBERS. Oh, oh.

Mr. GIROUARD. Hon. gentlemen opposite may laugh, but I base my argument upon the decision of Judges who understand the law better than they do. The salary is essential; it is an essential factor in the appointment, and as such could not be detached by the Government. I will refer the House to several cases, among others, to one which is reported in the *English Jurist*. That is the case of *Liverpool Corporation vs. Wright*, where it was decided that a recorder, who under the Statute was entitled to fees could not agree with the corporation to take a salary instead, upon two grounds of public policy. It was held that the fees were necessary to the dignity of the office, and in that case the agreement was declared to be null and void. But here the renunciation to salary was not in the paper making the nomination, it was in a separate paper; it was not in the commission itself. I come now to a more recent case decided in our own country, that of Mr. Taillon, the present Attorney-General of the Province of Quebec. The Independence Act of the Province of Quebec is a copy of our own Act. In 1880 the Province of Quebec provided for the appointment of an officer to examine certain municipal accounts. On 24th September, 1880, Mr. Taillon, then, and still, the member for Montreal East, in the Assembly of Quebec, by Order in Council, was nominated with all the powers, rights, privileges, emoluments and advantages attached to the said office. There was a salary attached to this office in these terms—the terms are not imperative, as are the terms of the Statute providing for the nomination of a High Commissioner, but at the same time there is a salary attached to the office.

"The appointment of such Commissioner shall be during good pleasure, and his salary may be fixed by Order in Council, but shall not exceed \$3,000 per annum, over and above travelling expenses."

Mr. Taillon received his travelling expenses, but he did not receive a salary; in fact no salary was ever fixed by Order in Council. He was sued by one Laliberté for penalties provided in the Quebec Statute, the same as in our own Statute. A decision was given by Chief Justice Meredith, on March 13th, 1882, in these terms:

"Considering that when the defendant sat as a member of the Legislative Assembly of this Province, as mentioned in the plaintiff's declaration, no salary, fee, allowance, emolument or profit of any kind was then attached to the office which the defendant then held, as mentioned in the plaintiff's declaration; it is in consequence considered and adjudged that the action and demand of the said plaintiff against the defendant, be and the same is hereby dismissed with costs in favour of the said defendant."

Mr. GIROUARD.

I believe that is in some respects a case similar to the present one; but the case nearest to the present one is that quoted the other day by the leader of the Opposition. I have taken the trouble since that time to go over the whole report of the case, and it is apparent that the decision in that case does not bear out the hon. gentleman's proposition or the propositions adduced by hon. gentlemen on the other side of the House—I refer to the Harvey case, before the Imperial Parliament. Let me say that Mr. Wynn, the mover for a Committee to enquire into the charge made against Mr. Harvey, from whose statements the leader of the Opposition quoted so fully the other day, was accused of partiality. In discussing that case, Mr. Harvey, in answer to Mr. Wynn, said:

"I see by a motion of the gallant officer the member for Lincoln, that thirty or forty commissions have been appointed with salaries attached to them. There are several members of Parliament in these commissions to whose names it is true, the remark is annexed to the return, that they have declined salaries."

In the County Rate Commission I find the names of Mr. Law Hodges, and Mr. Shaw Lefevre, who it is said, 'declined to receive salaries.' Their declining to receive them rather implied that they could take them if they pleased, and the acceptance of this office worked their disqualification, according to the reasoning of the right hon. gentleman. Why the right hon. gentleman has suffered such appointments to pass unnoticed, I cannot conceive, unless it be, that as 'Commissioners' and not found on the Journals of the House, they are a subject beneath his notice. Again, I find, that there has been a commission on Irish fisheries, in which case it was laid down that the Commissioners should receive their salary when they reported. But I see that Mr. Walker, as one of these Commissioners, has, from the commencement, refused to receive any remuneration. That, no doubt, is very creditable to Mr. Walker; but if the doctrine be approved, as agitated by the right hon. gentleman, that the acceptance of office—such paid offices as these paid commissionerships,—constitutes the evil, and vacates the seat in Parliament, I am a little surprised, giving the right hon. gentleman credit for not being actuated in the smallest degree by personal feelings or party motives in bringing forward his motion of this evening, that these commissionerships should have altogether escaped his attention."

Mr. Hume said on the same occasion:

"I can have no objection to comply with the request of the right hon. Baronet. Had I been a member of the Committee, in the case of Mr. Harvey, I should have asked how it was that an hon. member for Marylebone had been appointed to an office of profit, and been permitted to proceed to a foreign country, without vacating his seat, and without any notice having been taken of his appointment in this House. I should have asked how the hon. member for Kilmarnock had been permitted to accept an appointment, and to receive largely the public money without vacating his seat. And I should also have asked how an hon. member for Dundee had been permitted, without a notice being taken of his appointment, to hold another office of profit. That would have been the course I should have pursued had I had the power. There are, in all, about sixteen members of this House who have received offices of profit, and yet no notice has been taken of their appointment. The first blot was hit in Mr. Harvey's case. But I shall take especial care that such appointments, shall, in future, be rigidly examined; and I shall also consider whether I ought not to bring those who have been already made under the notice of the House."

This shows that Mr. Wynn, whose opinions were quoted the other evening by the leader of the Opposition as sustaining his view, is not, after all, a very impartial authority on a question like this. But I will show that even in the opinion of Mr. Wynn, a case like that of Sir Charles Tupper would not come within the prohibition. Mr. Wynn said—and of course this portion was not quoted by the hon. gentleman:

"But the hon. member, in his letter to the Noble Lord, the Secretary of State for the Home Department, said that he would not receive any emolument or profit from the office, if Parliament should be of opinion that its acceptance would oblige him to vacate his seat."

Mr. Harvey had applied for the salary in the first instance, but when he applied he was told that perhaps he would render his seat vacant, and thereupon he declared that he would not receive any emolument from the office if Parliament decided that his seat would thereby become vacant. Mr. Wynn goes on to say:

"The hon. gentleman's refusal to accept a salary was therefore only a qualified refusal, dependent upon the refusal of Parliament as to the effect of accepting a salary. This, I contend, does not exempt him from the disqualification created by his original acceptance of the office."