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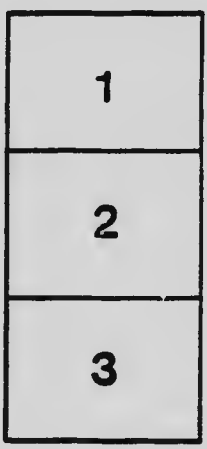

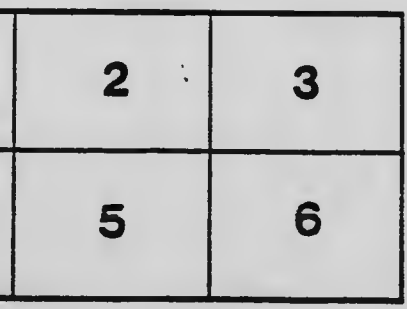

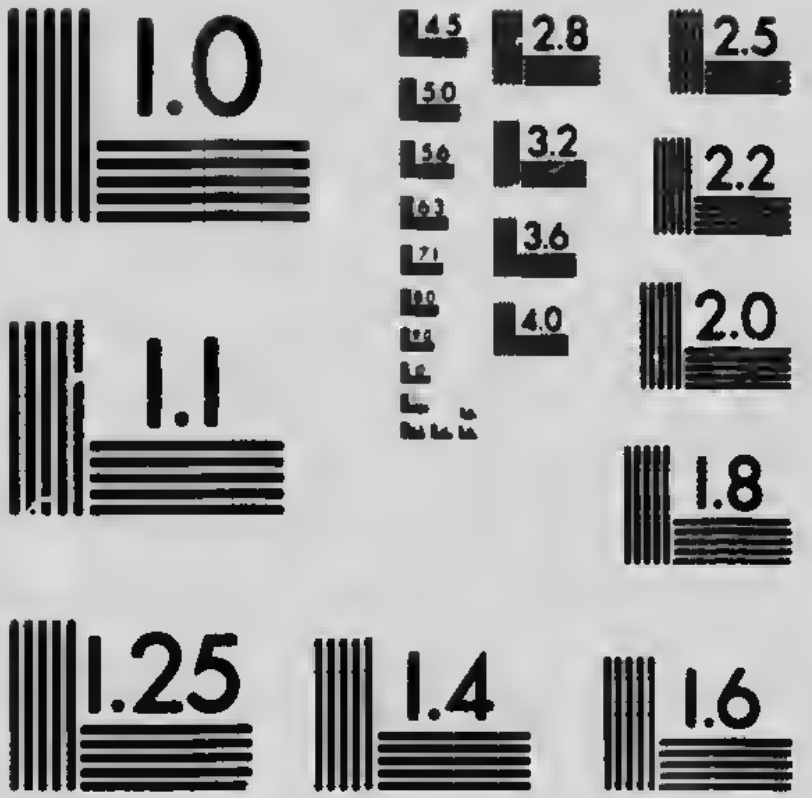

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FACTS, NOT FICTION

Whitney's Assertions Disposed of by Clear Statements Founded on Fact

The Pritchett Affidavits

Hon. J. M. Gibson, Attorney-General, speaking in the Local Legislature on March 12th, 1901, had not, he said, intended to add to the arguments from the Government side of the House or to deal in a general way with those of the Opposition. But his department had been subjected to more or less criticism by hon. gentlemen, and he would deal briefly with that phase of the debate. At the outset he wished to refer, though he had not heard the remarks, to some strictures which had fallen from the lips of the member for East Toronto. That hon. gentleman seemed to have the faculty of using extremely strong language when occasion required rather moderate terms. (Government applause.) He (Dr. Pyne) had used the strongest possible language in political condemnation of the Attorney-General, because he had concurred in the views of the officers of the department in regard to an application for increasing a reward offered by the city authorities for the discovery of a party or parties who had murdered a woman in Toronto. The department had freely given or offered the assistance of the Provincial detectives to the city police force. When the city, Mr. Gibson proceeded, the large and important chief city of the Province, with a large and efficient force of police, and having control of its own administration of justice, thought that the reward of $250 which it had offered should be increased to $500, it should have raised the reward itself. (Government applause.) He pointed out some of the dangers and difficulties surrounding the offering of large rewards in connection with attempts to bring criminals to justice. It was undesirable, he said, that the people should be taught to expect money payments to them before they could be induced to give information of serious crimes. (Government applause.) In the specific case which had been referred to he did not think that the department, after offering all possible assistance, should have been called upon to go any further, and the remarks of the member for East Toronto in that connection were entirely out of place.

THE ELECTION CASES.

Continuing, Mr. Gibson said: "Much has been said about inaction of the Attorney-General's department in connection with the West Elgin and North Waterloo cases. As was stated the other day, the report of the commissioners in the former case, and of the election trial Judges in the latter case, has been submitted to the House since the commencement of the present session, and it was not likely that these matters would be taken up to be dealt with during the session. But fault is found because the Attorney-General did not initiate prosecutions. The answer is: When does the Attorney-General initiate prosecutions? There is local machinery for the purpose of prosecuting—County Attorneys, Police Magistrates, Magistrates, policemen and constables. Practically all informations and complaints are initated in the locality. That is the rule, and that is what the machinery is for. In cases of murder, felony, forgery, theft and such like, the person injured lays the information, or someone for him, or possibly the constable or County Attorney in the particular locality, but not the Attorney-General and his Toronto departmental officers. The whole scheme and intention of our system of administration of justice is that these things should be worked out on the spot and in the locality, and if the Attorney-General or his deputy personally intervenes at all, it is at the request of the County Attorney, or for some other particular reason. And if this be so in the ordinary administration of justice, there is still greater reason why it should be so in the case of political offences or violations of the election laws. In these cases the usual procedure should be followed, without reference to the political head of a department of the Government happening to be in power, and whose motives might and certainly would be misconstrued, and whose action would certainly be characterized by one party or the other as partizan or partial, and in the interest of his own political party.

WEST ELGIN.

"Was the course taken by the Government the reasonable and natural course? The election in West Elgin, at which the irregularities which are complained of took place, was held in the early part of the year 1899. An election petition was filed and was pending, and it was reasonable, notwithstanding the rumors of irregularities having occurred, that the trial should be allowed to take place before any other action was taken, so that it might be seen what disclosures would come to light, and what light would be thrown on the charges. Besides, there had been prosecutions instituted against the only men who were or could be identified, and the County Attorney had been instructed to assist in the prosecution of these men.

A PRINCIPLE OF LAW.

"It is a well-known principle of law that there should not be two prosecutions for the same offence, and the objection to prosecutions from two different sources is even stronger. In the case of the prosecutions which had already been begun, if the department had assumed to interfere to the extent of taking any of these prosecutions out of the hands of the private prosecutors there certainly would have been an outcry raised that we were taking it out of their hands for the purpose of sheltering the offenders. The County Attorney was acting and was instructed to do so by the department. He was advised from time to time by the department, and there was nothing further for the department to do in

those matters. The ballots and papers had been destroyed, and could not be produced, rendering the prosecution difficult and embarrassing. The then Attorney-General, as all will remember, was in bad health. He was absent a great deal during the summer, and on his return after vacation he concluded to leave his successor to deal with the matter, it having been agreed that a commission should be appointed to inquire and report upon all these irregularities. The commissioners have reported, and notwithstanding the strictures of the leader of the Opposition and others, I think it must be admitted that the facts have been got at, and if they fail to justify the hon. gentleman's strong language of last session and of every public speech he has made during the past year, no doubt that seems to him a strong reason, a natural reason, why he should abuse the commissioners.

THE COMMISSION'S REPORT.

"In the first place, the commissioners tell us that, out of the thirty-eight polling divisions in that constituency, no irregularities occurred in thirty-two of the divisions. As to the remaining six divisions, there undoubtedly were irregularities, though the result does not seem to have been affected. In four polling divisions a system of personation was carried on in the matter of acting as deputy returning officers, which the election law does not appear to reach. Whatever may have been the motive which prompted these men to get themselves appointed deputy returning officers under assumed names, and doubtless in some cases, at least, the motive was a very improper one, they seem to have been closely watched by the Conservative scrutineers, and so closely watched that their intentions, whatever they may have been, were unavailing. Some of these scrutineers were from London and other places outside the constituency, and it is remarkable how positively they testify against the possibility of anything wrong having occurred. Now, no one for a moment can think of apologizing for or palliating the conduct of those men, who, by means of trickery or deception, obtained appointments as deputy returning officers. Their conduct was reprehensible and indefensible, but the definition of personation in the election law does not cover their cases." Mr. Gibson quoted from the election law and continued: "What is more, the criminal code does not appear to reach such cases. Personation with intent to obtain property, personation of owners of stock, and personations at examinations are provided for and appropriate terms of imprisonment fixed, but the acts of deception of which these West Elgin men were guilty do not come within any of these articles, and I am unable to find that they amount to criminal offences at common law.

QUESTION OF FORGERY.

"Then, too, if it should be said that in some of the cases the crime of forgery has been committed, it would seem, under the definition of forgery given in the Dominion code, far from clear that such of these men as had themselves actually appointed, though under assumed names, are guilty of forgery in signing such assumed names. At all events, forgery, being an offence in respect of which the Province has no legislative authority, cases of that nature could not be dealt with by courts of two Judges for trial of illegal acts under our election law. Amendments of the act have been submitted to the House this session which would bring within the definition of personation all such cases of deception and trickery as had been perpetrated in West Elgin. Prosecutions have taken place in some of the other constituencies, and it will not and cannot be said that there has been anything like partiality in connection with these matters.

DETAILS OF SOME CASES.

"In some cases the Judges have thought trials unnecessary or likely to prove abortive, and dispensed with them. In other cases, owing to new elections having taken place and further petitions being pending, or owing to appeals of cases that have already been tried not being disposed of, it was considered undesirable to proceed with prosecutions, and nothing has been done. In one case in a distant constituency in the Province a Crown lands agent was reported as being guilty of a corrupt act, consisting of furnishing liquor on polling day. The utmost penalty that could be imposed under the act was $10, but the disqualification which would also accompany that fine is a very serious matter. On being reported, the Government asked for the officer's resignation, which was immediately sent in, and no further salary paid. This, however, was followed by a petition signed by the whole community on both sides of politics, including the Conservative candidate, asking for the agent's reinstatement, and this case it was not considered necessary to go further. For the reasons stated some of the cases reported have not been proceeded with, and, as suggested by the leader of the Opposition, being ordinary cases of bribery do not involve the same important considerations that arise when the provisions of the law relating to the conduct of elections are set at defiance. These cases have now become stale. The election act has been amended in various ways; the penalties are made very severe, and prosecutions will hereafter take place automatically, as it were, at the election trial, or by direction of the Judges and without reference to any department of the Government, and that seems to have been the real intension of the former act, thought not clearly brought out.

PUNISHMENT OF OFFENDERS.

"Then, again, at a time when already conventions are being held for another approaching general election, and when perhaps a sufficient number of prosecutions have already taken place to serve as a salutary warning of what may be expected in future, it is a question whether any useful purpose will be served by going any further with these trials of bribery cases. Most of the Judges think that in view of the considerations just stated no good purpose will be served. The principal object of punishment of offenders is the prevention of future offences by examples which deter rather than that of vindictive or retributive justice. Many of those already punished have suffered keenly and severely for their folly. There has been offered the strongest possible warning to those who may take part in future elections, and as the result of the amendments of last year, introducing certain features of the English act, it will hereafter be extremely unsafe to pay money for a vote.

OPPOSITION CHARGES.

"The Opposition leader is not justified in making a statement to the country that the Government had decided not to do anything further in the West Elgin and North Waterloo cases. It was stated, in answer to his questions in the House, that the reports of the commissioners in the West Elgin case and of the trial Judges in the North Waterloo case had been submitted to the House since the opening of the present session, and that these were under consideration. Moreover, with regard to the North Waterloo case, in answer to the question of whether a commission was to be issued to enquire into the circumstances attending that election, the reply was given that whatever course the Government

might decide on in that case it was not intended to appoint a commission. These answers did not justify the Opposition leader's remarks or those of any other gentleman, that the Government intends to do nothing.

NORTH WATERLOO.

"The cases of Wildfong and Cummings, in the North Waterloo election, are outside the class of ordinary bribery cases, as to which admittedly a distinction should be made. Nothing is so important as strict regularity in the conduct of elections, and while bribery must, by every means possible, be restrained and punished, it is even more necessary that officials conducting elections should be free from even the suspicion of wrongdoing. Cummings is reported as having miscounted ballots. One would suppose that the scrutineers would have set right any mistake in that direction. A mistake may have been made inadvertently, and this has often occurred where no wrongful action was intended. It is altogether a question of deliberate intention. But miscounting of ballots does not appear to be specifically provided for by the act, nor does it appear to come within any of the general provisions of the act."

Mr. FOY: "The hon. gentleman will pardon me, but the report of the commissioners says that Cumming's fraudulently miscounted 21 ballots." (Opposition applause.)

Mr. GIBSON: "I do not say that he did not. I say that mistakes frequently occur in these things. Ballots may be inadvertently miscounted. The Judges report this case as fraudulently miscounting. Perhaps the hon. gentleman is in a position to say whether that makes any difference. I would like to know where he can put his finger on a clause of the election act that provides a penalty where there is fraudulent miscounting. I am unable to find any special provision in the election law which reaches it. There is that much to be said as to the difficulties which may be incurred when it becomes necessary to prosecute these men. (Government applause.)

WILDFONG'S CASE.

"Wildfong's case," Mr. Gibson continued, "is different. The defacing of ballots is expressly made a grave offence, but no direct evidence appears to have been given to incriminate Wildfong. A process of exclusion of others who denied having any knowledge of the alterations and defacement of the ballots seems to have led to the conclusion arrived at, that Wildfong, as the deputy returning officer, must have committed the offence. My view is that further proceedings should be instituted." In this connection Mr. Gibson pointed out that he has introduced, at this session, legislation bringing the procuring of appointments of deputy returning officers by fraud and wilful misconduct in counting ballots within the provisions of the Ontario Election Act.

DESTRUCTION OF BALLOTS.

He continued:—"As to the amendment now before the House censuring the Government for not prosecuting those who were concerned in the destruction of the ballots in the West Elgin case, no one who has read the report of the commissioners would seriously think that there was reasonable ground for adopting such a course. The three Judges, having taken all the evidence that could be found or that could possibly have any bearing in the matter, reported as follows:—'The commissioners can arrive at no other conclusion upon the

evidence of all parties engaged in the destruction of the ballots, etc., than that the said box, with its contents, was inadvertently taken with the other boxes containing the general election returns from the vault to the furnace and there burnt. The evidence satisfies us that the said box, with its contents, was not destroyed with design or deliberate purpose, but it indicates an absence of that care and caution in calling over, checking and scrutinizing the boxes and packages containing the ballots and other election papers which should be observed in transferring such important papers from the vault to the furnace for the purpose of the statute.' Practically the same conclusion had been arrived at on the investigation held by the Deputy Attorney-General immediately after it had been found that the West Elgin ballots had been destroyed along with the general election ballot papers, which were destroyed according to the provisions of the act, and legislation of last session will prevent such unfortunate mistakes occurring in the future.

COL. CLARKE WAS READY.

"Colonel Clarke, the Clerk of the House, had been requested to attend as a witness at one of the prosecutions and to explain what had occurred in this connection, and he would have attended but the case was not proceeded with. He attended at the election trial prepared to make a sworn statement of the facts, but was not called, the respondent having disclaimed the seat, and it was afterwards decided that a commission should be appointed to inquire into the irregularities, and we have the report of that commission.

MR. MACDIARMID'S CLAIM.

"The member for West Elgin has stated that he was sent to this House as a protest against the burning of ballots. There is little doubt but that his election was the result of the foolish wrongdoings connected with the West Elgin election case. The Liberal party deprecate and condemn the actions of the irresponsible parties which have given rise to all this trouble. Neither the Government, nor any of those who can fairly or reasonably be considered as acting on behalf of the Government, have been in any way implicated in these wrongdoings, and, on the whole, it must be admitted that the Liberal party, not only of West Elgin, but the Liberal party throughout the Province, have been most severely punished for the actions of the few irresponsible individuals immediately concerned in the irregularities which occurred. No one would dream of connecting Mr. Macnish with any knowledge of, much less participation in, any of these irregularities. As a matter of fact, he was easily the elected member of the constituency, but when he became aware of the irregularities which had been committed, honorable man as he was, he disclaimed the seat.

RECORD OF THE PARTY.

"The Liberal party in this Province has now been in power in this Province for about 30 years, and the record in connection with the conduct of elections is clean and above suspicion. I venture to say that the same cannot be said regarding elections conducted by the Conservative party while in power at Ottawa. Numerous instances of irregularities of the gravest character have taken place, and, what is more serious still, a general and widespread system of deliberate intention to defeat and thwart the will of the people prevailed for two or three elections before the defeat of the late Dominion Government."

The Attorney-General concluded by saying that he did not p[illegible] to go into a discussion of that at the present time. It has been dis[illegible] pretty fully. But the course of the leader of the Opposition in dealing w[illegible] the Provincial elections w[illegible] a fair comparison of a man straining at a gnat while swallowing a camel with any number of humps of very large dimensions. (Government applause.) The Liberal party wanted a full and fair expression of the popular will in the elections, and had no inclination to either obtain or retain power that was not the legitimate outcome of the open and honestly expressed preponderating desire of the people of this Province. (Loud and long-continued Government applause.)

J. G. PRITCHETT'S CASE.

In the Session of 1900, Mr. Whitney read in the Ontario Legislature an affidavit signed by one J. G. Pritchett of the City of London.

It appears that a warrant had been sworn out for the arrest of J. G. Pritchett for a violation of the Election Law in West Elgin. Being warned that he might be arrested at any time, Pritchett fled to the City of Detroit in order to evade arrest. While in the City of Detroit, according to his evidence before the Royal Commission, communication was opened between him and Mr. Sam. Barker, organizer for the Conservative party, and also Mr. Fleming, a barrister of the City of Windsor. As a result of this communication, Pritchett made an affidavit before William L. Carpenter, Judge of the Third Judicial Circuit, Michigan, containing a number of statements which have been since contradicted on oath :—

(1) Pritchett said that he saw Cornelius O'Gorman, Sullivan, Squire Hunt and John Lyle at the Dake House in the City of St. Thomas and had conversation with some of these gentlemen with regard to his acting as Deputy Returning Officer at Polling Division Number 6, Southwold.

In the evidence before the Royal Commission it was proven that these gentlemen had no communication whatever with John G. Pritchett. So the first statement in his affidavit was proven to be false.

(2) In applying to Sheriff Brown for the papers required by a Deputy Returning Officer, he gave his name as Marshall F. Johnson.

This statement was also admitted by Pritchett to be false.

(3) He stated that he "slipped," *i.e.*, counted 19 votes for Macnish that should have been counted for McDiarmid (when the ballots were being counted at the close of the polls) the Conservative candidate.

It was shewn at the trial that he could not have done this, as the scrutineers for both parties were present when the ballots were counted, and Mr. Luton, Conservative scrutineer, swore that he believed Pritchett could not have "slipped" the ballots without being caught, as Mr. Luton said Pritchett was very closely watched.

(4) He swore that William O'Gorman gave him $25 for acting as scrutineer at St. Thomas, and that John O'Gorman at London gave him $100. O'Gorman swore that this statement is false.

Pritchett was a fugitive from justice when he signed the affidavit, and he gave as his reason for making the affidavit that he wanted the warrant against him to be withdrawn in order that he might return to Canada, and the warrant was withdrawn.

When Mr. Whitney moved a vote of want of confidence in the Government on the 22nd day of March, 1900, he read the Pritchett affidavit as the reason why the Government should be defeated. An Opposition that depends for a case on such evidence is certainiy driven to the very last ditch, and Mr. Whitney's action in the matter is unworthy of the position he occupies as a member of the Conservative party. He must have known that Pritchett was a fugitive from justice. The affidavit itself declared that he had used a false name in order to get appointed Deputy Returning Officer. It is also stated that he had violated the Election Law by miscounting or "slipping" the ballots. All these facts are set forth on the face of the affidavit, so that at the time Mr. Whitney made his charge against the Government, he was using the testimony of a man who was a fugitive from justice, who had endeavored to pass himself off under an assumed name, and who had declared that he had violated the Election Law.

During the trial Pritchett was characterized by Judge Morgan as a self-convicted liar. Notwithstanding all this, Mr. Whitney holds the original affidavit of Pritchett in his possession, and declares it to be a precious document. One of the proudest moments of his life was when he used that document.

The question may be asked why is not Pritchett prosecuted for personation.

The answer to that is that as the law stood at the time he personated one Marshall B. Johnson, there was no provision in the law for punishing for the personation of a Deputy Returning Officer. An amendment to that has been made, however, since by the Attorney-General.

Then why should he not be prosecuted for forgery ?

The answer to that is, that under the criminal code the offence is not one that comes under the description of forgery.

Then why not prosecute him for perjury ?

The answer to that is, he made his declaration in the City of Detroit where he was beyond the reach of Canadian law.

What will be thought of the leader of a Party who would attempt to make political capital out of affidavits made by such men as J. G. Pritchett ?