

to compel them to give evidence as is vested in any court of record in civil cases.

It is expressly provided in that statute that no witness examined before such commissioners shall be excused from answering any questions put to him on the ground that the answer thereto may criminate, or tend to criminate, him; but no evidence so taken shall be admissible against any such witness in any criminal proceedings, except in the case of a witness charged with having given false evidence at such inquiry, or having procured or attempted, or conspired, to procure the giving of such evidence. In the opinion of the undersigned, chapter 114, as it now stands amended, is sufficiently ample to meet the requirements of the investigation, as suggested by Mr. Borden (Halifax).

Sir Charles Tupper suggests that the commission should be enlarged by adding the following words: 'And any fraudulent practices, persons or means connected therewith.' The present commission authorizes the commissioners to inquire into the fraudulent conduct of any person in relation to the alleged wrong-doing in respect to the ballots, and so these words are, in the opinion of the undersigned, unnecessary.

Sir Charles Tupper suggests that, in the employment of counsel, the leader of the government (the Prime Minister) shall name one counsel, and he shall name the other. The undersigned is of opinion that it is better the appointment of counsel should rest with the commissioners, as they will be present for the purpose of aiding the commissioners in accomplishing the object had in view—the ascertainment of the facts in the constituencies in which it is found necessary to conduct an investigation.

As to the suggestion that the witness should be asked how he voted, the undersigned is of opinion that no attempt should be made by legislation to compel a witness to give evidence that it may have been the express intention of the law should not be given. Whether a witness shall be compelled to testify how he voted or not, is a question which the commissioners will undertake to decide in conformity with the law. The present Ballot Act was introduced into parliament by the late Chief Justice of the province of Quebec (Sir A. A. Dorion), at the time he was Minister of Justice. At that time, it was intended by him, on ground of public policy, to have parliament to so legislate that the ballot could not, under any circumstances, for the purpose of ascertaining by whom it was marked, be inquired into, in a court of justice. In this respect, the Ballot Act of Canada differs from the English law, and also from the law of Ontario, where, upon a scrutiny, the law provides that it may be ascertained from the ballot itself how each elector voted. The ballot being itself the primary evidence, it has been said that there is no other safe means than by its production, to show how a party voted, and it would certainly be very hazardous to permit a party to testify how he voted. The witness, were he to give false testimony in this regard, would do so without the slightest fear of detection, and without its being possible, except by the ballot, to establish that his evidence was wrong.

In the case of the Haldimand election, the present Chief Justice of the Supreme Court (Sir Henry Strong) held that to permit a voter to testify how he voted would be a direct violation of the Act—that secrecy is imposed as an absolute rule of public policy, and that it cannot be waived. The whole purview of the law is different from that of the English and of the Ontario Acts.

Sir WILFRID LAURIER.

Some judges have held to a different opinion, but the commissioners, who are all judges of ability, may be safely left to interpret the law for themselves.

In the opinion of the undersigned, it would be extremely improper to permit the evidence taken before the committee in the West Huron case to be made evidence before a commission, as the importance that the commissioners may attach to the evidence of a party, and the impression made upon their minds may depend upon his demeanour in giving his evidence, it is most important that the parties should appear before the commission and testify in the ordinary way.

Sir Charles Tupper states that he was advised that it is impossible for the commissioners to compel the Clerk of the Crown in Chancery to do what is required of him in this commission. In that view the undersigned cannot concur. The Clerk of the Crown in Chancery is an officer of the Crown, through whom the Crown issues the writs calling upon the parties to whom they are addressed to make a return of a member to the House of Commons within the time specified. He, as an officer of the Crown, is subject to the summons of the commissioner, as much so as any other witness whose attendance may be required.

Respectfully submitted,

DAVID MILLS,
Minister of Justice.

Sir CHARLES TUPPER (Cape Breton). I am sorry that the government have arrived at the conclusion they have with reference to this matter, because I am sure it will prevent the accomplishment of what the right hon. leader of the government (Sir Wilfrid Laurier) said was its object, and that was to have a thorough and complete examination of the subject. I took exception to the scope of the commission, and was anxious it should also embrace 'any fraudulent practice, persons or actions connected therewith.' What possible objection there could be to the addition of these words and to this addition to the scope of the commission, I am at a loss to conceive, if the government wishes a fair, full and complete investigation into this matter.

The MINISTER OF RAILWAYS AND CANALS (Mr. Blair). What is the difference between 'fraudulent practices' and 'fraudulent conduct' which is to be inquired into?

Sir CHARLES TUPPER. Even supposing that my hon. friend (Mr. Blair), is right in saying that the point I desire is already covered, there could be no objection to adding the words 'fraudulent practices, persons or actions.' In the next place, the Act under which this commission is authorized is stated in the *Canada Gazette*—for I find that the commission has been gazetted in anticipation of any action by this House or any expression of opinion here—is chapter 114, and it is appointed to inquire into, investigate, and report upon certain election frauds. The English Act to which I drew attention, provides specifically that the commission shall inquire into the matters committed to them 'by all such lawful means as to them appear best.' It also provides: