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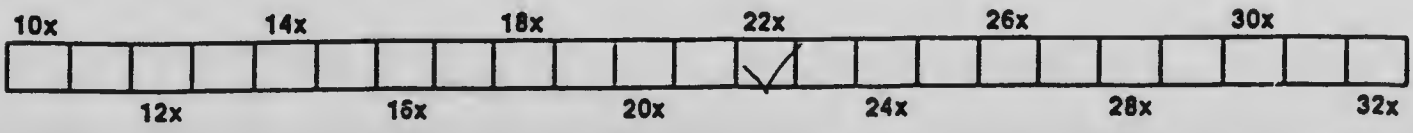

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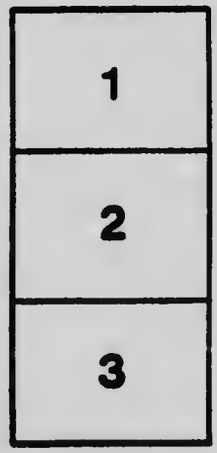

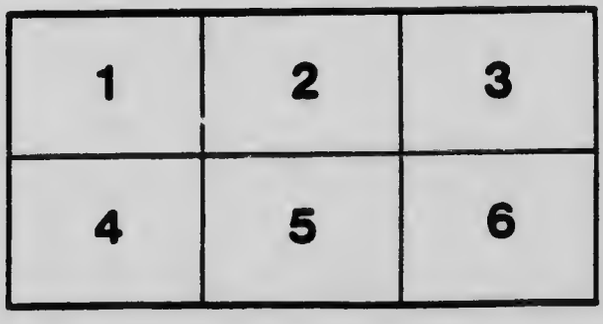

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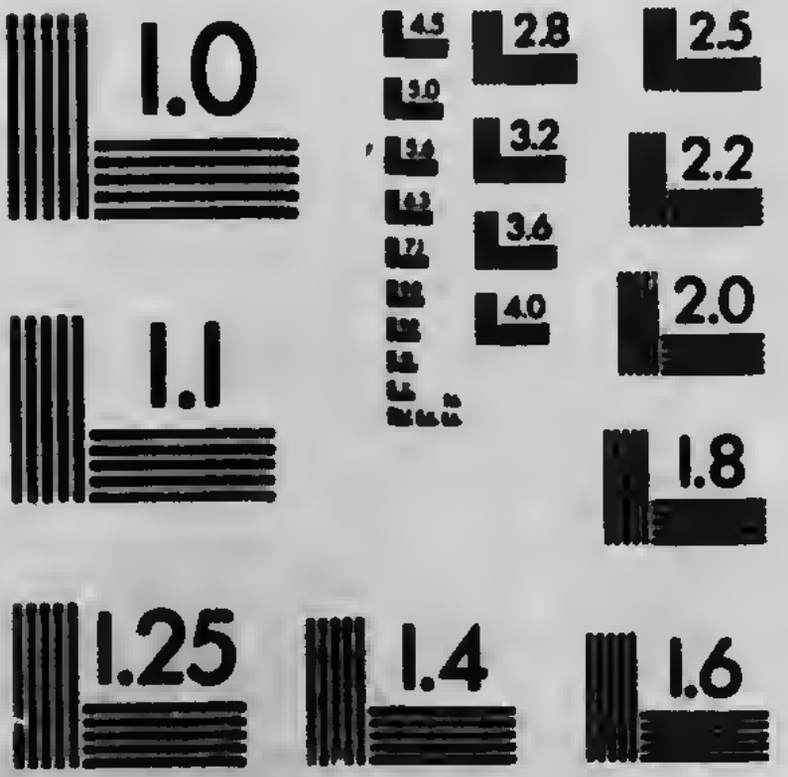

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1903

SPEECH

... OF ...

A. G. MacKAY, M. P. P.

Delivered on the 24th and 25th March, 1903

... IN THE ...

LEGISLATIVE ASSEMBLY OF ONTARIO

In Support of the

REFERENCE OF THE GAMEY CHARGES TO A COMMISSION

SPEECH

... OF ...

MR. A. G. MacKAY, M. P. P.

On the proper tribunal to hear evidence and report upon the Gamey charges

Mr. A. G. MacKay, M.P.P. for North Grey, in replying to Mr. Foy, said :—

MR. SPEAKER : In rising to continue this debate I am delighted to be able to express satisfaction with the calm, judicial, and courteous manner in which the Honorable Member for South Toronto has dealt with the subject. It stands out in very marked contrast to the wild and frantic manner of his Leader when addressing this House some two weeks ago. (Applause.) The honorable gentleman has admitted that the excitement has somewhat subsided; to use his exact words, "the excitement has to a certain extent abated." That is a frank admission of what all along honorable gentlemen on this side of the House have contended, namely, that honorable gentlemen opposite have been in an excited state of mind, and therefore not in a condition or mood to act impartially upon a Committee, or to act as Jurors in endeavoring to ascertain the real facts of the case. (Applause.) Yes, "the excitement has to a certain extent abated," but, sir, if this case be sent to a Committee of this House, it needs no elastic imagination to picture a sudden increase of this excitement the moment the first witness steps into the box. (Applause.) The very tone of this debate is the best proof possible that a Committee of heated and excited partizans is not the proper forum before which to ascertain the real facts of such an important and grave issue.

The member for Centre Grey, Mr. Lucas, who made a clever speech, said they did not want the investigation conducted in a manner that the sidelights would not be brought in. They wanted to get in "hearsay evidence." I thank him for the frank admission. My honorable friend knows that the very first thing he ever learned in law was

that "hearsay" is not, and never was, evidence, and therefore ought not to be received. The hon. member for W. York, Mr St. John, before the instructions were brought down, and before anyone could possibly know what the scope of the investigation was to be, prejudged the case, and declared that it would be a white-washing commission. Another hon. member said the appointment of a Commission would be to load the dice. That was the criticism of an hon. member who was scarcely in a mental condition to fairly hold the scales and judge between the accuser and the accused. The member for S. Toronto, Mr. Foy, said that the accused were selecting the judges. If a Committee of the House made the investigation, seeing that a majority in this House is Liberal, and therefore would control the number and political character of the Committee, there might be something in such a criticism. I cannot help thinking that the Leader of the Opposition came to the House on the day the motion was brought down, expecting the Government to propose a Committee of the House, and it was against that proposal that he had intended to speak as the loading of dice. (Applause.) In dealing with this case I propose to take up the subject under four heads :—(1) I will endeavor to show by precedent that the House in adopting the reference to a Commission of Judges is pursuing the usual and proper course; (2) That the powers of the Committee as defined by statute and circumscribed by precedent are no greater than the powers of a Commission in forcing evidence that might tend to incriminate; (3) I will trace the history of the statute under which we are proceeding, and show that it has had the unanimous support of the Legislature for nineteen years; and (4) I will discuss the width and scope of the Commission.

It being 6 p.m. the House adjourned.

When the House rose last night at six o'clock I was proceeding to discuss the particular question before the House, that is, whether it is more advisable to send the question now under consideration to a Commission of High Court Judges to take the evidence, find the facts, and report both to this House, or to send it on to a Committee of the House, the Committee on Privileges and Elections, composed of 41 members of the House, or nearly half of this whole House, to take the evidence and similarly report. It is purely a question of procedure, of the better way of ascertaining the facts. Now, sir, speaking generally of that question, I may say that the House is seized of the question now, that is, the whole House. It is merely a question of procedure, merely a question of agency which is being discussed. The question is one, simply, of which is the better means of getting at the facts, and the finding and reporting them back to this House, when they will again be dealt with by the whole House.

AGE OF SPECIALISTS

We live, sir, in an age of specialists. Business men realize this, all men in private life realize this, that we live in an age of specialists. In an age, for example, if something went wrong with the heating apparatus in one's house, one would not send for a physician, but for a plumber or a man skilled in that line of work. If a man were ill he would not send for a land surveyor, but for a man skilled in curing diseases. So, here, if we follow the conditions of ordinary business in the country, and do in this House what we naturally would do in the conduct of our own business at home, we would select men who are specialists in that work, select for example High Court Judges, whose whole life is given to the hearing and weighing of evidence, and the finding of facts just as the Leader of this House proposes. (Applause.)

FOUR VIEWPOINTS

I said last evening that I intended to discuss this question from four standpoints. First, along the line of precedent; second, and in this I may be brief, owing to the nature of the bill which has just been read a first time, as to whether a Committee of the House would have more power than a Commission of Judges to take evidence, or rather to force the evidence of an unwilling witness along the line of evidence that might tend to incriminate him. In the third place I wish to trace the history of the amendments to the particular statutes under which we are sending this on to a Commission; and lastly, what is most important, the scope of the Commission itself.

PRECEDENTS

IMPEACHMENT CASES

Now, Mr. Speaker, I was particularly struck with the remark made by the member for W. Lambton, Mr. Hanna, in the very forcible speech which he delivered the other day, and while he may not agree with all I may say to-day, I hope to carry him with me to a certain extent to see whether he will approve of following the precedents of the British House of Commons, the mother of parliaments. The member for W. Lambton stated in effect—to use the very words—that there was "an impeachment against the Provincial Secretary." That is true in substance and in fact, if not technically. I propose to show how the British House of Commons deals with such cases. We will go back to the time of Edward III. when Latimer was impeached, or to the time later on when Warren Hastings was impeached, or to a still later date, the last impeachment, that of Lord Melville. We may note here that the procedure in the last case is the one always quoted, in fact, the latest case is always cited as the ruling case, although in these three cases it is practically the same in each case. After the impeachment of Latimer, the House of Commons again for a time referred such matters to a

Committee of the whole House, but finding this method again to prove a failure, they ceased that practice and again dropped back to the original procedure which is closely analogous to that which the hon. Leader of the House asks this House to adopt. (Applause.) What is the procedure in the case of impeachment? It is a safe parliamentary practice; it is the practice not only followed in charges made against members in the British House of Commons, but it is the practice followed under our law, and rightly followed even to the meanest criminals from the slums who are charged; that is, that the charge should be direct and specific. (Applause.) Any charge ought to be specific, giving the place where and the time when. I cannot help thinking it would have been well for hon. gentlemen opposite if they had weighed well the manner of procedure, and had adopted the proper parliamentary practice and followed the rule that when a charge is made against any member it should be definite, specific, in black and white, and over the signature of the accuser. (Applause.) They have not chosen to do so. One charge has been made, and it is being dealt with. In Great Britain if a charge were being made against a member of the House of Commons, the member would make the charge in black and white, definite and specific, and would not be afraid to put his na.. : to it. Any man, in or out of this House, who is not man enough to put his name to the charge ought to be gentleman enough to withdraw it and not make it at all. (Applause.) When a charge is made in the British House of Commons, the commoners would resolve, if they think it a proper case, that the commoner who is to be impeached, the accused man, shall be sent forthwith out of that House entirely. So here, we say, send the accused outside this House. In Britain the accuser and accused, prosecutors and defenders, are sent outside the House of Commons to appear before the Law Lords. So here, we say, send accuser and accused, prosecuting and defending Counsel, out before what here corresponds to the Law Lords—the highest Judges in our Province—Chiefs of the Supreme Court for this Province. (Loud applause.)

What is the proposition in this case? We have no House of Lords. The Law Lords are the highest judges in Britain, the highest judges in the territory over which the British House of Commons has jurisdiction. So we propose to send the case to the highest judges in our Province, the district over which this House holds sway, commonly known as the Supreme Court Judges. The proposition now is a close analogy to the procedure in Britain. I follow it further. While the Law Lords are not in name the Judicial Committee of the Privy Council, yet they form in another capacity part and parcel of them. So we propose to send the present case up to judges who are not sitting as High Court Judges, as, for example, Assize Court Judges, but who, in another capacity, are those judges, and in this case are a special tribunal as in the case of the Law Lords. I cannot understand how human mind could frame on the floor of this House a resolution which would provide a procedure more closely analogous to the procedure adopted in Britain in impeachment

cases than is done by the resolution now before the House. I ask hon. gentlemen to follow it up and point out where the analogy fails if failure there is. I challenge them to that, sir. (Applause.)

THE PARNELL CASE

Now, let me take a very important case referred to previously in this debate, a different line of case, not an impeachment case; that is the Parnell case, a case in which a British commoner was charged by that great Conservative thunderer, The London Times, with a grave crime, a case which had been considered for a number of years by the British House of Commons, a case that led to, as this did, a great deal of heated discussion. Speakers referred to it, members of the House used a great deal of animated discussion, very much passion, very much the same kind as the greater number of the hon. gentlemen opposite have exhibited in this discussion; even the Leader of the Opposition, who ought to give a fair and moderate lead, entirely lost his head and frantically shouted about larceny and murder. (Applause.) When the Parnell case came before the British House of Commons, an alleged crime committed outside the House, the same as the present, but brought up on the floor of the House, as is the present charge—when the grave charges were made, affecting not only the dignity of the House of Commons, but affecting as this charge affects every hon. gentleman sitting as a member of this House, Mr. Parnell rose on the floor of the House and submitted this question :—

"I now beg to ask the right hon. gentleman, the First Lord of the Treasury, whether he will grant a select committee consisting, if he likes, entirely of English and Scotch members," to inquire into them and report the facts to the House?

If the British House of Commons had appointed a select Committee, that would be a precedent in favor of the contention of hon. gentlemen opposite, but if the British House of Commons gave reasons for not sending a case of that kind to a Committee of the House, but of sending it on to the judges, then I ask is that not a strong argument in favor of our contention? I ask hon. gentlemen to tell us if a Committee of this House, consisting of 41 members, nearly half the House, will not naturally be divided into Conservatives and Liberals, if the Conservatives will not naturally desire to bring about a report which will lead them to the land they have been looking forward to for thirty-three years? (Applause.) Would not they naturally desire to bring in a report that would assist them to walk across to the treasury benches? So, also, would not our natural desire—hold the scales as evenly as you will—the natural desire of the majority of that Committee would be to have a report brought in which would maintain the integrity of the Ministers and maintain the Liberals in power? I leave that to any independent thinking man if that would not be the natural result. That is the exact thing that the British Commoners said. The First Lord of the Treasury, Mr. W. H. Smith, answered Parnell :—

"This House is absolutely incompetent to deal with the grave charges—to use the language of the hon. baronet—to which he refers or to be at any time a tribunal of the character indicated. I have the less hesitation in saying this as there exist tribunals in this country on whose competence and absolute impartiality no doubt whatever can be thrown." Yes, sir, and there exists also in this country a statute nineteen years old to provide a fair hearing of a charge of this kind. (Applause.)

When I quote the First Lord of the Treasury and the Marquis of Salisbury I would have hon. gentlemen understand that I am quoting men who stand so high that they are advising the King upon the throne, and he cheerfully accepts their advice. I only ask hon. gentlemen opposite to be as loyal as the King himself. (Applause.) "This House is absolutely incompetent to deal with the grave charges." So says the First Lord of the Treasury in the old land; so say we here in Ontario. We have judges and courts upon whose integrity and ability no charge of impartiality can possibly be thrown. Mr. Parnell followed up the matter, and questions came up very much as questions are now coming up here. I do not know whether the hon. member for W. Lambton, Mr. Hanna, has been looking for precedents, but he asked if the counsel for the accused had been consulted with reference to the form of the submission. That same question was asked by Mr. Sexton when he asked in the Parnell case if it was intended to consult the Times solicitor in drawing up the bill. The Times was the prosecutor. When the question was hurled across the floor the First Lord declined to answer it. He said no question should be answered as to communications that may have passed between members of the Government in the discharge of their duties. "No such question can be answered by any Minister of the Crown." (Applause.)

The First Lord went further. He said, "the proper tribunal for trial of the charges against Parnell would be a jury and court of law. It is because the hon. member has deliberately declined to avail himself of that tribunal which is open to him and every one of Her Majesty's subjects, and because he claimed to have a tribunal of this House, which we have always declared to be absolutely unfit to try a question of this kind, that the Royal Commission had been proposed."

"We have always declared that a Committee," he says in effect, "of warring wrangling politicians, divided all their lives, a committee of that kind was absolutely unfit to try a question of this kind." Then he proposed the Royal Commission, and when the order came for second reading there was a long debate. It is exactly on all fours with the question in this House. (Applause.)

The First Lord said further:

"A Committee of this House is wholly unfit to enter into the consideration of the grave charges which are to form the subject of investigation. Apart from other considerations, we are of opinion that the passions excited by debates in this House during the last four or five years render it hardly possible for members to divest themselves alto-

gether of party prejudices and feeling, and to enter upon a judicial enquiry of this character in a judicial spirit, and with the perfect calm in which alone they ought to enter upon it." (Applause.)

These are the very passions that the member for S. Toronto, Mr. Foy, was honest and candid enough to say "they have to a certain extent abated." "Passions render it hardly possible for members to divest themselves altogether of party prejudice and feeling." That is what the First Lord of the Treasury said, and it is what every right-thinking man who is not tied down by party prejudice in this Province would say. The people of this Province are of the opinion that the hon. gentlemen opposite are degrading this House by dragging in the old W. Elgin and N. Waterloo war horses. They might at this season turn them out into the pastures to freshen up a litttle. (Laughter.) The people of this Province say that by the dragging in of extraneous matter, hon. gentlemen opposite are showing their hand completely, and are more anxious to make party capital and gain than to sustain the honor and dignity of this House and in dealing out evenhanded justice to accuser and accused. (Applause.) The First Lord added another sentence worth quoting:

"Under all the circumstances it would not be fair to imperil the character and reputation of the House of Commons by asking it to enter upon an inquiry under such conditions."

That is exactly what we have been doing on this floor. The reputation of this House is lost to a certain extent owing to the dragging in of party matters extraneous to the subject under discussion, and the evident attempt of hon. gentlemen opposite to make party capital of what ought to have been a straight effort to get at the truth, the whole truth and nothing but the truth. The First Lord continued:

"We have therefore offered to the House and to the hon. members who are concerned, that a Royal Commission, based upon precedents which existed in the past when great questions of immense difficulty have presented themselves for investigation and inquiry, based upon the precedent of a less important character in regard to the Metropolitan Board of Works—I say, following these precedents we have offered a Royal Commission which shall have full and complete power to investigate all the charges and all the allegations which are contained in what the Lord Chief Justice declared to be a tremendous indictment against hon. members below the gangway."

He does not say there are no precedents, as do hon. gentlemen opposite, and that very recklessly. He would not dare peril his reputation by saying there are no precedents, that none have been handed down to us through the still lapse of the ages that are past. (Applause.) One more word with reference to what Sir Edward Clarke, Solicitor General, said, and the Solicitor General of the British Empire, that greatest Empire the world has ever known, deserves a most respectful hearing. (Applause.) Sir Edward Clarke said:

"Of course they will listen to legal evidence and to legal evidence only. Does he imagine that three judges would hold a tribunal of this kind and accept as conclusive and form the foundation of their judgment

on evidence which, if they were trying a small action for £25, they would reject as insufficient and unsatisfactory?"

That reminds me of what I mentioned yesterday respecting hon. gentlemen opposite showing their hand. The member for Centre Grey, Mr. Lucas, was frank enough to say that they wanted "hearsay evidence." That, however, never was evidence and never will be. They want to try this man on so-called "hearsay evidence," something that he is not responsible for. Sir Edward Clarke enunciated the principle that has been adopted through years past. "They will listen to legal evidence and to legal evidence only." "Great minds run in the same direction," said Mr. MacKay. (Applause.)

Several honorable gentlemen on this side have propounded the same doctrine in nearly the same words. (Applause).

Now I want to quote from the Hon. Joseph Chamberlain, one of those lay minds, and I want to quote from him because I feel again I am quoting the words of a Britisher who has shown that he is a brainy, hard-headed man and one of the best parliamentarians of the age. He said:

"I am sorry the Government did not grant a Committee. I am perfectly convinced in my own mind that the result would have been unsatisfactory and incomplete; but it would have prepared the way to an unanimous assent to a different kind of investigation." (Loud Applause).

Strong language, for he is speaking here now under exactly similar circumstances. He says, in effect, I am sorry you did not go to a Committee, because later on you would have sent it to a tribunal the public would have confidence in. (Loud Applause). And that is practically what the Committee of this House did in the year 1884. (Renewed applause). Practically that. It is true that the report was brought in that the Committee had not time to finish doing its work. I ask here what greater work did any parliament ever do than to sit here and go into that bribery plot. The question was of greater moment to this Province than the question of finance. It affected the honor, dignity and integrity of hon. members of this House, and no greater question could have held them here had they been satisfied that they could have done the work well. It was, however, sent on to the judges to complete the work in proper form. Chamberlain says further:

"In one sense the objection to a committee would be very strong. A Committe of the House of Commons would have to be judge and jury. My objections to a Committee is not that it would not be impartial, that it would not be able to rise above the considerations of party. I believe that it would be incompetent, and that it has not the qualifications for dealing with a case of this kind, and that it could come to no satisfactory result." (Applause).

I ask hon. gentlemen if, when I quote from the next name, it is not from a name they are all delighted to honor, the Marquis of Salisbury. He says:

"They themselves (Parnell and his followers) proposed that it should be submitted to a Committee of the House."

He is speaking from the House of Lords, he is not in the Commons. He has not seen the passion and heat displayed, but he has sized the whole situation up.

"They proposed that it should be submitted to a Committee of the House, and I think with very good ground the Government held that a Committee of the House could not be looked upon as an impartial tribunal, and the House of Commons was itself of that opinion." (Applause).

And again he says :

"They again demanded that the matter should be referred to a Committee of the House of Commons. The Government again took the matter into serious consideration. But they were compelled to observe that by the action of the House of Commons itself it had been established that such a tribunal was not a fit one for the decision of questions in which grave and deeply contested political issues were closely interwoven." (Applause).

Then the hon. gentlemen opposite tell us that the whole Government is at stake, that if they succeed in this they will drive the Government from power and succeed in crossing the floor of the House and taking the treasury benches. That "grave and deeply contested political issues are closely interwoven" is shown by the speeches of hon. gentlemen opposite. (Applause). Had the Marquis of Salisbury been penning the last sentence I quoted, and applying it to this case, he could not have, in the whole vocabulary of English, found words to better express the situation. (Applause). "They again demanded that the matter should be referred to a Committee of the House of Commons. The Government again took the matter into serious consideration." Then he goes on :

"Now we have been in the habit for the last century of trying members of Parliament before Committees of the House of Commons. It was not for a very grave offence, you may say ; it was only the allegation of bribery." Note well, that bribery is the present charge.

He has been writing about this case in advance. (Applause). The hon. gentleman with the full-orbed eye of reason, coupled with the prophetic eye, has been writing and thinking that his followers in Ontario might later go wrong, and he writes in advance to warn them not to go wrong. (Applause and laughter). He continues :

"But still bribery is precisely one of those charges into which political feeling is deeply interwoven."

They used to, he says, try these cases by a Committee of the House.

"From the time of Lord Grenville down to 1867 the question of the allegation of bribery was constantly submitted to a Committee of the House of Commons. Their form was repeatedly changed in order to obtain a more satisfactory and impartial tribunal ; that at last, in despair, the Government in 1867 proposed to Parliament that it should abandon this attempt, and that the trial of members for bribery should be committed to the ordinary Judges." (Loud applause).

I ask hon. gentlemen again, are you not trying a member of this House for attempting to bribe or for actual bribery? Then why not follow the highest British precedent, that of the British House of Commons? (Applause). Mr. Speaker, I was struck with the remarks of the hon. member for East Hamilton (Mr. Carscallen), who said that we must be careful in quoting precedents that we thoroughly understand them; and I say, sir, that whatever differences exist between the Parnell case and the present, this they have clearly in common, that they have led to heated and impassioned debate in the respective Houses, and therefore the opinions quoted are extremely applicable.

The Marquis of Salisbury goes on:

"Wherever bribery was extensive then a species of Commission had been instituted which had large powers of discovery, and among others that most important power of giving indemnity to witnesses. This seemed to us a precedent which should guide us. To submit again a matter of this kind, deeply connected with political controversies of the most exasperating kind, to a Committee of the House of Commons, was to go back upon the experiment, to use again the weapon which was condemned, to repudiate all the experience which the century had given us." (Applause).

What was the result? The London Times was practically the prosecutor, the Parnellites were the accused. What did the London Times itself say as to the manner in which that investigation was conducted? If the prosecutors in that case were satisfied, as they were, I should take it that the prosecutors in this case, under similar procedure, would very likely be satisfied as well. I quote now from Justin McCarthy's "History of our Own Time," written, of course, after the Parnell trial. He says:

"On the whole there seems to us no reason now to regret that the Commission was set up. On the main questions, which had a distinct and pressing interest on the personal questions, if we may put it so, the decision of the judges was entirely satisfactory to most of the men against whom the charges and allegations were made."

That is, after the Commission had made its finding and had reported, Justin McCarthy commended it and says it worked out very satisfactorily indeed. Justin McCarthy after the Commission had done its work, publicly and openly expressed satisfaction with it, although on the floor of the House he had bitterly opposed the appointment of a Commission and favored a Committee. (Applause).

OUR OWN STATUTE

And now, sir, we come to the precedent of precedents,—one that this House by its own statute has made. (Applause).

I hold in my hands the very Act under which the honored Leader of the House proposes that this case shall be heard before two judges, an Act that this House passed nineteen years ago for that very purpose, creating the best and highest precedent. The British House of Commons did not have local machinery as we have. They passed a special

Act of Parliament and appointed a Commission of judges, giving them practically the same power as we are conferring upon the judges in this case.

Mr. Foy: A little more.

Mr. MacKay: And a little more. There is a clause in the English Act which compels a witness to give evidence whether incriminating or not, but its exact parallel is contained in the special Act which has just received its first reading before this House. (Applause.) I say, sir, our own statute is the great precedent, and should be followed in this case. Later I shall fully discuss this statute.

THE PACIFIC SCANDAL

Hon. gentlemen opposite have used quotations from statements of Liberal leaders at the time of the Pacific scandal. They have asked the public to accept the statements of Mr. Huntington and Mr. Blake made in the indignation meeting at that time just as if the circumstances were the same as those which they are now discussing. I do not know whether they intend to mislead this House and the public. I would not suppose that they meant to do that, but certainly, wittingly or unwittingly, they made statements which are wholly misleading. The Pacific scandal came up. The charges were made. They were referred to a Committee of the House of Commons in 1873. The House adjourned on the 23rd of May to the 13th of August, for the purpose of giving the Committee a chance to hear evidence and get at the facts of the case. The difficulty of the Oaths Bill came up. The Government did not expressly ask the Imperial authorities to disallow the bill, but on reading the correspondence it will be seen that that practically what was meant. The bill was disallowed by cable on July 1. Here is an important difference. Parliament met on August 14th and naturally expected that the Committee would bring in a report to the House. Before they had time to do anything Parliament was prorogued on the advice of Sir John Macdonald. The Committee never had an opportunity to report, Parliament being prorogued while it was seized of the whole question. While this Committee was considering the question, Parliament, while being seized of it, was by a high-handed act prorogued, and the very next day Sir John Macdonald appointed a Commission of judges to do exactly what Parliament appointed the Committee to do. That is, by a high-handed, unconstitutional act he prorogued Parliament, and, without asking the people's representatives what to do, or asking the Committee to report, without consulting Parliament, he appointed a commission of judges, a tribunal composed of men whose salaries and promotion depended upon the favor of the Government, making the two cases far different. The analogy would be the same if what had been done here was that the member for Manitoulin had brought down his charge and it had been moved that the charges be referred to a committee, and the House had adjourned to the 13th of August to allow the Committee take evidence, and had then assembled and been immediately prorogued, was

then prorogued, and on a later day the Premier, without consulting the people's representatives, that is the House, had appointed the Commission himself, he would have been doing the same as Sir John Macdonald did. Then the remarks made by Liberal leaders at that time would be applicable. (Applause.) We have been treated to quotations made by leaders on the day of prorogation against the unconstitutional act of the Premier in taking the matter out of the hands of Parliament and running it himself—to put it in plain English. (Applause.) I find from the journals of Canada, No. 7 of the House of Commons, that Mr. Mackenzie said :

"He had no doubt that from his point of view, the Governor General was right when he said that he was bound to take advice of his advisers; but we had one English writer—an authority both on law and history—who had said otherwise ; this writer, Goldwin Smith, said plainly in a letter to the Witness, as well as in the Canadian Monthly, that the members of the Committee of Inquiry were right in refusing to allow it, without the authority of the House, to be turned out of doors by a Royal Commission appointed by the parties accused. He takes the ground that the Ministry are not in a position to advise His Excellency as to a prorogation or commission, but must take the prerogative into his own hand. (Hear, hear.) It must be borne in mind that Parliament had appointed a committee, whose operations were frustrated by agencies which were controlled by the Administration."

That is not what we are asking in this case. We are acting constitutionally—this House, this whole House being seized of this question —we are considering now merely a matter of procedure, merely the better method of getting at the truth, of taking one step and appointing one agency for ascertaining the truth, of sending the case to the Royal Commission to report the facts back to us when the whole House will be again seized of the facts, and the case is never taken out of the control of the House as was done in the Pacific scandal case. (Loud applause.)

Mr. Blake is reported in the journals of the House as saying :

"They were aware that by accepting the Commission the enquiry might at once go on, but they felt they had a far higher duty to perform, that from the House of Commons they received their instructions," remember Blake was a member of the Committee and is speaking as such, "and it was for them to maintain the dignity and independence of that body. As delegates of the people their duty was imperative, and their instructions from the House were not withdrawn ; and least of all were they authorized to agree to a change of tribunal."

Their instructions, that is the instructions given by the House to the Committee, had never been withdrawn, and least of all they were not authorized by the House of Commons to agree to this tribunal, and therefore they opposed the Royal Commission. That is an entirely different way of putting it to what hon. gentlemen opposite presented last week. They have been quoting from the statements of Mr. Blake and Mr. Mackenzie at the indignation meeting. I tell them that the gravemen of the whole charge in the Pacific scandal case was that the House was seized

of the question and it could not be taken away from them, that is the House, by any cabinet or body save by the will of the House itself. The protest made by Blake, Mackenzie and Huntingdon at the indignation meeting was to the effect that by a high-handed procedure the cabinet were usurping the powers and rights of the House itself. (Loud applause.)

Hon. L. S. Huntingdon is reported as follows (See journal 7, House of Commons, p. 107):

"There were occasions that inspired eloquence, great occasions, which made great men, such as the result of the large measure that had to be discussed, and of the warmth of feeling that was elicited. He would pay a poor compliment by making a lengthy speech; but, however they might feel, this was a great question. He looked on it as a question, not whether a contract had been sold, but whether this country should or should not be governed by Parliament." Ay, there's the crucial point in a nutshell—whether this Dominion should be ruled by Parliament or by a clique of autocrats, called a cabinet, acting in defiance of the mandate of Parliament. (Applause.)

Again permit me to read from a letter of Hon. L. S. Huntingdon to Hon. Chas. D. Day, chairman of the Commission, giving reasons for not appearing before the Commission. (See journal 7, House of Commons, p. 226.)

"I believe that it is a breach of those privileges, that a Royal Commission issued without the special sanction of the House, should take any cognizance of, or should assume to call on me to justify words which I have spoken on the floor of the Commons, and for which I am responsible to them, and to them alone."

Will hon. gentlemen of this House note the words—"without the special sanction of this House." (Hear, hear.) To-day, sir, the special sanction of this House is being asked for the appointment of the Royal Commission. How different, therefore, are the two cases! (Applause.)

That is the point; as opposed to Government by cabinet he would consult Parliament. I might go on to refer to other authorities, to the opinion of Lord Dufferin. I might also quote the letter from Lord Kimberley, the British Colonial Secretary, but time is fleeting and I will not trouble the House with these quotations.

THE CARON CHARGES

I want a word or two, however, with reference to the Caron charges, that is so far as they are applicable to this case. I want to refer in this connection to the opinion of an hon. gentleman whom Liberals and Conservatives alike esteem as a man of high integrity and undoubted ability. In quoting him I am quoting the language of an hon. gentleman whose opinion will be accepted by all the people of Ontario without hesitation and without wavering. I refer to the late Sir John Thompson. (Applause.) He says in dealing with the tribunal before which the Caron charges were to be tried

"Another observation which I would venture to make is, that when accusations of improper conduct are made, even against members of Parliament as such, we ought to consider most carefully whether it is imperative upon the House to exercise its judicial functions, which we so rarely like to exercise, and which we so rarely exercise well, considering the diversity of feelings, of interests, and even of political passions, which are apt to prevail in an assembly like this. We have to consider whether the accusations which are brought forward are accusations which some better qualified tribunal in this country is not clothed with powers to determine. If the constitution has erected a tribunal in the country which has jurisdiction over such matters, and if the laws which govern us all, us as well as our constituents, give to these tribunals a right and a procedure to carry on the investigation, it is most proper that the House should, if possible, decline to exercise any judicial functions on its part, and leave to the tribunal which is qualified by the constitution and the statutes of this country, the power, the right and the duty to determine and investigate the complaint, whether it be of a member who desires to make an accusation here, or of any person outside of this House." (Applause.)

"If the constitution has erected a tribunal in the country which has jurisdiction over such matters." Notice what that means. I point out how close the applicability is because this House did erect a tribunal in 1884, when it unanimously passed the Act to which I shall refer later. He says, "if possible the House should decline to exercise any judicial functions on its part and leave to the tribunal, which is qualified by the constitution and the statutes of this country, the power, the right, and the duty to determine and investigate the complaint." It appears to me again that had Sir John Thompson been writing a sentence particularly applicable to the question now before us, had he been furnished with the eye of a prophet, he would have followed exactly on the lines I have quoted. I appeal to hon. gentlemen opposite in dealing with matters here to have regard to the opinion of their own former Leaders and the great constitutional lawyers of this land and of the old land. (Loud applause.)

A short quotation from another gentleman held in high esteem by the people of this Province, a gentleman who was for a time Prime Minister of the Dominion, Sir Mackenzie Bowell. He said :—

"I believe the country will concur in the course adopted by the Government in this matter. I believe the country will be better satisfied that the truth can be arrived at much better by a Commission of one or more independent gentlemen, whose duty it will be to hear the evidence and discuss it, than by a body of politicians who compose the Committee on Privileges and Elections."

I now quote from Mr. N. F. Davin, who favored the appointment of a Royal Commission. In 1892 Hansard, at page 2096, his words will be found as follows :—

"I say here, and I defy him to contradict it, that he cannot show a single instance where a charge of this character was ever tried in England

before a Parliamentary Committee. I have here the record of a very remarkable trial, the trial of Lord Melville, the last impeachment that took place in England, and supposing I could only give this one case, the universal proposition laid down by my hon. friend would be destroyed. He laid down the universal proposition that in no case has the usage been departed from, from the time of Edward III; that the mode of trial of offences of the class he alleges against Sir Adolph Caron, was to refer them to a Committee of Parliament, or, in his own language, to try them before the House of Commons. Was the case of Lord Melville tried before a Parliamentary Committee? Let us see. I may say here in passing that if these charges which affected the honor of Lord Melville are looked at, you will see that they are specific charges, and that they state specifically the actual things with which Lord Melville was charged, so that he knew what he had to reply to. Now, when Mr. Whitbred moved the resolution charging Lord Melville, what was done by Mr. Pitt, who was then Chancellor of the Exchequer and leader of the House of Commons, and who was then Prime Minister of England and the most powerful Minister that ever swayed the British House of Commons? He got up in his place and he moved that these charges be referred to a Committee of the House of Commons."

Mr. Mills, Bothwell: "Hear, hear."

Mr. Davin: "My hon. friend says hear, hear, but let him wait awhile. What did the British House of Commons do? The Imperial House of Commons actually voted down the proposition of their own leader, and the result was, after several efforts to bring Lord Melville to justice, he was impeached before the High Court of Parliament, in the only manner known to English constitutional history; and a prosecuting body went up from the Commons of England to the House of Lords." (Applause.)

Again I quote from the same gentleman whose view I said would be received with respect, Sir John Thompson. Speaking again of the same matter in 1892, he said:

"If we were taking the matter entirely out of the House, I would be willing to meet hon. gentlemen in debate and would discuss the matter in the line of precedents, but it is sufficient for me to know that, as far as the judgment of the case is concerned, we are still leaving it in the hands of the House of Commons of Canada, and simply adopting a convenient and expeditious mode of conducting the trial, and one we think that will command more public confidence as to its fairness than any procedure on the part of a Committee of this House would command. It is quite enough, in considering whether or not that procedure should be adopted, to know that we have the sanction of law and the authority of a statute for proceeding as we are asking the House to do. The leader of the Opposition seemed to think there were precedents against it. There are no precedents against it whatever. No one will contest the principal assertion of the hon. gentleman that Parliament has frequently appointed Committees, that it has frequently taken evidence by Committees, but is there a single authority to show that the mode of

taking the evidence by Royal Commission is not as expeditious, and as convenient, or that in any sense whatever it is repugnant to parliamentary institutions? Not only has no precedent been cited to that effect, but not the slightest suggestion of an argument has been made or a phrase uttered which could be dignified with the name of argument to show that there is anything repugnant to parliamentary procedure in such a manner of taking the evidence." (Applause.)

That is the very point I have been urging upon the attention of this House, namely, that we are not surrendering any right or control whatever. We are simply selecting impartial, competent, trained and experienced men to hear evidence and to report to this House. Your warring, wrangling, untrained Committee would simply hear evidence and report findings. In short it is the case of the adoption of an unprejudiced and experienced tribunal as against a prejudiced and unexperienced one to do agency work for this House. (Loud applause.)

Again I quote from Sir John Thomson's speech. See Hansard, 1892, page 3026.

"My hon. friend will see that if there is anything in his objection, and I think there is nothing, it has come at least forty years too late, because the best wisdom and experience of the Parliament of the mother country, and afterwards of Canada, has decided that the most fitting tribunals to decide political questions involving questions of purity and questions of impurity as regards elections and as regards everything touching the security of the foundations of public life and of electoral liberty, are the courts of justice. After struggling for a century or two to establish its absolute right to decide all such questions itself, and having vanquished the courts in the struggle, the House of Commons asked its co-ordinate branch of the Legislature to join it in declaring that it should denude itself of that power and transfer jurisdiction to the very tribunals which are now said by hon. gentlemen opposite to be unfit to carry on investigations of a political character. But, sir, I deny altogether that judges are tainted with impurity, or lessened in public respect, by having to inquire into matters which are distasteful to persons of purity, persons of taste, and persons of impartiality. It is said that to enquire into matters touching electoral corruption stains and degrades the judges, and that they would return to their duties of deciding between man and man not as pure as they descended into that enquiry. If that were so, there would be very few judges in this country whose characters would be worth a pinch of snuff, because their first duty day after day is to enquire into charges of the most degrading offences that can be charged against humanity; and it is an astonishing nicety of taste to say that they would come back impure from an investigation into political charges, but would come back pure from another investigation into charges alleging every kind of vice of which human nature is capable. Moreover, if there is anything in that, we must have a very degraded bench in this country at present, because, since last we sat in this House, some fifty political cases have been tried by these very judges, they have descended into the political arena with fatal results to about forty members of this House,

and it is something new to be told that after having tried these cases they have gone back impure to discharge the ordinary duties of the bench."

Here, sir, the late Sir John Thompson is ably and successfully combatting arguments similar to those advanced by hon. gentlemen opposite. He is pointing out the modern practice of referring such trials to judges because of the absolute failure of prejudiced and impassioned committees to try such cases impartially. (Applause.) That is the opinion of Sir John Thompson expressed on the floor of the House. These are the opinions of the Leaders of the Conservative party, given with reference to particular facts, such as now hold this House in question. The opinions given by Liberals at the indignation meeting in 1873, and subsequently followed, did not fit the present case at all, because they were a loud protest against the Government taking the question which was then before the House, away from the control of this House, and giving it to a Commission without ever consulting Parliament. There is no analogy between that case and this, and hon. gentlemen ought to have known that these cases are not analogous, and that the public would know they were trifling with the question in trying to make political capital at the expense of fair argument. (Loud applause.)

Just one citation more from Mr. Weldon. He says:

"Last year we had a trial of a Minister of the Crown and other persons by a Parliamentary Committee, and the trial went on for three or four months, and those of us who were members of that Committee could not at all events be reproached with indolence; yet all that we, the members of that tribunal, received after four months labor in the long hot summer here, was to be posted by Liberal papers from one end of the country to the other for having brought in a whitewashing report. When, I ask, have hon. gentlemen opposite been converted to the belief in the fairness of a trial by a Parliamentary Committee? Hon. gentlemen opposite, by their own intolerant writings in their party newspapers, and by their injudicious utterances on the stump and in Parliament, have thrown so much discredit upon a Parliamentary Committee, that to-day, by reason of the discredit they have heaped upon it, it has not the authority in the country that it should have. I contend that you get a fairer taking of the evidence before a Commission of Judges, and I say that the evidence taken by them will be—which is a very important matter for us to consider—more generally accepted in this country."

Sir, this latter statement is very important, and deserves, nay, calls loudly, for due consideration. I happened to spend eight years of my life as a Crown prosecutor, and as a result I came firmly to this conclusion, that not only was it important that the law should be administered fairly, but that it was of equal importance that the public should feel and know that these laws were being fairly administered. (Loud applause.) You must have public confidence behind the administration of all laws. So here, sir, the charges are grave indeed, and it is all important that they shall be dealt with by a tribunal that has an absolute

and complete grip upon public confidence. (Applause.) The Chiefs of our High Court will form such a tribunal, notwithstanding the wholly uncalled for sneers of hon. gentlemen opposite. If I were satisfied that a Committee of the whole House could take the evidence as well, and judge it as well, and bring in the same report as a Commission of Judges would bring in, I still would favor the appointment of a Commission of Judges, because I know the public generally would have more confidence in the finding and would be better satisfied. (Applause.) Hon. gentlemen opposite do not like the judiciary; there are others. (Laughter.)

I will not trouble the House with further quotations. Taking the word from the lips of the hon. member for W. Lambton, Mr. Hanna, that this case is an impeachment, I have gone through the whole line of impeachment cases and pointed out how closely analogous are those proceedings to those now proposed, and I have further shown that the course of hon. gentlemen opposite is entirely at variance with the proceedings in the British House of Commons, and from the opinions of the world's greatest parliamentarians have shown the utter unfitness of a wrangling Parliamentary Committee to deal with such grave charges. I have taken up the Parnell case, I have discussed the Pacific Scandal case, and have shown that what was then done by Sir John A. Macdonald is not at all analogous to what is now proposed by the Leader of this House, because Parliament is now being fully consulted. I have taken up the arguments of leading men in the Caron case of 1892, and if further precedents were needed we have other provinces to go to, and it may be of some interest to know what other provinces did under similar circumstances.

MANITOBA CASES

Let us go to Manitoba. They have practically our laws there, a Legislature of co-ordinate jurisdiction in nearly every respect. I will take two cases; first, a case where the charge was made by the Liberals, and next where it was made by the Conservatives. To use a homely phrase, what is sauce for the goose should be sauce for the gander. (Laughter.) You remember the charges against the Hon. Thomas Greenway, grave charges affecting his right to sit in the House, made by The Free Press and Call newspapers. These were referred by a practically unanimous vote of the House to Chief Justice Killam, not to a Committee of the House. The Manitoba legislators knew what the British practice was, and they were loyal. (Applause.) They were a new province and new parliament, but older in parliamentary experience and knowledge certainly than hon. gentlemen opposite. (Applause.) I say, sir, and in all sincerity, it is no credit to hon. gentlemen opposite, some of them living in this great metropolis, to be found one hundred or two hundred years behind the times in questions of this kind. I know full well that every hon. member of this House must have felt when the member for S. Toronto, Mr. Foy, was speaking, that his heart was not in his work. (Applause.) One could see that behind his words

there was not the heart and mind that sent the words out that brought conviction. The hon. gentleman could hardly believe what he was saying himself. (Applause.) The same remark might apply to the hon. member for E. Hamilton, Mr. Carscallen. They are clever men, and the more clever they are the harder it was for them to try to make the worse appear the better cause. (Applause.)

In Manitoba they knew Parliamentary procedure. A serious charge affecting the honor and integrity of Mr. Greenway so serious that if proved he had no longer the right to sit in the House, and the House would not have let him sit there longer. I quote the exact words. The House considered the charges brought up in the regular way, although not spoken in the House. They were referred to Chief Justice Killam, the highest judge, just as we are sending it to our highest judges, as: "A Royal Commission to investigate and report upon the charges in the Free Press and Call newspapers." (Applause.)

Let us take another case when the shoe is on the other foot. Although there is a good deal of partyism in the Manitoba Legislature they are all loyal to British precedent and deal to both sides the same kind of treatment. When the charges were made against Premier Norquay, serious charges, they were referred by resolution of the House to the late Chief Justice Wallbridge, and he investigated them and actually reported back to the House. (Applause.) Wherever we go, sir, we find that the course we advocate is well within the lines of proper Parliamentary procedure.

WEST HURON AND BROCKVILLE CASES

Something has been said that the West Huron cases were not analogous. Are they not in principle analogous to this case? The only thing this House can do to the Provincial Secretary, if it finds him guilty, is to expel him from this House. The criminal law may be further applied in the ordinary way. The deprivation of a seat in this House is the only punishment this House can mete out. In the Brockville and West Huron cases, the right of a member or members to retain a seat in the House was involved. In principle, therefore, sir, the cases are very closely analogous and identically analogous as to possible results. (Applause.) But here, while I think of it, let me say, that notwithstanding false reports to the contrary, that there is no difference of opinion among hon. gentlemen on this side of the House, that we stand here as one man, determined that no pre-judgment shall be made, but determined to stand solid as adamant until the whole evidence is heard and the report given, and we will cheerfully abide by the result. (Loud applause.) We cannot take any other stand. We would not rise to the true measure of manhood or the position that members of this House ought to occupy if we prejuded this case and found anybody guilty in advance of the evidence, either accuser or accused. Some of the hon. gentlemen opposite have prejudged the case, found the hon. the Provincial Secretary guilty, and now they are fighting and wrangling as to how he is to be tried after they have found him guilty. They are unconstitutional from

start to finish. They, like some newspapers, will not follow common sense and British precedent. They prefer lynch-law methods. (Applause.)

They even go so far to show the public where they stand as to take the accuser out to Conservative gatherings and banquets and howl themselves hoarse in his honor, according to newspaper reports. (Laughter and applause.)

I was going to speak of the West Huron and Brockville cases, and I was about to say, sir, that there is this analogy between the two cases. In the West Huron and Brockville and similar cases, the charges made, if found true, would drive the member out of the House of Commons. Can we do any more with either accuser or accused? Can this House send either to jail or penitentiary? No matter what this House may do, it does not and it cannot in any way take away the rights or powers of the accuser in the ordinary courts of the land. He can go to the Police Court and prosecute him if he thinks he has the evidence. So that in principle there is practically no difference, and I quote the West Huron and Brockville cases of 1900 as a precedent, because in that case the Opposition agreed with the Government, and the House unanimously voted that the cases should be given to a Royal Commission of judges. (Loud applause.) A word or two as to what Sir Wilfred Laurier said in 1900, and when I speak of what he said, I know I quote the words of an hon. gentleman who fills the public eye of this Dominion as no man has done unless it be the late Chieftain of the hon. gentlemen opposite, Sir John Macdonald. I quote from Hansard, at page 5671:

"I say further that we refuse to send this case again to that Committee because it is not right, it is not fair, that the honor, the dignity and the seat of a man in this House should be placed in the hands of such a court, under the circumstances disclosed.

"But I may be told that our friends are in the majority, that our friends are in power in that Committee. So they are, but if my friends in that Committee were to insist upon having the laws of evidence observed they would immediately be charged with burking the enquiry. Therefore, I say, that, for these reasons, this tribunal is not satisfactory, and for these reasons we cannot accept the motion which has been made by the hon. senior member for Halifax."

Yes, Mr. Speaker, Sir Wilfrid was of the opinion that even the dignity of the House would be lowered by sending such a question to a wrangling Committee. And I venture the opinion, sir, that in the opinion of all right thinking men, the dignity of this Legislature has suffered from the partizan and excited manner in which the majority of hon. gentlemen opposite have approached the consideration of this grave and serious question. (Applause.)

I quote the opinion of a gentleman whom hon. gentleman opposite will surely respect. Surely hon. gentlemen opposite will reverently hear the great "I am" of their party, Sir Chas Tupper, when he says:

"I hail with joy the proposal of my right hon. friend to refer this matter to a Commission of Judges. But it must be done promptly, there

must be no attempt to delay or evade this issue. This Commission must be appointed at once. I would infinitely prefer it to the Committee on Privileges and Elections after the character which the junior member for Halifax has given it, when he showed that the members of the Committee were so partisan that no confidence could be placed in the action of a majority of that Committee, which is composed of their own supporters."

And again at page 5695, of 1900 Hansard, he says: "I have already expressed the pleasure with which we accept his proposal to have a Judicial Commission appointed immediately, and one that will promptly investigate all the charges."

That is an opinion which hon. gentlemen will surely accept. It is the opinion of the man who discovered America, and made Canada, the great "I am" of the Conservative party, Sir Charles Tupper. (Laughter and applause.) Then, sir, whatever opinion may have been expressed in 1873 by the Liberal Leaders against the appointment of a Royal Commission to try charges such as this, has been practically offset by the vote of such speakers in the House of Commons in 1900 when they agreed that such questions should be tried out by a Royal Commission. It is always the last case that counts, and the subsequent vote of Sir Richard Cartwright must be taken to have negatived (if contradiction there be) his opinion of 1873. (Applause.)

In addition, sir, I may add that that independent, high-minded, and clever commoner, the late Dalton McCarthy, also strongly supported the reference to a Royal Commission in preference to a wrangling and passionate Committee of the House.

POWERS OF A COMMITTEE AND OF A COMMISSION AS TO FORCING INCRIMINATING EVIDENCE

And, now, Sir, I come to the second phase of my argument. Would a Committee of this House have greater powers to compel a man to give evidence than a Commission would have? I say no, and yet if you listen to arguments of hon. gentlemen opposite the inference is that a Committee would have greater powers and rights to force a witness to give evidence than a Commission. That is an absolutely erroneous argument. I will prove it by the very law which this House has made. It has laid down laws to govern this, and I turn to chapter 12 of the Revised Statutes of Ontario, section 57. I appeal to hon. gentlemen opposite if the result of their argument would not lead to the belief that a House Committee had greater powers than the Judges in securing evidence, especially along the line of forcing an unwilling witness to give evidence that might tend to incriminate him, and I need not argue that this whole House cannot delegate greater powers to a Committee than it possesses itself. Section 57 reads as follows:—

57. (1) The said Assembly shall have all the rights and privileges of a Court of Record for the purpose of summarily inquiring into and punishing, as breaches of privilege or as contempt of Court (without

prejudice to the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act), the acts, matters and things following :

1. Assaults, insults or libels upon members of the Legislative Assembly during the Session of the Legislature and twenty days before and after the same ;

2. Obstructing, threatening or attempting to force or intimidate members of the said Assembly ;

3. The offering to or the acceptance of a bribe by any member of the said Assembly to influence him in his proceedings as such."

This House then, sir, in dealing with the question of one member offering another a bribe, has the powers of a Court of Record ; no more, no less. The present charge is that the Hon. the Provincial Secretary offered to bribe or actually bribed the member for Manitoulin. The statute quoted covers the case exactly. Let us, therefore, see what are the powers of a Court of Record in this respect. This is a question of evidence and we turn to the Act respecting witnesses and evidence, being Chapter 73 of R. S. O. and section 5, which reads as follows :

"Subject to section 9 of this Act, nothing herein contained shall render any person compellable to answer any question tending to subject him to criminal proceedings or to subject him to prosecution for any penalty." (Applause.)

Section 9 has nothing to do with this case, as it refers to cases of summary trial before magistrates, etc. Therefore, sir, this House by its own legislation clearly says that even the whole House cannot force self-incriminating evidence from an unwilling witness. (Applause.)

Our own laws show we cannot go any further and compel any person to answer a question that will render him liable to any criminal proceedings. Yet they said the House Committee could do that, and the judges could not do that, and that by sending the case to the judges we would shut out a great deal of evidence. That principle of law is simply an old common law principle handed down through ages. It is an unwritten law, sometimes called the crystalized wisdom of the ages.

THE ROCHDALE CASE

For proof of this I refer you to the Rochdale case in the British House of Commons. That is a case where a member was accused of bribing a witness, asking him to go abroad to New Orleans that he might not have to appear before a Committee of the House. The Attorney-General lays down the law. See English Hansard, 1857, page 98. In the Rochdale election case the Attorney-General said : "I understand the person in attendance, John Lord, to have

said in substance that he never did induce nor attempt to induce Abraham Rothwell to accept any money; but that he heard Peter Johnson offer to Rothwell the sum of £50 to go abroad to New Orleans. I beg to suggest to the House that the question now occurs whether any further enquiry shall be pursued by the House itself or adopted in some other form. If the House undertakes the duty of pursuing such an enquiry, I think it must be aware of the difficulty of managing such an investigation. As to the party now in attendance, I should deprecate any further questions being put to him, because, to a certain extent, he appears to be a party to the charge. He has in some degree denied that charge; but if the House shall determine itself to continue the enquiry, I think the person in attendance should be cautioned that he may decline to answer questions that may tend to incriminate himself." That, sir, is the law and the practice as laid down by the Attorney-General of Great Britain. The witness "may decline to answer questions that may tend to incriminate himself." And yet, sir, the hon. member for West York labored long and loud to prove that a Royal Commission of judges would be subject to the same rule; desiring us to infer that a Committee of the House would not. (Applause.) That is the way the people of the Province have been misled, by the specious sophistries of hon. gentlemen opposite. The public will come to the conclusion that hon. gentlemen opposite must have a mighty weak case, else they would not advance such miserably one-sided and absolutely misleading arguments. I say, sir, that such arguments are unworthy any member of this House, and ought not to be heard on the floor of this House. (Loud applause.)

Again, if hon. gentlemen opposite will turn up the pages of that great authority and guide as to parliamentary procedure in our own House of Commons, Sir John Bourinot, they will observe that he adopts and emphasizes this as the proper and only procedure to be followed.

PRECEDENT OF PRECEDENTS—OUR OWN ACT

I pass hurridly on, following the lines laid out to the consideration of the particular Act under which the resolution says we ought to proceed to investigate the present charge. This is the greatest of all precedents, it is an Act passed by this very House, it is an Act passed to deal with cases of this kind nineteen years ago. (Loud applause.) Law-makers should not be law-evaders. The fact that this statute, I refer to R.S.O., chap. 19, has remained on the book for nineteen years and is still here is the best possible proof that hon. gentlemen opposite think it the best possible provision for dealing with a case of this kind. If they did not think so, they would not be doing their duty to their country if they did not try to have

it repealed. How can hon. gentlemen go back on this statute; the leader of the Opposition is going back on twelve years of his own life in this House. (Hear, hear.) This Act was passed in 1884, passed after a Committee of the whole House had been wrangling and jangling over the bribery plot for weeks. The original Act which was passed in 1867 and amended in 1884 to cover the case of the brawling brood of bribers. Then the Liberals were the accusers and the Conservatives the accused. Then the Liberal Government was in power, a Liberal Premier was in power, and he says: "We will implement this old statute and enlarge it." It is not at all likely that the Liberal Premier, in drawing an Act of that kind, would shorten his own arm to reach out for the other fellow (Applause.) Hon. gentlemen cannot get away from the statutes of this land. (Applause.) We do not purpose that they shall. They charge that the Provincial Secretary attempted to corrupt the member for Manitoulin. Here we have ninteen-year-old legislation, passed by ourselves for the purpose of dealing with a case of this kind, and what reason do hon. gentlemen opposite offer for running away from it? The hand which drew this Act was the hand of Sir Oliver Mowat. (Applause.)

It will have a steadying effect all over this Province when the people clearly understand that this Act, under which we are proceeding, expressly passed to provide proper means for dealing with a case of this kind, was written with the pen of him who stood easily first among constitutional lawyers and masters of proper parliamentary procedure in this land. Liberals admired and Conservatives respected the high integrity and undoubted ability of Sir Oliver Mowat. (Applause.) Many a time and oft did he or his representatives cross the ocean to fight out the constitutional battles of the Province at the foot of the Throne, and as oft as they crossed, so oft did they return wearing the laurel wreath of the victor. (Loud applause.) As oft as he closed in keen legal conflict with the big Premier, so oft did the latter bite the dust. (Applause.) I repeat, sir, that Liberals therefore admired the undoubted ability of the man, and Conservatives, as a result of the cumulative effect of successive defeats in the courts, learned to respect Sir Oliver Mowat's ability. Be it known, therefore, that ninteen years Sir Oliver Mowat drew this Act with his own hand, and be it further known that Hon. William Meredith, the leader of the Opposit revised it, and pronounced it perfect; further, sir, that it was unanimously adopted by this whole House; and further still, that in 1887 and again in 1897, when the statutes were consolidated, it was affirmed and re-affirmed by this whole House. This is the very Act, sir, under which the hon. leader of this House asks us to proceed, and we challenge hon. gentlemen opposite to advance a single substantial reason why we should disown our own law, and stultify ourselves by running away from it. (Loud applause.)

When the people know, sir, that Mr. Meredith revised it and looked it over, and when they know that the Act, which in 1884 amended and added to the original Act, was an Act that amended several Acts, and when the people know that Mr. Meredith divided the House on several of these, yet when he came to the amendments to this particular statute he, in effect, said, that the statute and the amendments to it were as perfect as he could make them. He would not divide the House, and the House unanimously adopted the very statute under which we are proceeding to-day. (Applause.) Precedent of all precedents, that is the greatest, for it is our own law. This Act does not say you must try these cases, but it provides the machinery whereby we may try them. We tried one case under this Act. After we had tried the bribery case of 1884 under this Act, the fact that hon. gentlemen opposite allowed the Act to remain on the statute with the revisions we made from time to time to the general statutes, is an admission that they could not make it any better. I say to hon. gentlemen opposite, you have tried one bribery plot under this Act, therefore, follow your record of the past; do not ask us to stultify ourselves by turning our back upon our own laws. You have been facing the east, the land of the rising sun, for nineteen long years; turn not now westward, to the land of the setting sun, the land of darkness. If you do so turn, the people may send you to everlasting political darkness, and you deserve it. (Loud applause.) We have re-affirmed the statute, and when another case comes up we will use it. I cannot understand if hon. gentlemen opposite realize what they are doing. I cannot help thinking that they will yet repent at the eleventh hour and withdraw this amendment, and send this case on to an impartial tribunal in which the public have absolute confidence, who know how to do their work, who know where to draw the line. I say, and I mean it, I would plead with hon. gentlemen to reconsider what they are doing before they vote. I plead with hon. gentlemen, who for years and years have sat in this House, and have, by so doing, approved of this Act, not to stultify themselves by running away from and condemning our own laws. I repeat, sir, we made this law in 1884, and law-makers should not be law-breakers or law-evaders. (Applause.)

THE COMMISSION

Just a word about the Commission itself. The terms are pretty well known to the public. Briefly, what this House proposes to do is to confer upon two eminent High Court Judges the work of this investigation. They are judges whom this Government does not in any way control; they were both appointed by a Conservative Government at Ottawa. This House cannot in any way dismiss or control them, nor can they be benefited in one way

or another, no matter what their judgment may be. Briefly, the proposal is to give them the power of High Court Judges. They will have the power to subpoena witnesses and compel their attendance, and to compel the production of papers. Here I want to refer to the undignified manner of debate of which members opposite have been guilty. The member for W. Lambton, Mr. Hanna, asked why we had not impounded Sullivan and put him under arrest. The hon. gentleman is a lawyer, and knows that no man ought to be arrested until you are in possession of evidence. He knew that the evidence was not in our control, that his Leader absolutely refused to place the papers in the speaker's hands. (Applause.) Hon. gentlemen opposite refused absolutely to put the evidence in our control, and no one on this side knows where the evidence is, or whether it is in existence or not.

With a display of theatrical play the Leader of the Opposition produced a parcel and called some one to witness that it still bore his own seal, it was sealed and stamped with the stamp of his own signet. When handing the papers back to the member for Manitoulin, he, in effect, said: "I call you to witness the fact that I deliver it back as I received it, so that hereafter should the same evidence be not forthcoming, should the documents be in any way changed, or should some have disappeared, I, at least, will be able to say, 'these hands are clean.'

Mr. Whitney: I said nothing of the kind.

Mr. MacKay: I accept his explanation. I do not pretend to give his words verbatim. I have comfort in knowing that I am not the only one who apparently fails to hear him correctly. Many a time, indeed, the press reporters by their reports unanimously show that the hon. gentleman cannot, apparently, be correctly heard. (Laughter.)

I wish now to consider one or two objections made by the member for S. Toronto, Mr. Foy, in his calm, reasonable, and courteous speech. He said that under the Commission there was only one Minister charged, and they moved an amendment charging all the Ministers. There is just exactly the weakness or the difficulty I see with reference to the matter submitted to the House. The onus of that difficulty rests upon the member for Manitoulin, and partly upon the Leader of the Opposition, for you will recollect that the Premier asked the member for Manitoulin, Mr. Gamey, if he would pledge his position in the House to making good the charges, and if he would make them definite and specific. He replied that he had made his statement. The Premier asked the Leader of the Opposition if he would take the responsibility, and he shook his head.

Mr. Whitney: No.

Mr. MacKay: Hon. gentlemen on this side saw him..

(Applause.) There are insinuations, I admit. They say that the Commissioner of Crown Lands, Mr. Davis, is charged. I would like to know with what? There is an assertion that Sullivan had stated that Davis would resign and would not stand for trial. That is the only thing I can remember of that he did say with reference to Mr. Davis. Does that make Mr. Davis guilty of bribery, or attempting to bribe? I do not know what hon. gentlemen opposite expect the public to think. I call the attention of the Leader of the Opposition to it now, that under that Commission if you think there should be more charges made, the Commission calls upon you now to make them, put them in writing and put your name to them. (Applause.) Is that not a reasonable thing to ask when a member of this House is being impeached? We are trying this case now and we are establishing a precedent. They are sometimes dangerous things, for the House might next year or in a few years be called to vote again. We have no right to place a Member of this House in a lower position than the meanest criminal from the slums, and no man can charge the criminal without making a charge in black and white; not only that, sir, but the accuser must swear to the correctness of the charge. (Applause.) Hon. gentlemen are not asked to do that. They are told here by the Commission, if they say there are charges against any other Minister, let them name the charge, attach it to the Commission, and under that Commision it will be investigated by the two Judges. (Applause.) Let us understand this thing thoroughly. Let us have no afterclap after the Commission is over. If you want to formulate a charge, if you take the position of saying that there is a charge of some particular kind, then I say make it now and here, put it in black and white, say whether it is bribery or stealing or conspiracy, call it what you like, label it, and we will know what you are talking about. (Applause.) I ask any hon. gentleman opposite if he would like to be charged with any kind of crime and the man who accused him was not man enough to write it down and let him know what he was accused of. (Applause.) They say the Ministers are all guilty but Mr. Dryden, and a shadow hangs over him. (Laughter.) I do not know, Mr. Speaker, in anything I have ever read or anything I have ever heard of, where public men occupying a public position, having any conception of the responsibility resting upon public men, have ever taken such a course against any other public man. I do not believe you could find a township council from Ottawa to the Soo, I do not believe you could find a village or town council where any of its members would have such a poor conception of their duty as to make a rambling general charge when they were not fair and manly enough to make the charge definite and specific. (Loud applause.)

Paragraph eleven was objected to very properly. Now, I observe the Government intend to go further and amend the

Evidence Act so far as this case is concerned. Personally I do not think much of this Special Act we are going to pass. When we get away from first principles we are liable to go wrong, we may make bad precedents and bad law. If, however, it will have the effect of giving the country more confidence or in any way widening the scope so as to get at the full facts, then I will vote for the Bill. (Applause.) Complaint is made that two Judges are appointed, not three or one. This is analogous to the procedure in this and the old land; we have two Judges in all election trials. Did hon gentlemen opposite, on the floor of this House, ever suggest that the number should be three or one? If not, why not?

If this question is sent to a Royal Commission, the Judges, who are experts in their own line, will know better than we would know what is evidence and what is not. Not only will the two High Court Judges do their work better than we could do it, but the people will have confidence that their work has not been a party wrangle or the victory of a majority over a minority, but that there has been a fair trial by impartial men not influenced by either side of the House, not swayed by party prejudices; that the case has been tried by men appointed Judges for life, by highminded men, experts in their own work.

I am sorry to have taken up so much time of this House, but I felt that there were a number of points that needed clearing up, and I am in the judgment of this House as to whether I have either drifted away from the subject or needlessly occupied time.

I desire to say again, sir, that I would have every Liberal from Ottawa to the Soo, from Windsor to beyond Sudbury, clearly understand the position we take in this House. Notwithstanding false reports that have appeared in certain lynch-law journals to the effect that we are divided, that there were divisions in our caucus, we stand as an adamantine wall, as one solid unit, behind the accused Provincial Secretary, to see to it that British parliamentary practice shall be followed, that he receives but the same manner and form of trial that the vilest criminal from the slums may demand; we ask no more for him, and we shall see to it that he receives no less. (Loud applause.)

Thus, sir, do we intend to send this case on to a fair, impartial and unprejudiced tribunal; to a tribunal in which, notwithstanding sneering remarks of hon. gentlemen opposite, the public have absolute and complete confidence. (Applause.) If, sir, the Honorable the Provincial Secretary comes forth from such tribunal free and cleared from the charge, as I believe he will, well and good. If the member for Manitoulin, however, makes good his charges, then I for one will vote that the Provincial Secretary shall step down and out of this House. I stand here to say, sir, that we should endeavour to deal with this question not in a petty, low, miserable partizan spirit; but as with a question that affects the dignity, the

honor of this whole House, of which dignity and honor we should all feel that we in part at least are the custodians. We want, sir, the truth, the whole truth and nothing but the truth, and we desire the same to be searched out and pronounced upon by a thoroughly competent tribunal, beyond reproach, and in whose findings the public will have unlimited confidence—in short, sir, we want findings that will have permanent and lasting results. We should never have allowed ourselves to approach the discussion of this subject as eager and bitter partizans, ready and anxious to drag in any and all kinds of irrelevant matter for party gain. We should be fair and reasonable, and in this christian age ought not to fall short of that maxim of a pre-Christian era, "Fiat Justitia ruat coelum" — "Let justice be done though the Heavens fall."

As for Liberals, the history of Liberalism is greater far to every man who fully understands what Liberalism has done for this and the old land; Liberalism is wider, deeper, greater far than the leadership of any man or set of men. Be it our duty then to stand for a fair, full and impartial investigation, fair alike to accuser and accused; and then when results are known, no matter how it affects accuser or accused, we must "hew to the line, let the chips fall where they may." (Loud and long-continued applause.)