

EXECUTION OF LOUIS RIEL.

Mr. BLAKE. Before recess I was pointing out that we must not consider these points as theoretical merely; they are practical—intensely practical. The spirit of them is exhibited in our Statute-books, in the Act which constitutes the Supreme Court, in which it is expressly provided that the judges of that court should not be competent to accept any commission or employment, or any emolument under the Government of the day. In the Consolidated Statutes of Lower Canada, an express prohibition of a similar character exists, and was brought into play we recollect, not so many years ago, by our late lamented friend, Mr. Holton, and that in connection with a North West matter too, when a learned judge of the Superior Court of the Province of Quebec had been appointed administrator of the Government of the Province of Manitoba. This statute precluded the taking effect of that appointment. And how did this take place? How was it that this law was engrafted on the Statute Book? Because it had been found of practical consequence to the people of the Province of Quebec that it should be so. There also, as we know, there had been an agitation against grievances of many years' standing, which culminated in the rebellion of 1837; and for a great many years this question had been one of the questions agitating the people of that Province. You will find that as early as 1825 the resolutions of the Legislative Assembly of Lower Canada declared as follows:—

"That for the more upright and impartial administration of justice it is expedient to render the judges of His Majesty's Court of King's Bench and Provincial courts more independent than hitherto by incapacitating the said judges from seats in the Executive and Legislative Councils, and disqualifying such as have now seats therein from sitting or voting in such Councils.

"That it is expedient to secure by law to the said judges their respective offices during good behavior in the same manner as those officers are secured in England.

"That it will be expedient, for the purpose aforesaid, to secure adequate permanent salaries to the said judges on their being prevented from holding any other office of profit or emolument under the Crown."

It is not, Sir, in the heyday of liberty that we are to forget the securities for freedom. The price—according to a hackneyed but ever-to-be-remembered maxim—the price of liberty is eternal vigilance; and in this regard, as I have said, an error has been committed. Now, what is the measure and extent to which this Administration is chargeable in this respect? Certainly not in the existing state of the law with reference to a trial before one of the stipendiary magistrates. All that can be complained of fairly against them is, that their attention being called to the special circumstances of the case to the unprecedented and unanticipated circumstances, during the late Session of Parliament, by the hon. member for Beauharnois (Mr. Bergeron), and the suggestion being made that legislation should take place, they declined to accede to the suggestion and insisted that the trial should go on under existing laws. Sir, I have said that trials of this description differ altogether from all other classes of trial in respect to the importance of the independence of the judiciary. They differ wholly, because in trials of this description there is hardly a conceivable case in modern times at any rate, in which the Government does not occupy a wholly different relation to the prosecution from that which it occupies in all ordinary cases in the administration of criminal justice. There can be no question, for example, of the Government being otherwise than an impartial and equal administrator of the law if John Jones or Tom Smith is taken up and accused of having picked somebody's pocket, or robbed somebody's barn, or maimed somebody, or killed somebody. But cases of this description wholly differ. In this case the Government may be, generally is, in this particular case unquestionably was—a prosecutor in altogether a different sense and with altogether different relations to the prisoners than in those other cases. I point out—for I desire through this discussion

to sustain myself by authority—what authority says upon this topic. I refer to the well-known book of Lieber on Civil Liberty, where he uses these words:

"In the trial for treason the Government is no longer theoretically the prosecuting party as it may be said it is in the case of theft or assault, but the Government is the really offended, irritated party, endowed at the same time with all the force of the Government to annoy, persecute and often to crush. Governments have therefore been most tenacious in retaining whatever power they could in the trial for treason; and on the other hand it is most important for the free citizen that in the trial for treason he should not only enjoy the common protection of a sound penal trial; but far greater protection. The trial for treason is a gauge of liberty. Tell us how they try people for treason and we will tell you whether they are free.

"It redounds to the glory of England that attention was directed to this subject from early times, and that guarantees were granted to the prisoner indicted for treason centuries before they were allowed to the person suspected of a common offence. * * * Experience proves that not only are all the guarantees of a fair penal trial peculiarly necessary for a fair trial in treason, but that it requires additional safeguards; and of one or the other the following seem to me the most important.

"The judges must not depend on the Executive."

"The judges must not be political bodies."

Many safeguards are specified, of which I select the two that are apposite to the present case: "The judges must not depend on the Executive; the judges must not be political bodies." Now, Sir, being in the difficulty that in these particular trials the Government under the standing laws which they did not choose to propose to alter, had to select a judge who was dependent on the Executive—a judge who was one of a political body, it was eminently incumbent on them to have made the best selection, the one which was least objectionable, the one in respect of which it might be said, though there is a difficulty as to all to which I have adverted, this one is certainly the least or, at any rate, not the most obnoxious. But what I have objected to on a former occasion, an objection which I renew to night, is to the choice of the particular judge, because this particular judge, as you will see if you refer to the Public Accounts, was the recipient of special favors, the occupant of special relations to the Executive of the day. In the first place, he is the legal adviser to the Executive of the North-West; he is so appointed during the pleasure of the Government; he is so paid a salary during the pleasure of the Government. He answers to the Attorney-General, the legal adviser of the Government in the North-West Territories; and it needs not to enlarge upon the relations and responsibilities of a Lieutenant Governor of the North-West Territories to a rebellion in the North-West, and upon the relations and responsibilities of the First Minister of Canada, who declared that he was the medium of communication between the two Governments, and of the Minister of the Interior towards the Lieutenant Governor of the North-West Territories to point out that it was an unhappy choice to select, of the three or four judges, the person who filled the position of the political adviser, the political law officer, to the Government in the Territories to be the judge in this particular trial. He is also the recipient of special favors. I find, in the Auditor General's Report, just brought down, a statement of his accounts. I find that, irrespective of his salary of \$3,000 a year, there has been paid to him, during the year to which these accounts refer, a special rental allowance of \$500, an additional salary as legal adviser to the Lieutenant-Governor of \$200, three votes of \$200 each as a nominative member of the North-West Council, his travelling allowance of \$1,000, and something between \$100 and \$500 for expenses and allowances for attendance at Ottawa in connection, it is said, with the Torrens' Act; making a total of over \$2,700 paid during the last year to this judge, in addition to his salary of \$3,000. Now, as to travelling allowances, and allowances as nominative members of the North-West Council, the other judges were in the same position; but the allowances for house rent and as legal adviser and in connection with the Torrens' Act are peculiar to the