1923

*Feb. 6, 7.
*Feb. 20.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF MOOSE JAW

R. M. JOHNSON (RESPONDENT).....APPELLANT;

AND

H. YAKE AND OTHERS (PETITIONERS).....RESPONDENTS.

*Election law—Candidate—Official agent—Corrupt and illegal practices—Election expenses—Payment—Untrue return—False declaration—"Dominion Controverted Elections Act," R.S.C. [1906], c. 7, s. 51 as amended by [1921] (D.) c. 7, s. 9, and s. 56 as amended by [1921] (D.) c. 7, s. 7.—"Dominion Elections Act," [1920] (D.) s. 46, ss. 78 (3) (7), (9) and s. 79 (1) (3), (9).*

The appellant, being a candidate at a federal election, appointed one McR. as his official agent. An association, organized for the purpose of financing his candidature, received moneys which were deposited in a bank account under the control of its president and secretary. Certain election expenses were paid by cheques issued by the association without the knowledge of McR. The agent, with the approval of the appellant, declared in his return that he had authorized these payments. Two accounts, one of $20 for lunches supplied to the scrutineers and another for $68 for the services of a band on the night of the election day were sent to the agent and paid by him before his return was filed, but were not included in it. The appellant, pursuant to section 79 (3) of "The Dominion Elections Act," transmitted to the returning officer a sworn declaration that to the best of his knowledge and belief the return of election expenses made by his agent was correct.

*Held* that the appellant and his official agent were guilty of corrupt and illegal practices within the meaning of "The Dominion Elections Act," [1920] c. 46, section 78 (3) enacting that the payment of all election expenses should be made "by" or "through" the official agent and section 79 (1), (3), (9) declaring to be a "corrupt practice" any untrue return or false declaration knowingly made by a candidate or his agent. Consequently the election is void: "The Dominion Controverted Elections Act," R.S.C. [1906], c. 7, s. 51 as amended by [1921] c, 7, s. 4 and s. 55 as amended by [1921] c. 7, s. 9.

*Held,* also, that on the present appeal from a judgment merely declaring the election void, it was no part of the duty of this court to decide whether or not the parties in fault were liable to the penalties and disqualifications provided by "The Dominion Elections Act."

*Held,* further, that upon the evidence the appellant was not entitled to the benefit of the relief clause ("The Dominion Controverted Elections Act," R.S.C. [1906], c. 7, s. 56 (a) as amended by [1921] c. 7, s. 7) which provides for cases where the corrupt act of the parties arises through inadvertence, accidental miscalculation or other similar causes.

Judgment of the Election Court ([1922] 3 W.W.R. 328) affirmed.

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*PRESENT:—Sir Louis Davies C.J. and Duff, Anglin, Brodeur and Mignault JJ.

1923

MOOSE JAW ELECTION CASE JOHNSON v. YAKE

APPEAL from the judgment of Embury and Mackenzie JJ. (1), sitting as trial judges under the provisions of the "Dominion Controverted Elections Act," R.S.C. [1906], chapter 7, in the matter of the controverted election of a member for the Electoral District of Moose Jaw in the House of Commons of Canada, rendered on the 6th of October, 1922, maintaining the respondents' petition with costs and declaring void the election of the appellant.

The material facts of the case and the questions in issue are fully stated in the above head-note and in the judgments now reported.

*A. B. Hudson K.C.* for the appellant.—The trial judges had no jurisdiction to hear and decide the petition, as they were judges of the Court of King's Bench, not of the Court of Appeal nor of the Supreme Court.—The judgment is based solely on a finding that the appellant and his official agent were guilty of a corrupt practice in making a false return of election expenses, and a petition under "The Dominion Controverted Elections Act" is not authorized in respect of such matter.—The declaration of expenses was in fact true.—The payment of accounts by the officers of the association were authorized by section 10 of "The Dominion Elections Act."—The payments made for lunches and band were not election expenses.—The evidence is not sufficiently clear against the appellant and his agent to justify a finding of a lack of good faith, and relief should have been given under the provisions of section 56 (a) of the statute of Canada [1921] c. 7, in view of the very large majority of the appellant and the fact that no money was spent for corrupt purposes.

*W. N. Tilley K.C.* for the respondent.—The reprisement of "The Dominion Elections Act" with regard to the payment of election expenses through the official agent is absolute.—The payment of the accounts for lunches and band should have been included in the return filed by the agent.—The declarations transmitted by the appellant and his agent were false. The appellant and his agent having been found guilty of acts amounting to "corrupt practices," the election must be declared void.

(1) [1922] 3 W.W.R. 328.

THE CHIEF JUSTICE.—For the reasons stated by Mr. Justice Anglin, which I have carefully read, and in which I fully concur, I am of the opinion that this appeal should be dismissed with costs.

My learned brother has covered every point raised in this appeal so fully and satisfactorily that I cannot see any good reason for repeating his reasons.

DUFF J.—The return of the appellant as member for Moose Jaw was impeached by allegations of illegal and corrupt practices within the meaning of sections 51 and 55 of "The Controverted Elections Act" under two heads. Under these heads it was alleged 1st, that the agents of the appellant were guilty of illegal practices in paying election expenses otherwise than through the official agent in violation of the prohibition enacted by section 78 subsection 3 of "The Dominion Elections Act", 2nd, that the appellant personally and his official agent were guilty of corrupt practices within the meaning of section 79 subsection 9 of the same statute in making a false return of election expenses.

I shall deal with the findings upon these charges seriatim. As to the 1st charge, the trial judge found categorically that certain payments enumerated in the report were made by agents of the appellant otherwise than "by" nor "through" the official agent within the meaning of subsection 3 of section 78 of "The Dominion Elections Act."

The funds on which the appellant was at liberty to draw for election expenses were in part in the hands of an association known as "The New National Policy Political Association"; an association organized in part at least for the purpose of financing the canvas of the Progressive Party under whose auspices the respondent was conducting his candidature. The association had a central committee in Regina and a local committee in each electoral district. The Moose Jaw local committee of which one Thomas Teare was president and one Devlin was secretary, received in due course from the central committee moneys for the purpose of defraying the expenses of the Moose Jaw election these moneys being deposited in a bank account under the control of Teare and Devlin. The offi-

1923

MOOSE JAW ELECTION CASE
JOHNSON v. YAKE

Duff J.

cial agent, McRitchie, had no authority in relation to this fund and none over Teare or Devlin. On the 28th of November, about a week after the official nomination day and a week before election day, there was a meeting of the local committee at Moose Jaw at which Teare and Devlin and one Salsbury were present with the appellant himself. Certain accounts were produced by Salsbury and approved by all present and cheques were accordingly drawn and signed by Teare and Devlin for the payment of them. Teare and Devlin acted without consulting the official agent and without his knowledge or authority direct or indirect. These bills were, the trial judges found, paid irregularly, that is to say otherwise than through the official agent and in violation of subsection 4 of section 78 of "The Dominion Elections Act." It is not disputed that they were paid and paid by means of cheques drawn as just mentioned by Teare and Devlin; but it is argued by Mr. Hudson that the petitioners failed to prove that the cheques were not delivered to the payees "by or through" the agency of McRitchie.

It is undeniable, I think, that where a charge is made the proof of which may entail consequences of a penal nature under "The Dominion Elections Act" or "The Controverted Elections Act," a finding in the affirmative should only ensue on the production of evidence which is conclusive. I think Mr. Hudson does not over-emphasize the point when he argues that the trial judges before finding that such a charge has been established ought to be satisfied beyond reasonable doubt.

I am unable, however, to conclude that this general principle was disregarded by the trial judges. The evidence of Teare and Devlin touching the conversations with the appellant after the election upon the subject of these bills taken together with the respondent's declaration might, I think—if the trial judges accepted, as apparently they did, the evidence of Teare and Devlin as truly relating the incidents of that conversation—not improperly be considered by them to leave no substantial question that the cheques signed by Teare and Devlin had not passed through the hands of the official agent. I think, moreover, that the circumstance that McRitchie was not called by the appel-

lant was a circumstance which they might properly regard as lending some weight in favour of this conclusion. The principle upon which the failure to call a witness may be considered to be a fact weighing in the scale against a party to litigation rests in the first place upon a presumption of that party's probable knowledge of what testimony the witness would be likely to give. I think in all the circumstances and especially having regard to the incidents placed in evidence connected with the redaction of the declaration of expenses that the trial judges did not err in acting upon the presumption that the appellant would probably know the nature of the testimony his official agent would give if he were called as a witness or in inferring that he refrained from calling him because he or his advisers did not think McRitchie's testimony would heighten the prospects of a favourable issue.

Under the second head the appellant and his official agent were charged with the corrupt practice of making false declarations respecting election expenses. The declaration of the official agent is said to be false in two particulars, (a) in alleging that certain sums were paid in liquidation of election expenses under the authority of the official agent which in fact were paid without such authority, and (b) in omitting from the statement of expenses set forth in the declaration two specified sums which should have been included therein.

To begin with (a). The declaration which was the joint production of the official agent and the appellant, acknowledges the disbursement of the sum of $1,351.05 described as a sum expended "by paying bills authorized by myself and by cash direct." The list of bills making up this aggregate almost in its entirety consists of those sums paid by the cheques signed by Teare and Devlin already referred to. The charge is that the words just quoted necessarily imply an affirmation that these bills were either incurred by the authority of McRitchie or paid by his authority; and that affirmation is alleged to be contrary to the fact and to have been known to be so both by the appellant and by McRitchie. In respect of this charge the finding of the trial judges is against the appellant.

1923

MOOSE JAW ELECTION CASE
JOHNSON v. YAKE

Duff J.

The official agent, it appears, had long after the payment of these bills by Teare and Devlin and after the election indorsed them with his initials with the professed object of signifying his assent to them. This was done with the knowledge of the appellant but Mr. McRitchie's approval was not communicated to either Devlin or Teare or to the payees.

Subsection 9 of section 79 comes into play, I think, when two conditions occur. There must first be a " false declaration " respecting election expenses and by that I think is meant a declaration contrary to the fact, and in the second place it must be known that the declaration is contrary to the fact. And the first question which arises at this point is, was there a false declaration—was there an affirmation conveyed by these words which was contrary to the fact? The words do seem very clearly to convey an affirmation either that the bills paid had been authorized by the official agent or that the payment of them had been authorized by him. Now I do not think that such a statement would necessarily involve an affirmation of antecedent authority. In considering for our present purpose this question whether the affirmation was or was not contrary to the fact, we must, I think, do so without regard to any of the provisions of " The Dominion Elections Act " and I agree that " authorized " does not necessarily mean antecedently " authorized." But it does nevertheless imply something at least amounting to an adoption of what was done, an adoption in the sense of making the act " authorized " the official agent's own act and the assumption of responsibility for it. It requires very little argument I think to demonstrate that the indorsement by the agent of his approval on the bills long after the business was closed, long after the bills had been not only incurred but paid and paid by people over whom the official agent had no authority and out of funds over which he had no control and without the knowledge of those who had paid them, could not without abuse of language be described as an act authorizing either the bills or the payment of them.

The words quoted then do involve an affirmation contrary to the fact. Is it shewn that the appellant knew it was contrary to the fact?

The trial judges have taken the view that this form of language was deliberately adopted by the appellant and his official agent acting in concert, with the object of making it appear that the payments had been made "by or through" the official agent in conformity with the law; and that in doing this they both intended to give a false colour to the transaction referred to and particularized in the declaration.

There is some evidence that in framing this part of the declaration the appellant consulted his solicitor and it appears from Devlin's evidence that he told Devlin that this part of the declaration received the form it did in consequence of his solicitor's advice. I do not doubt that if it had appeared to the trial judges that the appellant and his agent, being desirous of honestly complying with the law, had acted in this matter in conformity with legal advice given to them as to the requirements of the law they would under this head have acquitted the appellant of the charge of bad faith.

But the question of bad faith or its opposite was in the circumstances largely a question of credibility and I am unable to discover any ground upon which the finding of the learned trial judges could properly be reversed. There is nothing to indicate that they misconstrued the statute or misapprehended the evidence or that they misdirected themselves in any way; while on the other hand there is a circumstance which in considering this branch of the case they could not very well leave out of account, and that is the circumstance that the appellant's solicitor was not called as a witness to support the suggestion that this form of the declaration was prompted by legal advice. The gravity of the charge of bad faith must have been apparent from the outset to the appellant and to his legal advisers and, valuable no doubt as the services of the solicitor at the trial would appear to them to be, the trial judges would, I think, be justified in attaching in this connection no little importance to the circumstances that the testimony of the solicitor himself was not placed before them.

The charge founded upon alleged omissions from the declaration by the candidate and the official agent respect-

1923

MOOSE JAW ELECTION CASE JOHNSON v. YAKE

Duff J.

ing election expenses was held to be established by the learned trial judges who rejected the plea of the appellant that the items to which this charge relates were omitted under the belief that they were not election expenses within the meaning of the Act. One of these payments was a payment for sandwiches provided for scrutineers on election day and the other for the services of the band of the Great War Veterans' Association for performing in celebration of the appellant's victory on the night of the election. If this charge had stood alone it may be that, having regard to the facts deposed to and in view of the absence of a visible motive for putting forward a misleading statement in respect of these payments, the learned trial judges would have been disposed to consider that these omissions had occurred innocently. But the trial judges would no doubt, as they were entitled to do, examine the question in light of the existing intention to mislead they held to be established respecting the statement already discussed touching the payments by Teare and Devlin. Here again I can discover no ground upon which this court would be justified in dissenting from the finding of the primary tribunal.

As respects this charge it must further be observed that these payments were made by the official agent, that they were not included in any statement of personal expenses sent to him by the candidate as required by subsection 14 of section 78; that, in the declaration of the official agent in relation to election expenses it is virtually affirmed that no personal expenses of the candidate were paid by the agent; and it is difficult therefore to accept the appellant's explanation of these items on the ground that he considered them to be personal expenses.

I may add, however, that I can find no evidence in support of the finding that these payments were made in breach of the provisions of subsection 9 of section 78 requiring all expenses to be paid within 50 days after the day on which the candidate was declared elected.

With respect to the point raised touching the jurisdiction of the learned trial judges, I think it is sufficient to say that in my judgment, subsection 2 of section 14 of c. 25 of the statute of 1916 very clearly applies and that it is a complete answer to the objection.

Such being my views as to the findings of the primary tribunal it becomes necessary to refer to two contentions touching the legal effect of these findings advanced by Mr. Hudson. The first concerns the effect of section 51 of "The Controverted Elections Act" (as amended by 11-12 Geo. V, c. 7, sec. 4), which is in these words:—

51. If it is found by the report of the trial judges that any corrupt practice has been committed by a candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, or that any illegal practice has been committed by a candidate or by his official agent or by any other agent of the candidate with the actual knowledge and consent of the candidate, the election of such candidate, if he has been elected, shall be void.

It is argued that the corrupt practices found and reported by the trial judges both took effect with the making of the declarations of election expenses on February 15th, 1922, two months after the return of the appellant as elected (December 15th, 1921), and it is said to follow that they were not "committed * * * at an election" within the meaning of section 51 because by force of section 2 (d) the "election" must be considered to come to an end with the making of the last mentioned return. I assume the effect of the statutory provisions mentioned to be that the "election" must be considered to have terminated on the date mentioned.

It is clear, I think, that the words "at an election" are not adverbial words qualifying "committed" but that as Mr. Tilley contended the words "candidate at an election" together constitute a single substantive description of the candidate, and the condition under which section 51 becomes operative is that the corrupt practice or illegal practice shall have been committed by the candidate or agent as the case may be, as candidate or agent. The same observation applies to section 55. It is plain that the duty of making a declaration under section 79 is a duty imposed on the candidate and agent as such and that a false declaration within the meaning of subsection 9 is deemed to be a corrupt practice committed by the candidate or agent as such. Moreover the illegal practice found to have been committed by Teare and Devlin with the assent of the appellant was indubitably committed by them during election as the agents of the appellant who just as unquestion-

1923

MOOSE JAW ELECTION CASE
JOHNSON v. YAKE

Duff J.

ably gave his "sanction" to what they did. Subsection 11 of section 78 cannot therefore apply and the necessary consequence is that the learned trial judges rightly held the election to be void.

There is no formal declaration by the trial judges in their judgments or in their report as to the disqualification of the appellant or his official agent. Their judgment does include the determination of issues raised by charges relating to corrupt practices and illegal practices and their report to the speaker declares the appellant and the official agent to have been guilty of corrupt practices in making false declarations respecting election expenses. The effect of their judgment and report as touching the disqualification of the persons whose conduct was in question is a matter which may be decided if and when the point arises by the application of the relevant statutory law to the facts as found. Mr. Hudson raises a question as to the effect of section 87 of the Dominion Elections Act and argues that, as regards the corrupt practices reported, since the declaration of election expenses was not made until long after the election had terminated, subsection 2 of section 87 does not come into operation, as it only applies where a corrupt practice or illegal practice is reported to the speaker as having been committed "at an election"; and since (such is the contention) subsection (c) of section 87 has no application to a finding or decision given upon the trial of an election petition.

I will not say that there is not here a contention as to the construction and effect of section 87 which though technical is nevertheless legitimate and is at least susceptible of plausible statement. And it is quite clear that as regards the corrupt practices reported they did not occur "during" the "election" or "at" the "election" if these phrases are to receive an interpretation derived from section 2 subsection (d) of "The Dominion Elections Act." I express, however, no opinion whatever upon Mr. Hudson's argument. Neither the judgment of the trial judges nor the report to the speaker declares in terms that a corrupt practice was committed by the appellant or the official agent either "at" or "during" the "election," and if and when

any question arises as to the disqualification of the appellant by reason of the judgment and report he will have the benefit of the full weight (if any) which his argument may be found to possess.

In my opinion this is not a case in which any relief can be granted under section 56 (a) of "The Controverted Elections Act."

The finding of the learned judges that the payments to the Paris Cafe and the Great War Veterans Association Band were made after the expiration of 50 days after the declaration of the result of the election should be set aside but subject to that the appeal should be dismissed with costs.

ANGLIN J.—Robert Milton Johnson, returned as having been elected to the House of Commons for the electoral district of Moose Jaw at the general election held on the 6th of December, 1921, appeals from the decision of an Election Court (Embury and Mackenzie JJ.) finding that he and his official agent had both been guilty of illegal and corrupt practices and declaring his election consequently void. The grounds of appeal are:

(*a*) that the Election Court as constituted was without jurisdiction;

(*b*) that the corrupt practices found are not proper subjects of a petition under "The Controverted Elections Act";

(*c*) that the evidence does not support the findings made; and

(*d*) that the acts found, so far as the evidence supports them, are not valid grounds for avoiding the election.

(*a*) The jurisdiction vested in the Supreme Court of Saskatchewan by "The Dominion Controverted Elections Act" (R.S.C., 1906, c. 7, s. 2 (viii) ), as amended by the statutes of 1915, c. 13, s. 1, is transferred to the judges of the Court of Appeal and of the Court of the King's Bench for Saskatchewan by c. 25, s. 1, s.s. 2 of the statutes of 1916. The judges who constituted the Election Court were judges of the Court of King's Bench of Saskatchewan duly nominated under s. 4 of that statute, and as such had jurisdiction to try this election petition.

1923

MOOSE JAW ELECTION CASE JOHNSON v. YAKE

Anglin J.

(*b*) Section 11 of "The Controverted Elections Act" of 1906 (R.S.C., c. 7) was repealed and a section to replace it enacted by c. 13, s. 4, of the statutes of 1915. Under this substituted section the unlawful or corrupt acts charged may properly form the subject of an election petition.

(*c*) The learned trial judges expressly avowed their confidence in the testimony of the two chief witnesses for the petitioners, Teare and Devlin, and quite as explicitly indicated their disbelief of that given by the appellant when in conflict with it. Upon that basis they have found and certified that the appellant was guilty of corrupt or illegal practices in authorizing the payment of certain of his election expenses otherwise than by or through his official agent in contravention of s. 78 (3) of "The Dominion Elections Act"; in causing an untrue return to be made by his official agent (importing the authorization by such agent of the payments so made) in contravention of s. 79 (1) of the said Act; in knowingly making a false declaration of the correctness of the said return in contravention of s. 79 (3) of the same statute; in causing the omission from his official agent's said return of two items of election expenses payment of which was made by him through such agent; and in knowingly making a false declaration that the total amount paid by him to his official agent was $677, whereas (including the said two items) he actually paid to his said agent the sum of $765. The learned judges also found and certified that the official agent, one Frank McRitchie, had been a party to, and was therefore likewise guilty of, the above corrupt or illegal practices.

A study of the evidence does not enable me to say that the appreciation of the credibility of the respective witnesses by the learned trial judges should not be accepted; neither does it disclose any ground which would justify a reversal of the findings of fact set out in their certificate.

Counsel for the appellant urged that one of the two items above mentioned as having been paid through the official agent and omitted from his return—$68 for the services of a band on the evening of polling day—should not properly be classed as an election expense. The statute (s. 79 (1) (a) ) expressly requires that the official agent's return

shall contain detailed statements of "all payments made by the official agent." I can see no justification for omitting this item from the official agent's return of "election expenses." The evidence rather indicates that it was so omitted deliberately and because in the opinion of the candidate and some of his friends it was thought advisable to conceal it.

I am of the opinion that it is not possible upon the record before us to set aside any of the findings made by the learned trial judges except that contained in their "determination," but not in their certificate, that the Paris Café account and the Pearce Band account were paid more than fifty days after the respondent was declared elected contrary to s. 78 (9) of the statute. The evidence does not appear clearly to support that finding.

(*d*) That the findings so made justified the "determination" that the election of the appellant was void I think admits of no doubt. The acts found to have been committed are declared to be, some of them illegal practices ("Dominion Elections Act," s. 78 (4) (7) ), and others corrupt practices ("Dominion Elections Act," s. 79 (9); "Controverted Elections Act," s. 2 (f). Those acts having been committed by "a candidate at an election" who has been declared elected, and also by his official agent, s. 51 of "The Controverted Elections Act," (1921, c. 7, s. 4), clearly voids the election. Parliament in its wisdom and after long experience has attached that consequence to corrupt practices and illegal acts such as the appellant and his official agent are found to have committed. We have no discretion in the matter. Our plain duty is to administer the law as we find it.

Counsel for the appellant pressed for a declaration that his client is not subject to the personal disqualification provided for by sections 39 (a) and 87 of the Elections Act. But that question is really not before us. The learned judges of the Election Court have not certified to such disqualification. They have found certain facts and have determined that upon the facts so found the appellant's election is void and they have certified these findings as required by the Controverted Elections Act, s. 68. On the present appeal from the judgment of the Election Court

1923

MOOSE JAW ELECTION CASE
JOHNSON v. YAKE

Anglin J.

it is not part of our duty, as I understand it, and it would therefore be an impertinence, to express an opinion whether the findings so made and certified entail disqualification of the appellant. While that may follow as a consequence, it is not so held in the judgment of the Election Court. Upon the correctness of that judgment—and upon that only—are we called upon to pass.

I would for these reasons dismiss this appeal with costs.

BRODEUR J.—The first question we have to decide is whether the judges of the Court of King's Bench of Saskatchewan have jurisdiction to try Dominion election petitions.

By virtue of the provisions of "The Dominion Controverted Elections Act," as amended in 1915, the court which had jurisdiction over such election petitions was the Supreme Court of the province.

In the same year, 1915, the legislature of the province passed an Act providing for the abolition upon proclamation of its Supreme Court and for the creation, also upon proclamation, of a new court of original jurisdiction to be called the Court of King's Bench.

The proclamation provided by the provincial Act having been issued the Supreme Court, which had jurisdiction over election petitions, was abolished, and the Court of King's Bench was established.

The judges who tried this case are judges of this Court of King's Bench, and it is contended by the appellant that they had no jurisdiction.

I would have been inclined to agree with the appellant on this point if it were not for the Dominion statute passed in 1916 which declared (ch. 25, sect. 14, s.s. 2), that if under any statute of Canada jurisdiction is given to the Supreme Court of Saskatchewan this jurisdiction can be exercised by the Court of King's Bench.

This federal legislation of 1916 removes all doubts as to the question of jurisdiction. Under "The Dominion Controverted Elections Act," the judges of the Supreme Court of Saskatchewan had exclusive jurisdiction to try petitions concerning elections held for the Dominion Parliament in that province. But this jurisdiction, by virtue of the Act

of 1916, can now be exercised by the judges of the Court of King's Bench.

The most important point in this case is whether the appellant Johnson has been properly found guilty of a corrupt practice which rendered his election void.

It is alleged that he has made a false return of his election expenses.

The evidence shows that a Mr. McRitchie had been appointed by the candidate Johnson as his official agent, that on the 28th of November, 1921, between the nomination and the polling day, cheques were issued by the Moose Jaw Constituency Committee of the Progressive party for the payment of certain election expenses to the amount of $1,351.05 which had been incurred by Mr. Johnson; that the cheques were paid without the knowledge of the official agent; that the officers of the committee having discovered that they had acted illegally in not having these payments made by the official agent (as provided by sec. 78 (3), "Dominion Elections Act") notified Mr. Johnson of their mistake; and that the agent, on the advice of the candidate, declared in his return of expenses that these payments of $1,351.05 had been authorized by him.

It is in evidence also that two other bills were sent to the agent, one of $20 claimed by the Paris Café for lunches supplied to the scrutineers of Mr. Johnson, and the other of $68 for the services of a band on the night of the election, and that these two bills, though received before the return of the election expenses, were not mentioned in it.

It is contended by the appellant that these two bills were not election expenses.

These bills having been paid by the official agent, I cannot very easily follow the argument that they were not election expenses. These scrutineers, to whom lunches had been supplied, were doing some work for the benefit of the appellant's election. In fact, this item was not included because he feared that these lunches could not be considered as legitimate expenses. I would not say that they were or were not legitimate election expenses—we are not called upon to decide that—but they have been incurred in connection with the election and it was the imperative duty of the agent and of the candidate to mention them

1923

MOOSE JAW ELECTION CASE
JOHNSON v. YAKE

Brodeur J.

in the return (sect. 79 s.s. 1-3 of "The Dominion Elections Act".)

It cannot be disputed also that the services of a band on the night of an election are expenses incurred in connection with the election.

The failure of the agent and of the candidate to include in their return these two bills for the payment of which money had been supplied by the candidate himself render them guilty of corrupt practices under sect. 79, ss. 9, which says:

> If a candidate or official agent knowingly makes a false declaration respecting election expenses, he is guilty of a corrupt practice.

As to the declaration in the return that the payment of $1,351.05 made by the Progressive Committee of Moose Jaw was made with the authorization of McRitchie, I am obliged to declare that it is not a true declaration.

The return of election expenses must give to the public a full and complete disclosure of all expenses and claims made by or to a candidate in connection with the election. Parliament requires by its legislation that the public should know exactly what has been received and expended in each constituency. The return should mirror the manner in which the electoral compaign has been conducted. If illegal acts have been committed so much the worse for the candidate. Of course, errors and omissions might occur, but then the courts are authorized to be lenient and not to condemn for trivial things (1921, ch. 7, s. 7.)

In this case I would have been for my part willing to exercise my discretion in favour of the appellant if he had declared the facts as they had occurred. It was evidently a mistake which was made by the officers of the Moose Jaw Committee when they issued cheques for these bills; but they were under the impression that being an incorporated association for political purposes they could pay legitimate election expenses (article 10, "Dominion Elections Act".) They had not thought of the fact that their powers were restricted to contributions for election purposes and that expenses incurred in a constituency should be paid by the official agent (section 78, subsection 3). If the agent or candidate had reported in his statement the facts as they really occurred, then the appellant could have invoked

the application of the statute of 1921; but no, they tried to prove that these payments had been authorized by the official agent when the evidence shows that he knew of them only long after. I admit the law is very severe; but if the agents or the candidates are candid and truthful and if the election has been carried out honestly there is no fear; the courts will not condemn for trivial things omitted.

These returns of expenses must be certified under oath and the agent and the candidate should always respect the sanctity of the oath.

For these reasons the finding of the trial judges that the appellant was guilty of corrupt practices is right and their report should be confirmed with costs.

MIGNAULT J.—The election petition of the respondents complaining of the return of the appellant as a member elected to represent the electoral district of Moose Jaw, Saskatchewan, in the House of Commons of Canada, was tried before the Honourable Mr. Justice Embury and the Honourable Mr. Justice Mackenzie, two of the justices of the Court of King's Bench for the province of Saskatchewan. The question of their jurisdiction to try this petition was raised before them, but the objection was finally rejected and the trial proceeded to judgment.

The petition having been maintained the appellant now appeals to this court and again raises the question of the jurisdiction of the learned trial judges. In my opinion, whatever doubts may have been created by the language of the provincial statute under the terms of which the Court of King's Bench replaced the Supreme Court of the province, no possible question as to the jurisdiction of the learned judges to try this petition can arise in view of the unequivocal enactment of subsection 2 of section 14 of chapter 25 of the Statutes of Canada for 1916 " The Judges Act." I would therefore dismiss this objection as unfounded.

On the merits I am of opinion that the judgment is well founded and that the appeal should be dismissed. Notwithstanding Mr. Hudson's very able argument I must hold that the appellant, as found by the learned trial

1923

MOOSE JAW ELECTION CASE
JOHNSON
v.
YAKE

Mignault J.

judges, made a false declaration of expenses within the meaning of the "Dominion Elections Act."

Mr. Hudson argued that the words contained in the declaration of expenses

by paying bills authorized by myself and by cash directly

were not false because the appellant's official agent, McRitchie, authorized the payment of these accounts which were paid by cheques issued directly to the payees by Teare and Devlin. McRitchie was not called at the trial, so Mr. Hudson could not go further than to contend that the declaration of expenses shows that McRitchie had authorized these payments. However, when they issued their cheques Teare and Devlin, respectively the president and secretary-treasurer of the incorporated association which furnished funds for the appellant's election expenses, did not even know McRitchie. And what the statute requires is that election expenses be paid "by and through" the official agent. The payments here were made by and through an association whose cheques were issued and made payable directly to the creditors of the accounts, and not by and through the official agent. If the words I have quoted from the declaration of expenses imply that these payments were made by and through McRitchie, they are false, and if they mean that McRitchie merely authorized the payment made with these cheques they are equally untrue, for McRitchie was not present at the meeting of the 28th November, 1921, when the payments were authorized and the cheques signed. The appellant said that McRitchie initialled the vouchers on the 28th January, the day he prepared the return of expenses, but this does not show that he authorized the payments when they were made, much less that these payments were made by or through him. It is difficult to escape the conclusion that the peculiar wording of the declaration was suggested by the desire to cover up something or to conceal the real truth. My opinion is that it was a false declaration.

Moreover the payment of two accounts, those for the band on the night of the election and for the luncheons furnished to the scrutineers in the polling stations, is not mentioned in the declaration of expenses. As a matter of fact, these accounts, which were for election expenses,

especially the account for luncheons, were paid after the preparation of the return of election expenses by the appellant and McRitchie, but before it was sworn to, and appear to have been paid with moneys furnished by the former to the latter. This payment, the trial judges say, was made more than fifty days after the day the appellant was declared elected, and they add that it was thus an illegal practice of the appellant and his official agent under subsection 9 of section 78 of "The Dominion Elections Act." The evidence is not clear as to the date when the band account and the account for luncheons were paid. As to the former account, the appellant says it was paid by cheque dated January 31st and passed through the bank on February 7th. The account for luncheons was apparently paid in money, the appellant having furnished $10 on two different occasions to his official agent for that purpose.

By knowingly making a false declaration respecting election expenses, the appellant and McRitchie were guilty of a "corrupt practice" ("Dominion Elections Act," section 79, subsection 9) and, under section 51 of "The Dominion Controverted Elections Act," the election is void. The commission of an illegal practice by the candidate or his official agent entails the same consequence. The appellant was certainly "a candidate at an election" within the meaning of section 51.

The appellant asked that he be given the benefit of section 56a of "The Dominion Controverted Elections Act" which permits the Court or the trial judges to relieve the candidate or the official agent from the consequence of an illegal practice, where the commission of the illegal practice did not arise from any want of good faith. This application was refused by the learned trial judges who in their reasons for judgment said:—

> We do not see that we can extend the benefit of this section to the respondent (now the appellant) in the present circumstances, primarily because we do not think that he has satisfied the onus cast upon him of proving his good faith.

This declaration of the learned trial judges places the appellant in a most disadvantageous position when he again before this court applies to be given the benefit of section 56a. And I cannot see my way to grant his application.

1923

MOOSE JAW ELECTION CASE
JOHNSON
*v.*
YAKE

Mignault J.

The learned counsel of both the appellant and the respondents appeared to be of the opinion that the result of the judgment of the trial court would be the disqualification of the appellant and his official agent. Mr. Tilley for the respondents very chivalrously did not insist on this personal disqualification, being satisfied with the avoidance of the election. But if personal disqualification be the legal effect of finding the appellant and McRitchie guilty of a corrupt practice under "The Dominion Elections Act," section 39, the court would be powerless to interfere. Disqualification is not declared in terms in the judgment appealed from, and I express no opinion on the question whether it was incurred. The matter rests on the proper construction and effect of section 39.

I would dismiss the appeal with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant: *C. E. Gregory.*

Solicitor for the respondents: *J. W. Corman.*