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In re Moose Jaw Election:

JOHNSON

vs.

YAKE *et al.*

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.

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, J.J.) 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, ss. 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.

(b) Section 11 of the Controverted Elections Act of 1906 (R.S.C., c. 7) was repealed and a section to replace it enacted by c. 13, s. 4, of the statutes of 1915.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 respondent when in conflict with it. Upon that basis they have found and certified that the respondent 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.