

May 2, 1872

into error, and he hoped now that the error was pointed out they would take steps to remedy it.

Good Governments, better Governments than this had fallen into error; for instance, the Government of Mr. Gladstone, which he regarded as infinitely superior to the Government of this country, had undoubtedly fallen in a grave error in the appointment of Mr. Collier to the Judicial Committee of the Privy Council, but there was this important distinction between the two cases, that Mr. Gladstone certainly kept within the letter of the law, while the hon. gentlemen opposite had violated both the letter and the spirit. He ventured to hope that the Government would set themselves right before the House and the country, but in any case he would have the satisfaction of knowing that he had sought to vindicate one of the great safeguards of freedom—the independence of the Judiciary.

**Hon. Sir GEORGE-É. CARTIER** said there was no doubt that the question raised by the motion was a very grave one, and it must be approached as such. The same question had arisen and been considered by the Government when they made the appointment. The objection contained in the motion was as to Judge Johnson, while continuing to be a Judge of Lower Canada and receiving a salary as such Judge, being appointed as Lieut. Governor of Manitoba with a salary in respect of such office.

He might say, however, that there was no statute fixing a salary to the office of Lieut. Governor of Manitoba, which was provided for by Order in Council. The House had already been informed by the leader of the Government that the appointment of Judge Johnson was merely temporary, and he might now say that Judge Johnson did not expect to receive, neither did Government intend to pay him, a salary on the scale paid to Governor Archibald; indeed, no salary was to be paid at all to Judge Johnson as Lieut. Governor.

He would now come to the question of legality. Judge Johnson, being a Judge of the Superior Court of Lower Canada, was under leave of absence, and his position was filled by an assistant, who performed all his duties. The leader of the Government had already explained on a former occasion that the Act of Confederation only allowed the appointment of an administrator of a Province in case of illness or absence of the Lieutenant-Governor, but not in a case of a resignation. He referred to the cases of Prince Edward Island and British Columbia, where, in case of vacancy, the Chief Justice was allowed to act as Lieut. Governor, and to Upper and Lower Canada, where, under the former regime the Commander of the Forces, was empowered to act.

Before he resumed his seat he would state the decision at which the Government had arrived; but as the member for Châteauguay (Hon. Mr. Holton) had appealed to the Statutes and questioned the legality of the appointment, he would first deal with that. He then referred to the Act of 1849, and maintained that its provisions only applied to Lower Canada and could not affect appointments outside that Province. He would not have taken this argument had he not been provoked to do so. He maintained that the offices alluded to were offices in Lower Canada, and that if that Act were the only

one on the Independence of Parliament as far as Judges were concerned, they could not be prevented from occupying seats in the House of Commons for constituencies outside of Lower Canada.

The hon. member was wrong in stating that the Act of 1857 formed the only exception to that of 1849. He mentioned the Act of 1852 16 Vic., Cap. 13, providing for the appointment of assistant judges in cases of unavoidable absence of judges and where the service of the judges had been otherwise required, which was amended in 1861 when the words “leave of absence” were added as one of the reasons empowering the appointment of assistant judges. He therefore maintained that the appointment was in all respects legal and valid, but concluded by stating that as an hon. member of the House had objected to it, though it was merely temporary, the Government had come to the conclusion to cancel the appointment.

**Hon. Mr. DORION** maintained that Judge Johnson from the moment of his acting on his commission, was entitled to the salary attached to the office and pointed out that in the Estimates for the present year the amount to be paid as salary of the Lieutenant Governor was included under the head of expenditure authorized by Statute, whereas the Minister of Militia had held that there was no Statute on the subject. He also maintained that the terms of the Act of 1849 were not confined to Lower Canada, and that its provisions were violated by the appointment of a Judge to any other office, no matter in what Province. The Government had no right to tamper with the independence of Judges, by granting leave of absence with the express object of giving them other offices.

He should not however protract the debate, and was glad that Government had admitted their error and consented to cancel the appointment. Mr. Johnson had been appointed for two years past as Recorder of Manitoba, for which he received a salary, and at the same time received a salary as Judge, and at the same time another Judge was performing his duties, so that two salaries were paid, one to Judge Ramsay and one to Judge Johnson.

**Hon. Mr. BLAKE** would not have continued the discussion after the statement that the appointment would be cancelled did he not consider that the statements made involved questions of very serious consequence to the country. He did not mean the arguments of the Minister of Militia (Hon. Sir George-É. Cartier), for he scarcely considered them to be arguments. He had however stated that though Judge Johnson was appointed Lieutenant Governor of Manitoba, he was not a salaried officer. He held however that the terms of the British North America Act, 1867, distinctly provided that there should be a Lieut. Governor, and that he should be paid by the Government, and therefore the hon. gentleman in endeavouring to escape from one violation had admitted that he had broken the fundamental law of the Constitution. Further than this, the very Estimates included the salary under the head of “expenditure authorised by statute.”

The Minister of Militia stated that it had been covenanted with Judge Johnson that he should not receive the salary of Lieut. Governor—he did not, however, say whether he might not get