HOUSE OF COMMONS

Thursday, April 3, 1873

The SPEAKER took the chair at 3 p.m.

Prayers

AFTER ROUTINE

COUNSEL IN ELECTION PETITIONS

Mr. MILLS said he had observed today before Mr. Speaker, a gentleman engaged as counsel in a case, and he also observed that same gentleman's name was upon the chairman's panel, and it might be that he might be called upon to serve as judge in the very case on which he appeared as counsel. A great deal of attention had been directed of late to English precedents, and he thought it was a well settled practice in Great Britain, that in no such case should any member of the House act as counsel. He observed that that was the law as laid down.

In May, it is stated that a member is incapable of practising as counsel before the House or any Committee, not only with a view of being free from any pecuniary influence, but also because it is beneath his dignity to plead before a Court of which he himself is a constituent part, nor is it consistent with Parliamentary or professional usage that a member should advise as counsel upon any private Bill, election petition or other proceedings in Parliament. Not only was that doctrine laid down by May, but a very high authority observed with regard to the trial of controverted elections, in speaking of the conduct of Mr. James, who appeared before the Court since controverted elections had been relegated to the Superior Courts, that his conduct was highly improper.

The same gentleman went on to say that the rule, as he understood it, both at the Bar and in Parliament, was that no member could take a retainer as counsel in any matter of which consideration either in the first or last resource belonged to the House. He cited in support of this view the names of a number of gentlemen of the long robe in Parliament—Sir R. Collyer, Solicitor General Coleridge, Montague Chambers, and others, who had declined such retainers upon the express ground that they were incompatible with their Parliamentary functions. It was also understood that Sergeant Ballantine and Sergeant Parry, for the same reason, had declined being candidates for election to Parliament in 1858. The House of Commons passed a resolution condemning this practice; a resolution was proposed declaring it was contrary to usage and the dignity of the House that any of its members should bring forward any proceeding or measure which he might have been connected with as counsel, in consideration of any fee or reward.

The mover of the resolution went on to state he had the entire approval of many eminent men of the English Bar in making the resolution. He also cited the opinion of Mr. Secretary Peel, who said that it was inconsistent with the uniform practice of the House that lawyers should take part as members of Parliament in a matter in which they were professionally engaged, because it was incompatible with the discharge of Parliamentary duties. This resolution was carried by a vote of 210 to 27. That was the well settled practice in England, and there could be no difference between gentlemen in this House appearing as counsel before Mr. Speaker on matters connected with election petitions, than their doing the same thing before the Election Committee.

He would, therefore, move the following resolution:—"That it is inconsistent with the dignity of this House, and contrary to the usage of Parliament, that any of its members should be retained as counsel in any proceeding which relates to any election petition, or any proceedings had under the law for the trial of controverted elections before any member or committee of this House."

He might further remark that his position was strengthened by the Bill submitted to the House by the Premier yesterday. He found among the provisions of that Bill the 55th section which disqualified members of Parliament from being retained as counsel in any election case before the courts. If that practice could be condemned when the trial of controverted elections was not before this House—when it was before another tribunal, it should be much more strongly condemned when gentlemen in this House were mixed up in the trial; especially was it to be condemned when hon. gentlemen acted as counsel in a case where his name was upon the Chairman's panel, and he might be called upon to sit as Judge in the very case in which he had acted as counsel.

Hon. Mr. CAMERON (Cardwell) thought notice should be given of this motion and that it could not be brought up without notice.

The SPEAKER ruled that it required notice.

Hon. Mr. BLAKE called Mr. Speaker's attention to the rule of the House (rule 38) which stated that when any matter of privilege arose, it should be taken into consideration at once.

The SPEAKER said English decisions drew a distinction between cases of privilege where there was an emergency, and other cases which were *quasi* questions of privilege. He held that this was a case where notice should properly be given.