

*Government's Right to Office*

the great office of Lord Chancellor for conscience' sake on one occasion, although he later succeeded to it. I now read from his personal and political memorials, volume 1, page 326. While it may be a little tedious for the House to listen, I do crave its indulgence during my reading of the record of a transaction that more nearly touches the present situation than any other that I know of.

Late in January 1874, after parliament had been summoned to meet for business on the 5th of February, Gladstone resolved upon an immediate dissolution. I believe that the motive for then taking that step was the difficulty in which he found himself about his seat for Greenwich.

After the prorogation in August, some changes had been made in the distribution of government offices; one of which was the removal of Lowe from the Exchequer to the Home Office, and Gladstone's assumption of the office of Chancellor of the Exchequer, in conjunction with that which he already held of First Lord of the Treasury. Strange to say, this was done without considering at the time whether it would vacate his seat (by no means a safe one) or not. The law upon the subject was contained in two statutes, one of Queen Anne's reign, the other Mr. Disraeli's Reform Act of 1867. The earlier Act made the election of any member of the House of Commons void on his acceptance of any office of profit from the crown, and directed a new writ to issue as if he were dead, enabling him to be re-elected. The Chancellorship of the Exchequer was certainly an office of profit under the crown; and Mr. Gladstone drew half of its salary, in addition to that of First Lord of the Treasury. The later act enumerated in a schedule certain offices,—among them, those of Commissioner of the Treasury, and Chancellor of the Exchequer;—enacting that, when a person had been returned to parliament after the acceptance of any one of those offices, his subsequent acceptance from the crown of any other office or offices described in the same schedule, "in lieu of and in immediate succession the one to the other", should not vacate his seat. Gladstone received the seals of Chancellor of the Exchequer early in August, and neither then nor afterwards ceased to be First Lord of the Treasury; though, as usual in such cases, a new patent was issued, reconstituting the Treasury Board, with the omission of Lowe's name, and including Gladstone as Chancellor of the Exchequer.

My own impression was that the seat for Greenwich was vacated: I could not see how, continuing for every practical purpose to hold his former office, and now adding to it a new office (for which he also received pay), it could be said that the one was "in lieu of", or "in succession to", the other. I told him so, before I knew what any one else thought, on the 20th of August, when he was at Balmoral. In reply, he sent me a copy of a letter which he had written to the Speaker; by which it appeared that Sir George Jessel thought differently; and it was intended to obtain further advice. His own view (which he supposed to be Jessel's also) was, that when the new patent, reconstituting the Treasury Board, was issued, there was an end of the office of First Lord, which he held under the patent superseded by it; and that "in lieu of", and "in succession to" it, he took a new commissionership, brought into existence by the new patent, in respect of which he again became First Lord; and that the office of Chancellor of the Exchequer was "attached by usage" to one of the Commissionerships of the Treasury—so that the conditions of the statute of 1867 were satisfied. He was under

[Mr. Bennett.]

the impression that both Lowe and the attorney general (Coleridge) concurred in Sir George Jessel's opinion: and, later in the same month, he sent me a memorandum, drawn up by a permanent officer of the treasury, in support of the same view.

I am sorry, Sir, to be so tedious in reading this, but it is the one case that so nearly touches this that I think the House should have the benefit of it at any rate.

In the meantime the matter was undergoing public discussion: and I found that Lowe, who visited me during that autumn at Blackmoor, was far from being of Gladstone's mind; and that Coleridge also must have been misunderstood. Coleridge wrote to me on November 6, just after his nomination to be Chief Justice of the Common Pleas, that he regarded the question as "very serious," and suggested that he should meet myself, Sir Henry James, and Mr. Bowen, to consider it. And Lord Young, a most able lawyer, recently Gladstone's Lord-Advocate for Scotland, wrote anxiously from Edinburgh, expressing his opinion that the case could not be brought within the exceptions introduced by the Act of 1867 to the general rule: he thought the question "serious and alarming," and understood that it would certainly be raised when parliament met.

Now comes, Mr. Speaker, what I conceive to be the most important part of this matter:

I told Gladstone of these communications: it was for him to decide whether a meeting of myself and the law officers, as was suggested by Coleridge, should be held or not: he did not seem unwilling; but the matter never came to that point. It was allowed to stand over until the time for the meeting of parliament drew near. It was at least sufficiently grave to require deliberate consideration from the House of Commons, and there was the risk of formidable penalties, if he sat and voted in the House when, in point of law, his seat was vacant. What was to be done? He was sensible of the difficulty (as he put it in writing to myself on September 19), of either taking his seat in the usual manner at the opening of the session, or letting the Address be voted, an amendment (perhaps vital to the government) disposed of, and the necessary arrangements for business in the House of Commons made in the Prime Minister's absence. A dissolution was the only escape: and I have never doubted that this was the determining cause of the dissolution of January 1874.

Mr. Gladstone, with his parliamentary majority behind him, felt that he could not permit parliament to meet and an Address to be voted unless he was present in either house of parliament.

Now the late Lord Macnaghten once observed that in his time no man was more meticulously careful in his statements of fact than Lord Selborne, or Roundell Palmer, as he was known. We find Mr. Morley, in his Life of Mr. Gladstone, adverting to and referring to this circumstance. It is to Lord Morley that I now appeal, because Lord Morley was clearly of the opinion that Mr. Gladstone could not possibly say that he had met parliament unless he was present as Prime Minister in either one house or the other. Mr. Morley puts it: