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PROCEEDINGS

OF THE

SELECT STANDING COMMITTEE

ON

PRIVILEGES AND ELECTIONS

RELATIVE TO

THE ELECTION OF A CANDIDATE TO SERVE IN THE HOUSE OF
COMMONS FOR THE YUKON TERRITORY.



OTTAWA
J. DE LABROQUERIE TACHÉ
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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40743—1

ORDER OF REFERENCE.

HOUSE OF COMMONS,

OTTAWA, 22nd March, 1918.

Resolved, That the following members do compose the Select Standing Committee on Privileges and Elections:—

Messieurs: Armstrong (York), Blake, Boys, Buchanan, Bureau, Cannon, Carvell, Copp, Crothers, Davidson, Demers, Devlin, Doherty, Douglas (*Strathcona*), Fripp, Guthrie, Jacobs, Keefer, Lapointe (*Kamouraska*), Lemieux, McCoig, McIntosh, McKenzie, McMaster, Meighen, Mowat, Nickle, Porter, Reid (*Mackenzie*), Sifton, Tweedie, and Vien.—32.

Attest,

W. B. NORTHRUP,

Clerk of the House.

Ordered, That the Select Standing Committee on Privileges and Elections be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records.

Attest,

W. B. NORTHRUP,

Clerk of the House.

MONDAY, 15th April, 1918.

Ordered, That the Special Return of the General Returning Officer to the Clerk of the Crown in Chancery for Canada concerning the election of a candidate to serve in the House of Commons for the Yukon Territory be referred to the Select Standing Committee on Privileges and Elections with power and authority to consider the same and the several documents therein alluded to and to report their conclusion and determination thereon to this House.

Attest,

W. B. NORTHRUP,

Clerk of the House.

REPORTS OF THE COMMITTEE.

FIRST REPORT.

Mr. Guthrie from the Select Standing Committee on Privileges and Elections, presented the First Report of the said Committee, which is as follows:—

Your Committee recommend that they be given leave to sit while the House is in session.

On motion of Mr. Guthrie, the First Report of the Select Standing Committee on Privileges and Elections was concurred in.

SECOND REPORT.

Mr. Guthrie, from the Select Standing Committee on Privileges and Elections to which was referred the Special Return of the General Returning Officer to the Clerk of the Crown in Chancery for Canada, concerning the election of a candidate to serve in the House of Commons for the Yukon Territory, with power to consider the same and report their conclusion thereon, presented the following as their Second Report.

Your Committee have had under consideration the various matters referred to in their Order of Reference of April 15th last and have heard the arguments of both candidates thereon.

At the last meeting of your committee the following resolution was adopted, which they beg to submit as a recommendation, viz. :—

Resolved—That a stated case be prepared and submitted to the Supreme Court of Canada, or to any two judges of the Supreme Court of Ontario, for decision.

MINUTES OF PROCEEDINGS.

HOUSE OF COMMONS,

THURSDAY, 18th April, 1918.

The Committee met at eleven o'clock, a.m., Mr. Guthrie in the Chair.

The Chairman read the Order of Reference, referring the Special Return of the General Returning Officer to the Clerk of the Crown in Chancery for Canada concerning the election of a candidate to serve in the House of Commons for the Yukon Territory,—with power and authority to consider the same and the several documents therein alluded to, and to report their conclusion and determination thereon to the House.

The Chairman also read a letter dated 17th April, 1918, addressed to himself by the legal firm of Murphy, Fisher and Sherwood, of Ottawa, to the effect that Mr. F. T. Congdon, one of the candidates at the said election desired to attend the sittings of the Committee in person, and enclosing a copy of a telegram stating that he had left Dawson on the 15th inst. and would wire from White Horse.

Mr. F. D. Hogg, of the legal firm of Hogg & Hogg, Ottawa, appeared of Counsel for Mr. Alfred Thompson, one of the candidates at the said election.

Mr. Lemieux moved, seconded by Mr. Mowat,—

That the Committee adjourn till Tuesday, 3rd May next to enable Mr. Congdon to be present in person during the consideration of the case.

After discussion Mr. Tweedie moved that the Committee adjourn till Tuesday, 23rd inst., and that Counsel for Mr. Congdon be notified to attend for the purpose of informing the Committee as to the date upon which Mr. Congdon was made aware that this case would be referred to this Committee, and as to the probable date of Mr. Congdon's arrival in Ottawa.

And the question being put on the amendment, the Committee divided, as follows:
Yeas 13—Nays 7.

Whereupon, the Chairman declared the amendment carried.

The Committee adjourned until Tuesday, 23rd April, inst. at eleven o'clock, a.m.

H. GUTHRIE,
Chairman.

WALTER TODD,
Clerk of the Committee.

TUESDAY, 23rd April, 1918.

The Committee met at eleven o'clock, a.m., Mr. Guthrie in the Chair.

Messrs. Armstrong, Blake, Boys, Buchanan, Cannon, Crothers, Davidson, Demers, Devlin, Douglas (*Strathcona*), Fripp, Jacobs, Keefer, Lapointe (*Kamouraska*), McIntosh, McKenzie, McMaster, Meighen, Mowat, Nickle, Porter, Reid (*Mackenzie*), Sifton, Tweedie, Vien.—26.

The Minutes of the last meeting were read and confirmed.

The consideration of the Order of Reference regarding the Special Return of the General Returning Officer respecting the recent election held in the Yukon Territory was resumed.

On motion of Mr. Devlin, Mr. Alexander Smith, Barrister, was heard on behalf of Mr. Congdon.

Mr. Smith submitted a telegram received from Mr. Congdon last night, stating that he has arrived at Whitehorse, Y.T., on the 22nd instant, and would advise when the steamer sails for Vancouver.

Mr. Devlin moved:—That as Mr. Congdon could not leave Dawson before receiving the message of the 15th inst., that the matter had been referred to the Committee, and as has apparently used due diligence in trying to reach Ottawa, the Committee adjourn until 3rd May, to enable Mr. Congdon to be present and to be heard before the Committee in person.

Mr. Hogg, of Counsel for Mr. Alfred Thompson, objected.

After discussion, Mr. Tweedie moved in amendment that the Committee adjourn for one week, and that Counsel for Mr. Congdon be then required to produce satisfactory evidence that Mr. Congdon is proceeding on his way to Ottawa.

Mr. Devlin with leave of the Committee withdrew his motion, leaving Mr. Tweedie's amendment as the main motion.

Mr. Hogg, of Counsel for Mr. Alfred Thompson, made a statement as to what in his view is before the Committee for consideration.

Mr. Stanley M. Clark, of the legal firm of Murphy, Fisher and Sherwood, was questioned as to the capacity in which he represented Mr. Congdon before the Committee. In reply Mr. Clark stated that he was representing Mr. Congdon simply as Agent to protect his rights and that he had asked Mr. Smith to act with him this morning.

Mr. Tweedie asked leave to withdraw his amendment, now the main motion, which was granted.

Mr. Tweedie then moved that the Committee adjourn till eleven o'clock, a.m., on Thursday 2nd May, and that if at that time Mr. Congdon has not left the City of Vancouver for Ottawa, the Committee shall proceed to dispose of this case in his absence, and if on the other hand Mr. Congdon has left the City of Vancouver for Ottawa the Committee adjourn for a reasonable time to enable him to be present, which was agreed to, *nem con.*

The Committee then adjourned till Thursday, 2nd May, at eleven o'clock, a.m.

H. GUTHRIE,
Chairman.

WALTER TODD,
Clerk of the Committee.

THURSDAY, 2nd May, 1918,

The Committee met at eleven o'clock, a.m., Mr. Guthrie in the Chair.

PRESENT:—Messrs. Armstrong (*York*), Blake, Boys, Buchanan, Cannon, Copp, Davidson, Demers, Devlin, Douglas (*Strathcona*), Fripp, Jacobs, Lapointe (*Kamouraska*), Lemieux, McIntosh, McKenzie, McMaster, Mowat, Nickle, Porter, Reid (*MacKenzie*), Tweedie, Vien—(24).

The minutes of the last meeting were read and confirmed.

Mr. Tweedie moved that Mr. Congdon's representative be heard, which was agreed to.

Mr. Alex. Smith, representing Mr. Congdon, stated that he had received a telegram from Mr. Congdon dated 30th April, from Seattle, and subsequently another

from Vancouver, dated 1st May, that he was leaving that evening for Ottawa, and should arrive on Sunday (May 5th). Mr. Smith, however, stated that according to the railway time table Mr. Congdon could not arrive before Monday at 6.20 a.m.

Mr. Tweedie moved that the Committee adjourn till Tuesday next, 7th May, at 10.30 o'clock, a.m., and then proceed to the consideration of the matter referred to it, which was agreed to.

Mr. Nickle moved that the Committee ask leave to sit during the sittings of the House. Motion agreed to.

The Committee then adjourned till Tuesday next at 10.30 o'clock, a.m.

H. GUTHRIE,
Chairman.

WALTER TODD,
Clerk of the Committee.

TUESDAY, 7th May, 1918.

The Committee met at eleven o'clock, a.m., Mr. Guthrie in the Chair.

PRESENT:—Messrs. Blake, Buchanan, Bureau, Cannon, Copp, Crothers, Demers, Devlin, Doherty, Douglas (*Strathcona*), Fripp, Jacobs, Keefer, Lapointe (*Kamouraska*), Lemieux, McIntosh, McKenzie, McMaster, Meighen, Mowat, Nickle, Porter, Reid (*Mackenzie*), Sifton, Tweedie, Vien—(27).

The minutes of the previous meeting were read and confirmed.

The Order of Reference having been again read, Mr. Tweedie moved, That before proceeding to discuss the matters therein contained the Committee hear the candidates or their Counsel, which was agreed to.

Mr. Lemieux moved that Mr. Alfred Thompson be heard first. Mr. Tweedie moved, in amendment, that F. T. Congdon be heard first. And the question being put on the amendment the Committee divided as follows, viz.: Yeas 11, Nays 6.

The Chairman declared the amendment carried.

Mr. Congdon then addressed the Committee.

The question having arisen as to whether Mr. Congdon is entitled to go into election irregularities not to be found in the record referred to the Committee. The Chairman ruled that Mr. Congdon will have to confine his remarks to such matters as are contained in the Order of Reference.

Mr. Devlin having appealed from the Chairman's ruling, and the question being put that the ruling of the chair be sustained, the Committee divided as follows: Yeas 9—Nays 7. Ruling sustained.

Mr. Congdon proceeded with his address and having concluded, Mr. F. D. Hogg, of Counsel for Mr. Alfred Thompson, addressed the Committee.

Mr. McMaster moved, That the Committee do recommend that the Order of Reference be enlarged to permit of inquiry into the method of taking votes, etc., withdrawn.

Mr. McKenzie moved that a stated case be prepared and submitted to the Supreme Court of Canada or to any two Judges of the Supreme Court of Ontario for decision. And the question being put, the Committee divided as follows: Yeas, Messrs. Bureau, Cannon, Copp, Demers, Devlin, Douglas (*Strathcona*), Jacobs, Lapointe (*Kamouraska*), Lemieux, McKenzie, McMaster, Reid (*Mackenzie*) and Vien, 13—Nays Messrs. Blake, Buchanan, Crothers, Doherty, Fripp, Keefer, McIntosh, Meighen, Mowat, Porter, Sifton and Tweedie, 12.

The Chairman declared the motion carried.

The Committee then adjourned.

H. GUTHRIE,
Chairman.

WALTER TODD,
Clerk of the Committee.

FRIDAY, 10th May, 1918.

The Committee met at eleven o'clock a.m., Mr. Guthrie in the Chair.

PRESENT:—Messrs. Blake, Buchanan, Bureau, Crothers, Demers, Doherty, Douglas, (*Strathcona*), Jacobs Lapointe (*Kamouraska*), Lemieux, McIntosh, McKenzie, McMaster, Mowat, Tweedie, Vien, (16).

The Chairman submitted the following draft report which was ordered to be reported to the House as a recommendation, viz.

The Select Standing Committee on Privileges and Elections to which was referred the Special Return of the General Returning Officer to the Clerk of the Crown in Chancery for Canada, concerning the election of a candidate to serve in the House of Commons for the Yukon Territory, with power to consider the same and report their conclusion thereon, beg leave to present the following as their Second Report.

Your Committee have had under consideration the various matters referred to in their Order of Reference of the 15th April last and have heard the arguments of both candidates thereon.

At the last meeting of Your Committee the following resolution was adopted, which they beg to submit as a recommendation, viz.

Resolved,—That a stated case be prepared and submitted to the Supreme Court of Canada, or to any two Judges of the Supreme Court of Ontario, for decision.

The Committee then adjourned.

H. GUTHRIE,
Chairman.

WALTER TODD,
Clerk of the Committee.

PROCEEDINGS.

HOUSE OF COMMONS,

OTTAWA, Tuesday, April 23, 1918.

The Select Standing Committee on Privileges and Elections met at 11 o'clock, a.m., the Chairman, Hon. Mr. Guthrie presiding. The Committee proceeded to the consideration of the Special Return of the General Returning Officer to the Clerk of the Crown in Chancery for Canada concerning the election of a candidate to serve in the House of Commons for the Yukon Territory referred to it by Order of the House.

Mr. DEVLIN: I understand that a message has been received from Mr. Congdon and I move that Mr. Smith be heard on behalf of Mr. Congdon.

Motion carried.

Mr. ALEXANDER SMITH, Barrister: Mr. Chairman, and Gentlemen, last night a telegram was received from Mr. Congdon, dated at Whitehorse, which read as follows:

CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAM.

WHITEHORSE, Y.T., April 22, 1918.

MURPHY & SHERWOOD,
Ottawa, Ont.

Just arrived from Dawson. Uncertain when steamer sails, will advise you tomorrow.

FRED. L. CONGDON.

Mr. TWEEDIE: When did he leave?

Mr. SMITH: He left on the 15th. On the 15th of April the Report of the Clerk of the Crown in Chancery with reference to the Yukon election was referred by the House to the Privileges and Elections Committee and a message was sent to Mr. Congdon at Dawson on the same day from Ottawa, as follows:—

OTTAWA, April 15, 1918.

FRED. T. CONGDON, Esq., K.C., Barrister,
Dawson, Y.T.

Yukon case today referred to Privileges and Elections Committee. Please wire when you can be here.

(Sgd.) MURPHY, FISHER & SHERWOOD.

Before Mr. Congdon had received that message we had a wire from him, of the same date, as follows:—

NIGHT LETTERGRAM.

DAWSON, Y.T., April 15, 1918.

MURPHY, FISHER & SHERWOOD,
Barristers,
Ottawa, Ont.

Leaving immediately. Stop. Bad trail may occasion delay. Stop. Rules old Election Committees required notice to parties and opportunity to produce evidence. Stop. Reason for establishing court was difficulty of fairly deciding legal questions and questions of fact by party votes. Will wire from Whitehorse.

(Sgd.) FRED. T. CONGDON.

Subsequently a message was sent from Ottawa inquiring whether Mr. Congdon had received the message of that date and the answer came back as follows:—

SERVICE MESSAGE, CANADIAN PACIFIC RAILWAY COMPANY'S TELEGRAM.

Murphy's collect fifteenth delivered. Congdon left for Ottawa sixteenth Dawson, Y.T., April eighteenth, eighteen.

According to that message, Mr. Congdon had left some time on the 16th, and arrived at Whitehorse yesterday according to the telegram received and which I had already read to the Committee, so that he is on his way and will arrive here as soon as the transportation facilities will bring him. I am instructed that Mr. Congdon desires to be present when the case is taken up and asks that the Committee will postpone consideration until he arrives in order that he may have an opportunity of presenting his case personally.

Mr. TWEEDIE: How long will it take him to get here?

Mr. SMITH: It will take five days to get here from Vancouver, and, I presume it will take from three to four days to get from Whitehorse to Vancouver. Perhaps some one else who is present will be able to tell the Committee more accurately how long it will take him.

Mr. DEVLIN: I move that in view of the statement that has been made by Mr. Smith and in view of the fact that Mr. Congdon could not leave before he had received the message informing him of the appointment of this Committee, and as he has used due diligence in trying to get here, the Committee suspend further proceedings until the 3rd of May in order to give Mr. Congdon a chance to be here and be heard.

Mr. KEEFER: How would it be if his solicitor first tells the Committee what the grounds of complaint are?

Mr. DEVLIN: It was my understanding at the last meeting of the Committee that Mr. Congdon had instructed no attorney to appear and present his case, but that he desired to present the case himself.

On motion Mr. F. D. Hogg, Counsel for Dr. Alfred Thompson, was heard. Mr. Hogg said:

Mr. Chairman and Gentlemen, it was stated at the last meeting of the Committee, on Friday last, that Mr. Congdon has been represented in this matter ever since it was referred to Parliament by the Order in Council of the 26th of February last. Mr. Congdon's solicitors were present when the Military Votes in North America were about to be counted, and served a document objecting to the counting of those votes at that time; I think that was the same day as the Order in Council was passed; Mr. Congdon was communicated with at once, on that date that the Order in Council referred the whole matter to Parliament, and later on, as it appears from the report of the General Returning Officer. Mr. O'Connor the General Returning Officer wired him on the 7th of March that this matter would come before Parliament, so that he has had ample opportunity to appear. The telegram sent to Mr. Congdon on that date will be found on page 27 of the Special Report of the Clerk of the Crown in Chancery on this election.

Mr. NICKLE: What is the objection to delaying the matter until Mr. Congdon can appear personally.

Mr. HOGG: The objection is that by the time Mr. Congdon gets here, assuming that he gets a steamer at once, and we have learned that the steamer only leaves every ten days, he cannot be here for at least ten days; it takes four days from Whitehorse to Vancouver, and another six days to come across, and if there is that delay, the session of Parliament may perhaps be ended before he arrives here.

Mr. NICKLE: I do not think Parliament will be over until the 24th of May.

Mr. HOGG: It will be over before the end of the month.

Mr. NICKLE: I think that unless it can be shown that Mr. Congdon has not been trying to get here, we should adjourn and give him a chance to be present. I think, however, this matter can be cleared up this year.

Mr. TWEEDIE: I move in amendment to Mr. Devlin's motion, that the Committee adjourn for one week and that the representative of Mr. Congdon be then required to place before the Committee satisfactory evidence that Mr. Congdon is proceeding on his way to attend the meeting of this Committee.

Mr. DEVLIN: I withdraw my motion in order to allow the motion of Mr. Tweedie to stand as the main motion.

Mr. HOGG: Mr. Chairman, and Gentlemen of the Committee, perhaps I may make it clearer to the Committee, acting for Dr. Thompson, what in my view is before the Committee for consideration. There is no matter of fact before the Committee and upon which a vote would need to be taken. The facts are contained entirely in documents before the Committee. The matter is a pure question of law and the first point of law to be determined is as to the interpretation of the Military Voters Act which covers the voting of those persons qualified by the Act, that is the soldiers, within and without Canada. That is a matter for interpretation with respect to that Act as dealing with this question as follows: First, does this Act apply to the Yukon, and second, were the soldiers' votes taken with respect to that constituency at the proper and lawful time, and at the only time laid down by the Military Voters Act? If the Act applies to the Yukon and if the votes the ballots, were cast at the only time, and the proper time, set out in the Act for soldiers to vote, that is the question to be decided. If they were then these votes should be counted, and the seat allocated to Dr. Thompson, as he got the majority. The other point is as to whether Mr. Congdon's nomination paper complied with the Statutes? These are the two points at issue in this matter. These are the sole points; it is not a trial, I submit, it is not in the nature of a trial, but it is in the nature of the submission of a stated case and in such matters it is not necessary for the parties to be present if they are represented. There is a stated case laid before Parliament as to the interpretation of this Statute, and as to the legality of Mr. Congdon's nomination paper. That, in short, is the whole matter.

Mr. NICKLE: There is a question of the residence not being set out properly, and there are some authorities on that point that are exactly on all fours. Do you not think that both sides should be heard with regard to that?

Mr. HOGG: Certainly, but I submit that Mr. Congdon's representative is here this morning.

Mr. NICKLE: Who represents him?

Mr. HOGG: Mr. Smith.

Mr. NICKLE: He says he does not represent Mr. Congdon.

Mr. HOGG: Well, Mr. Clark is here, and he has been acting for Mr. Congdon.

Mr. McMASTER: Surely a party to the case has the right to be beside his counsel in order to instruct him.

Mr. KEEFER: Who represents Mr. Congdon in Ottawa?

Mr. HOGG: Messrs. Murphy, Fisher and Sherwood, of Ottawa, have been representing Mr. Congdon in this matter ever since the 26th of February.

Mr. BOYS: Who is Stanley M. Clark?

Mr. HOGG: He is a member of the firm of Murphy, Fisher and Sherwood, and I understand Mr. Smith is acting as counsel in this case.

Mr. TWEEDIE: Mr. Smith, who instructed you to come before this Committee this morning?

Mr. ALEX. SMITH: Mr. Clark, of Murphy, Fisher and Sherwood.

Mr. TWEEDIE: Have you any doubt in your mind that Messrs. Murphy, Fisher and Sherwood are acting for Mr. Congdon in this matter and that they gave you instructions to appear in this matter on Mr. Congdon's behalf?

Mr. SMITH: These telegrams that I have read this morning were addressed to Messrs. Murphy, Fisher and Sherwood.

Mr. TWEEDIE: And they gave you instructions to appear before this Committee this morning?

Mr. SMITH: Mr. Clark asked me to come before the Committee and present these messages here on Mr. Congdon's behalf.

Mr. TWEEDIE: Do you not think you are appearing here on behalf of Mr. Congdon?

Mr. SMITH: So far as I am concerned I have no instructions given me by Mr. Congdon.

Mr. DEVLIN: I want to ask Mr. Smith a question: Have you any instructions whatsoever from Mr. Congdon to act as his representative before this Committee?

Mr. SMITH: In order to remove any misunderstanding, I said when I was reading these letters, that I appeared on behalf of Mr. Congdon to ask for an adjournment of the case because he could not be here and that I was not further instructed. I stated that it was Mr. Congdon's desire to be here to present his own case; my instructions were to that effect, and I so stated to the Committee. My entire remarks were confined to that, I did not go into the case in any other way except to state Mr. Congdon's desire to be present himself.

Mr. DEVLIN: I want to ask you, Mr. Clark, if you have received any instructions from Mr. Congdon to appear before the Committee on his behalf?

Mr. CLARK: I am here, in a sense, representing him as agent.

Mr. DEVLIN: Without any instructions to be here for the purpose of arguing his case?

Mr. CLARK: Only the general instructions I received to act as agent for him.

Mr. BOYS: Were your general instructions widened up to appear here for him?

Mr. CLARK: Not to appear as counsel.

Mr. BOYS: In what capacity do you appear?

Mr. CLARK: Simply as agent representing Mr. Congdon in order to protect his rights, and I asked Mr. Smith to act with me this morning.

Mr. BOYS: Did you advise Mr. Congdon of the decision arrived at at the last meeting of the Committee?

Mr. CLARK: He had left the Yukon, we wired to White Horse and the reply received was read by Mr. Smith.

Mr. DOUGLAS: Can you tell the Committee when Mr. Congdon left Ottawa?

Mr. CLARK: He has not been here since last July; he was here last July.

Mr. NICKLE: Could you argue the case before the Committee?

Mr. CLARK: No, because I have received no instructions that would enable me to argue his case.

Mr. NICKLE: Could you not argue it from the record?

Mr. CLARK: I do not think I can; as I understand it Mr. Congdon contemplates raising other points than those that are in the record. Mr. Meighen has made the statement that he could not do so. That Order in Council that was passed has the effect of handing the whole matter into Parliament. If Mr. Congdon had wanted to protest his election he could not have done so because that Order in Council left it to Parliament. Therefore, is it not a fact that, if he wants to raise the question of protest now, when the matter is dealt with by the Committee, he will be able to do so?

Hon. Mr. MEIGHEN: Hardly, on this reference. Surely you do not want to suggest to the Committee that with a special definite, specific reference he could raise matters outside that reference; he might raise other questions, but he could only do so when those questions are covered by another order of reference. Each reference is definite and specific. Mr. Clark is here as Mr. Congdon's agent.

Mr. BOYS: As solicitor and agent.

Mr. CLARK: I admit that I am both a barrister and a solicitor.

Mr. BOYS: On page 22, of the Special Report, Mr. Clark signs as solicitor, "Stanley M. Clark, Barrister, Solicitor".

Mr. CLARK: I admit that I am a barrister and solicitor.

Mr. TWEEDIE: I will withdraw the motion I made and substitute the following: That this Committee adjourn until 11 o'clock on Thursday, May 2nd, and if at that time Mr. Congdon has not left the city of Vancouver for Ottawa, then this Committee should proceed to dispose of the case in his absence. If he has left then we will have a reasonable adjournment to allow him to get to the city of Ottawa.

Motion carried.

Committee adjourned.

THURSDAY, May 2, 1918.

The Select Standing Committee on Privileges and Elections, met at 11 o'clock, the Chairman, Hon. Hugh Guthrie, presiding.

The Committee proceeded to the further consideration of the Special Report of the Clerk of the Crown in Chancery in respect to the election of the Electoral District of Yukon Territory.

Mr. TWEEDIE: I move that we hear Mr. Congdon's representative.

Motion carried.

Mr. ALEX. SMITH: Mr. Chairman, and Gentlemen, immediately after the adjournment of the Committee last week, I caused messages to be sent to Mr. Congdon and sent a message myself to a mutual client at Vancouver, as I did not think the boat would call at Vancouver on the way down. This seems to be correct as I had a message from Mr. Congdon, dated April 30, from Seattle, stating that he would leave Vancouver on Wednesday. I wired him to confirm this from Vancouver, and I have received another message from him which reads, as follows:—

VANCOUVER, B.C., May 1, 1918.

SMITH & JOHNSTON,
Barristers, Trust Building,
Ottawa, Ont.

Am leaving this evening for Ottawa, should reach there Sunday.

FRED. T. CONGDON.

I inquired at the C.P.R. office and they say that, according to the schedule, he cannot reach here before 6.20 a.m. on Monday. I would suggest that the Committee take into consideration the advisability of having the next meeting on Wednesday morning, as there may be some delay in the train service.

Mr. TWEEDIE: I move that the Committee adjourn until Tuesday morning next at 10.30 o'clock, and then proceed to the consideration of the matter referred to.

Motion carried.

Mr. NICKLE: I move that this Committee ask leave to sit during the sitting of the House.

Motion carried.

Committee adjourned until 10.30 a.m., Tuesday, 7th May.

TUESDAY, May 7, 1918.

The Select Standing Committee on Privileges and Elections met at 11 o'clock, a.m., the Chairman, Hon. Hugh Guthrie, presiding.

The Order of Reference having been read it was moved by Mr. Tweedie, seconded by Mr. McMaster, that the Committee hear the candidates or their counsel before proceeding to discuss the matter referred to the Committee.

Mr. F. T. CONGDON appeared in person; Dr. Alfred Thompson was represented by Mr. F. T. Hogg, Barrister.

Hon. Mr. LEMIEUX moved that Dr. Thompson, or his counsel be heard first.

Mr. TWEEDIE moved, in amendment that Mr. Congdon be heard.

The question being put, the amendment was declared carried.

Mr. F. T. CONGDON: Mr. Chairman and Gentlemen, as you have stated, Mr. Chairman, the practice of hearing matters of this kind before the Privileges and Elections Committee has fallen into such disuse as to make it difficult at the present time to find anyone familiar with the practice governing such cases. I think this is the first case of the kind as far as I can learn, that has come before the Committee since 1873, the date of the passage of the Controverted Elections Act. There cannot be any doubt that even under the Controverted Elections Act of Canada, the House of Commons still has jurisdiction over Election matters of this kind; that was evidenced by the fact that even in the case of an Election petition before a court established under the Controverted Elections Act, the court might report to Parliament, which enables Parliament to go further than any decision which could possibly be given by the court and to come to a conclusion such as the court could not possibly arrive at. The commonwealth is interested in the service of every member of the Commons' House of Parliament, and the court and the council of State and Justice of which this Committee is the representative is governed by rules of state and law peculiar and more high and more politic than those which govern the court in cases of any matter between party and party. For this reason it has always been the practice in regard to matters of this kind not to be scared away by technicalities, not to be hampered by rules which might be binding in courts of Justice, but to go straight to the heart of the matter, and determine what is just in regard to the matter in dispute. The objection which I make to the Votes cast by the soldiers' being counted is familiar to you, Mr. Chairman and I have no doubt to every member of the Committee, namely that these votes were taken before the nomination of any candidate for the Yukon Territory. In addition to that there are many objections which it would be unnecessary to inquire into were the decision on the objection first raised in one direction, but which I submit to you ought to be inquired into if the decision went a different way. There are a great many complaints and accusations which I would like the opportunity to make in respect to

the mode in which the Election was conducted in England and in France. Men voted who had no right to vote. There was a large class of receptacle which which has been opened, in which the votes which had not perhaps been properly taken were placed and which as I am instructed, through an earlier decision of the returning officer set them aside, were for some reason, later admitted, the first decision having been overruled. These receptacles were open, were available for two or three weeks for any one, and the votes contained in them should not have been counted.

Mr. TWEEDIE: One question which came up the other day was whether or not we are to go beyond the record, or whether we are to confine ourselves to the matter referred to us.

The CHAIRMAN: We must confine ourselves to the record.

Mr. HOGG: The discussion is outside the record altogether. The order of reference which is to be taken up by this committee is the disposition of the soldiers' votes, whether they should be counted for Dr. Thompson or for Mr. Congdon. That is the votes actually cast; nothing as to how they have been cast or anything else outside the record which is not before the committee. I submit that all that is before the committee is the disposition of those votes which have been cast, whether they go to Dr. Thompson or to Mr. Congdon.

Mr. CONGDON: Do I understand my learned friend to say that the Order in Council was limited?

The CHAIRMAN: The Order in Council of 26th February, 1918, is the one you refer to?

Mr. CONGDON: I submit that the Order in Council cannot limit the deliberations of this committee which is a committee of the High Court of Parliament, and cannot be limited by any such order, and that such order in Council was never intended to limit it in the way suggested. Parliament could sweep aside anything it deemed necessary to set aside an order to determine the truth and the justice of the case, and who shall be the representative of the constituency in question here.

The CHAIRMAN: The order of reference by the House "That the special return of the General Returning Officer to the Clerk of the Crown in Chancery for Canada concerning the election of a candidate to serve in the House of Commons for the Yukon Territory, be referred to the Select Standing Committee on Privileges and Elections with power and authority to consider the same and the several documents therein alluded and to report their conclusion and their determination thereon to this House." That is the limit of our powers.

Mr. CONGDON: Do I understand that this committee has no power to call witnesses, to bring before the committee the original records regarding the election, but is bound down by the return of the General Returning Officer which, on its face, contains statements which are in error?

The CHAIRMAN: The original records are here before the committee, but I doubt very much whether we have any power to go into the question whether the receptacles were improperly opened, or whether they were illegally or improperly allowed to remain open. That is not covered by the reference.

Mr. CONGDON: I submit to the committee the points—

The CHAIRMAN: I suppose there is no objection to your submitting points to the committee.

Mr. CONGDON: I would like to put in specific shape the allegations in regard to these matters. The committee will understand at what disadvantage one in the Yukon was in an election of this kind, the general returning officer being at Ottawa, 4,500 miles from the constituency, and part of the election in question being 7,000 miles away. It was practically impossible to get any particulars connected with the election until I arrived at the city of Ottawa yesterday. I would like an opportunity to put

in formal shape the allegations which I have to make in regard to the improprieties and illegalities at that election. One hundred and eight votes which were originally rejected were afterwards counted under duress, that the agent of the party there was put in jail for distributing literature in regard to the election; I wish to show also a number of other matters, that ballots were changed, that over 100 of the voters did not answer questions 6, 7, and 8, that voters were compelled to vote openly in the presence of officers, that men were told that conscription at that time was the only issue and that there would be a later election, after the nomination of candidates in the Yukon Territory, and further that illegal posters were placed in the booths. I submit these are matters that this committee should report to the House; it should give me an opportunity of putting in formal shape charges of this kind and that it should report to the House these charges in order that the House may give this committee undoubted jurisdiction to examine this question in all its details. This is not a mere matter of whether Dr. Thompson or I represent the Yukon but it is an important matter that Parliament should do justice in this matter and see that the election was properly and honestly conducted. For my part I do not care a button whether I am elected or not, if the decision is given on the merits. If that decision is that Dr. Thompson is declared elected, he is welcome to the seat. But I submit that these matters should be gone into, and that the matter is not properly gone into and a proper decision cannot be arrived at until after all these details in connection with the election have been inquired into. I ask only that we be allowed to place before the committee formal charges relating to these matters which I have indicated and that the committee inquire into the same. I have already said that it becomes unnecessary to make these charges if all these votes are rejected, but if these votes that were passed before the candidates were nominated are held to be good, I submit that I should be allowed to show that they were not properly cast, and that that question should be decided altogether apart from the legal question, which is the one to be specially dealt with first.

Mr. HOGG: I would object to Mr. Congdon's going into this matter. As you, Mr. Chairman, have said, this committee is confined to matters placed before it by the Return, and the documents which are before the committee are contained in the report of the general returning officer. I submit that this committee is confined to the discussion and determination of this question upon these documents, and upon this Return only.

Mr. BUREAU: Can you tell me by whom the jurisdiction of this committee can be limited, only to an inquiry of such matters as those specially submitted to it.

The CHAIRMAN: The order of the House which I have just read (Order of Reference again read by chairman).

Mr. FRIPP: In order to widen this inquiry as proposed by Mr. Congdon we would have to go back to the House for further instructions. Our instructions from the House under the Order of Reference are to deal with that specific measure.

Debate followed.

The CHAIRMAN: The discussion is, for the moment, on the point of order, as to whether Mr. Congdon is entitled to go into election irregularities not to be found on the record.

Mr. HOGG: If Mr. Congdon goes into these matters, it places Dr. Thompson at a great disadvantage. He has been acting on the assumption that this committee would take up matters laid before it and he has had no opportunity, therefore, to gather evidence which might controvert anything that Mr. Congdon might say outside the Order of Reference.

Debate followed.

The CHAIRMAN: If I have to decide the question of order I certainly feel bound to say that the Committee is bound absolutely by the Order of Reference, that it would

not be proper for us to go into any question involving matters of election irregularities. The report is before us and the order is before us and we are confined to both of them. Mr. Congdon will have to confine his remarks to such matters as are contained in the Order of Reference.

Mr. DEVLIN: I move, with all due respect to your ruling, that Mr. Congdon continue to be heard upon all matters respecting the Yukon election and that the Committee should afterwards, after hearing the parties, decide whether the Committee should decide upon the questions brought before it or not.

The CHAIRMAN: Do you appeal from my ruling?

Mr. DEVLIN: No.

The CHAIRMAN: Then I must rule the motion out of order. My ruling is that we cannot discuss these matters, and under my ruling the motion is out of order.

Mr. DEVLIN: I did not understand that your ruling was that Mr. Congdon should not be heard. A motion has already been adopted by this Committee that Mr. Congdon be heard, and immediately Mr. Congdon began to speak upon the Yukon election, he was stopped upon a point of order. I understood to say, giving an offhanded decision, that you thought the point of order was well taken. I would not like to appeal from your ruling, Mr. Chairman, but I feel forced, if you say my motion is out of order, to say that the ruling be not adopted by this Committee upon that particular point.

The CHAIRMAN: The question before the Committee is "shall the ruling of the Chair be sustained."

Ruling sustained by a vote of nine to seven.

Mr. CONGDON: Mr. Chairman, I do not desire to take up the time of the Committee, but at the very outset, I wish to note some palpable errors in the report of the returning officer. The second paragraph of the report states (page 4):—

"That on the 10th day of December, 1917, pursuant in all respects to section 94 of the said Act, Alfred Thompson, of the Province of Ontario, physician, was nominated as a candidate at the election directed by the said writ to be held, and his nomination paper is hereunto annexed."

That is clearly an error, because if the nomination were under section 94 Dr. Thompson would require 25 names on his nomination paper and the paper put in shows only 2 names. It is a palpable error in the report, it should be under section 40, instead of section 94. Then,—

"On the 29th day of December, 1917, Frederick Tennyson Congdon, of 219 Second Ave., Dawson, Yukon Territory (no addition or description being given) was nominated as a candidate at said election, and his nomination papers likewise annexed."

If the General Returning Officer would look at the nomination paper he would see that the addition and description "219 Second Ave., Dawson, Yukon Territory," is given. The Standard Dictionary on this subject I think settles the question absolutely. Its definition of addition is in law, a title or mark of designation attached to a man's name to show his business, office or place of residence, etc," therefore I cannot understand why the General Returning Officer should have raised any question in regard to the character of the nomination in respect of any insufficiency in the description of business in the nomination paper and further I submit that any objection arising from the omission is absolutely closed off unless that objection is taken immediately after the nomination paper is put in. Unless objection is taken immediately it is of no avail. McPherson, in his election law, page 237, expressly states that any objection on the ground of insufficiency of description must be made or taken immediately after the delivery of the nomination paper. From the very first it was conceded that the nomination papers of both candidates were absolutely correct, there was no objection taken at the time to mine or to that of Dr. Thompson.

Hon. Mr. LEMIEUX: Do you take exception to that objection by the returning officer?

Mr. CONGDON: Certainly. It is covered by the general election rule that any objection to the candidate in order to be of avail and benefit the one who claims its benefit must be given to the electors so that they will know they are throwing away their votes if they vote for the person against whom the objection is made. Even should the objection be valid, it would only void the election as a whole, and could not secure the election of Dr. Thompson, because he did not give any notice.

Mr. TWEDDIE: Your contention is that both you and Dr. Thompson were legally nominated?

Mr. CONGDON: There was no objection until the returning officer raised it, and we both accepted the nominations as properly made.

Mr. MOWAT: Have you considered the Two Mountains case, 47 Supreme Court?

Mr. CONGDON: Yes; I want to point out the difference between section 40 and section 94. Section 94 does require the name, residence, and addition or description of each person proposed, in such manner as sufficiently to identify such candidate, and section 40 does not require it except by reference to the schedule. You will notice that section 40, under which the nominations were made in the Yukon Territory, has no such requirements as section 94.

The CHAIRMAN: Why was it not in section 40, does it state there?

Mr. CONGDON: It is only special relating to the Yukon (reads):

"At any time after the publication of the aforesaid notice and before two of the clock in the afternoon of the day fixed for the nomination—

"(a) in the provinces of Saskatchewan and Alberta, any four or more electors; and

"(b) in the Yukon Territory, any fifteen or more electors may nominate a candidate by affirming to and signing, before a justice of the peace or police magistrate, or before the returning officer, and causing to be filed with the returning officer, a nomination paper in form H."

The CHAIRMAN: But the residence and addition or description is omitted from section 40.

Mr. CONGDON: It is not there at all except—I want to be perfectly frank about this—except in so far as form H would show. Now the form it has reference to is the same as under section 94, showing a distinction as between section 94 and section 40, and the rule is that the distinction must mean something, and it would be as I have stated.

The CHAIRMAN: Your contention is that both parties were duly and properly nominated?

Mr. CONGDON: Yes. I will not labour this point very much, for the reason I think that is conclusive. There is a clear clerical error in the third line of paragraph 3. It is clearly the 19th day of November, 1917, and not the 19th day of December, 1917, which is intended. The report reads:—

3. The day fixed pursuant to section 89 to part 3 of said Act as amended by section 7 of part 4 of said Act for the nomination of candidates in all electoral districts except the Yukon Territory was the 19th day of December, 1917."

Mr. LAPOINTE: I notice here that the nomination paper of Dr. Thompson contains no postal address, and there is a new statute which requires it now.

Mr. CONGDON: That is a point I do not care to raise because I think the committee will be inclined to agree with me that we took it for granted at the time that

it was correct. Then there is the very peculiar statement in paragraph 3 of the Returning Officer's report.

"The day for holding the poll within Canada under part 4, of said Act for the election of a member to represent the Yukon Territory is not specifically denominated by the said Act but I have assumed it to have been the intention of Parliament that in the case of a General Election, in which case only does part 4 of the said Act at all apply, (see section 1) polling ought to, as it should, proceed for all electoral districts, including the Yukon Territory, on one and the same day."

Well now as I understand the case the Returning Officer has not the right to assume what Parliament meant. What Parliament means it expresses in the language of the Statute, and the language of the Statute is explicit, that the election in the Yukon Territory should be 28 days after the nomination of candidates in that Territory. Section 58 of the Act fixes the day for holding the election. I would like to quote the committee section 36 which relates to the nomination of candidates in the Yukon. Under section 36 the day fixed for the nomination was the 31st day of December, 1917, and under section 58, the 28th January, 1918, became the day of the election. Section 58 reads:

"In the Yukon Territory the polls shall be held on the 28th day next after the expiration of the day fixed of the nomination of the candidates that is on the same or corresponding day of the week as that on which the nomination has taken place, or, if such 28th day is a statutory holiday, then on the next following day not being a Sunday or statutory holiday."

The CHAIRMAN: When was the poll held?

Mr. CONGDON: On the 28th January.

The CHAIRMAN: Then your contention is that it should have been 28 days after the general nomination.

Mr. CONGDON: The nomination in the Yukon Territory was the 31st December, the election was the 28th January, and my contention is that no votes should be taken in that territory except between the 31st December and the 28th January.

The CHAIRMAN: What bearing has the Military Voters Act on that?

Mr. CONGDON: I shall come to that later, I just want to deal with this at present. The only day mentioned for the election in the Yukon Territory is the 28th day after the nomination. It is clearly that for the purposes of the Act the 31st December was the nomination day in the Yukon Territory, and the 28th January was the election day.

Mr. KEEFER: What day was fixed for the nomination?

Mr. CONGDON: Section 36 provides for that.

The CHAIRMAN: "The Governor in Council shall fix the place and the day for the nomination of candidates at each election."

That is in the Yukon Territory, "and the day so fixed shall be specified in the writ of election for the electoral district to which such day applies."

Mr. CONGDON: And it was so shown on the writ.

Mr. KEEFER: It was rightly held as far as the Yukon Territory was concerned.

Mr. CONGDON: Yes.

Mr. KEEFER: And the question now is with regard to the soldiers' vote.

Mr. CONGDON: Yes the soldiers' vote was taken before the 17th of December, that is before nomination day in the Yukon Territory.

Mr. KEEFER: Then it has narrowed down to this that the nomination being regular and the election in the Yukon Territory being regular, it is all a question of the soldiers' vote.

Mr. CONGDON: So far as this report is concerned; I think the question is purely a question of law as to whether under this Act the votes of soldiers taken before the nomination in the Yukon Territory, should be counted for any candidate.

Mr. JACOBS: How did the soldiers at the front know who were the candidates if they were not nominated until ten or twelve days after the vote was taken?

Mr. CONGDON: That is one of the things I wanted to call attention to, if I am not out of order. I want to point out that the notices over there relating to the lists of candidates stated with relation to the candidates for the Yukon "Yukon deferred." I am referring to the notice posted under the provisions of the Act.

The CHAIRMAN: You are not ruled out from discussing anything in the report.

Mr. CONGDON: This is not in the report.

The CHAIRMAN: This is only a question of election irregularities.

Mr. CONGDON: I can only prove that by going into the question of the manner in which the vote was taken. I am making the assertion, I am so instructed, I am not speaking from personal knowledge, that the lists furnished under section 6 of part 4 was a list of candidates of the various constituencies throughout Canada and that when it came to the Yukon the only words it contained regarding the Yukon were "Yukon deferred." I do not want to be held as doing anything more than repeating what I have been informed; I cannot have it on my personal knowledge.

Mr. MCKENZIE: Can that report not be produced before the committee?

The CHAIRMAN: I do not know to what report you are referring.

Mr. MCKENZIE: The report posted upon which it was stated that the Yukon election was deferred.

The CHAIRMAN: That is not in any way referred to in the report before us. It certainly could be produced.

Mr. CONGDON: It was posted up in England, at Epsom, I am told, it is the official notice under section 6 of part 4.

The CHAIRMAN: What does it say?

Mr. CONGDON: The last paragraph in page 108 says:

"Presiding officers shall cause placards containing this information to be posted upon the bulletin board in each battalion in all camps where same shall be possible, and shall use all other reasonably available means to bring such information to the knowledge of the military electors."

Meaning the information in respect to the various candidates nominated throughout Canada.

Mr. DEVLIN: Would you mind reading section 7 of part 4 and subsection 1 of section 8 and state the interpretation you place on the section and subsection.

Mr. CONGDON: Just one moment if you will allow me to finish.

Then in paragraph 4 of this report:—

"Polling under parts 3 and 4 of the said Act proceeded within Canada for all electoral districts, including the Yukon Territory, on the 17th day of December, 1917, and, under part 4, of section 16 of said Act polling proceeded within Canada on various days from the 23rd November, 1917 to the 17th December, inclusive. Polling under part 4 of said Act proceeded without Canada for all electoral districts, including the Yukon Territory from the 1st to the 17th day of December, inclusively."

Then paragraph 5 of the report says:—

“On the 5th day of January, 1918, the Clerk of the Crown in Chancery for Canada published in the *Canada Gazette* pursuant to section 12, subsection 5 of part 4 of said Act official recognition of the candidate Alfred Thompson by the Government party, and of the candidate Frederick Tennyson Congdon, by the Opposition party and previously notified by cable, the Assistant Clerk of the Crown in Chancery, London, England, and myself as General Returning Officer for Canada, of such official recognition.”

I want to call attention to the word “previously.” It could only have been between the 29th day of December when I was nominated and the 5th day of January. I was the last one nominated. Dr. Thompson was nominated on the 10th of December, so that the information could be wired over there only after the 29th of December, the day of my nomination, and it could only have been wired after the votes had been taken. One of my arguments is that neither the Honourable Prime Minister nor the Honourable Leader of the Opposition could assign votes that had already been taken; they could only assign votes under this Act which were to be taken later.

Under paragraph 7 of the report it will be noticed that the contentions of said candidate were notified to the Governor General in Council and that on the 26th February, 1918, an Order in Council was passed, and I wish in that connection to point out that the assumption by the Governor General in Council of the exercise of the right under the Order in Council of the 28th February practically prevented the presentation of an election petition. I think the members of this Committee and of the House will in every possible way help out an inquiry into this case when they recognize the effect of that Order in Council. There are no other means known to the law by which an inquiry can be held; the Controverted Elections Act is absolutely useless, because before the return is made the date for the presentation of a petition in the case has expired. It is a well-known principle of the election law that you cannot present a petition against another person unless that person has been returned as member. I could not have presented a petition against Dr. Thompson, nor could I have presented a petition against the return or no return that would not have been set aside immediately it was attacked, simply because neither he nor I were returned, and it is only against a man who has been returned. The only petition that could be presented against the returning officer was one attacking a return which he had not made, and I could not compel him to make the return, because he could have made the reasonable answer: “I am not yet in the position to make a return.” I am merely presenting this point of view in order that the Committee may make all reasonable efforts to have an inquiry into this election, because before a petition could be presented protesting the election the opportunity has been absolutely lost.

Now, turning to part 4 of the Act, section 6, it will be noted that the first step taken under section 6 is a step to be taken “at the expiration of the time for nominating candidates.” Now let us read the section as applied to the Yukon Territory, and before doing that I want to point out this: suppose nothing is said here about when the poll should be taken, would any one doubt that a poll was absolutely invalid unless it had been taken on the election day. If in any constituency in Canada on the 17th of December there had been presented to the returning officer a box containing ballots which had been taken at the beginning of the month, was there a returning officer in Canada who would not have said: “The ballots cannot be counted, because they were not taken under the provisions of the election law.” It is stronger still when, in addition to that, you have the perfect prohibition of the Act against taking the election before a certain time. Had the Act been silent as to when the vote should be taken I think there would be no question that it must have been taken on the election day, but the Act is not silent on that, it contains an expressed prohibition against taking that vote before a certain date. I would ask the committee to read

section 6, as it applies to the Yukon Territory, "at the expiration of the time for nominating candidates for the Yukon Territory"—I am reading in the words "for the Yukon Territory"—"the returning officer for the Yukon Territory shall inform the Clerk of the Crown in Chancery by telegraph, or other expeditious means, of the names, addresses and descriptions of the several candidates who shall have been nominated. Now, could any information be given by the returning officer of the Yukon Territory before the close of the nomination under the Act, I say he could not give any. Then the latter part of the section provides for the publication of these notices on the various bulletin boards of the battalions that have a right to know. Now, that clearly contemplates that nothing is to be done with regard to the taking of the soldiers' votes, that no steps be taken till the returning officer for the constituency to which those votes relate has informed the Clerk of the Crown in Chancery of the candidates nominated in that constituency. Then section 7 is "notwithstanding sections 89 and 90 of part 3, all nominations of candidates for all electoral districts, except the Yukon Territory—"

The CHAIRMAN: That does not apply to the Yukon.

Mr. CONGDON: No, the gentleman called my attention to it, but it does not apply to the Yukon. Section 8, subsection (i) says that polls shall be held in such camps or other places in Canada or elsewhere, as shall be assigned to the charge of presiding officers for the purposes of this part. Those held without Canada shall be maintained open during such sufficient number of days and during such hours as military exigencies will permit, but so that no polling shall commence before the day following that of the nomination of candidates nor continue after 8 o'clock of the evening of the day for holding the poll within Canada." Now the contention is made that you cannot read this Act specifically with regard to the Yukon Territory or to any election later than the general election. I say that the only way that this can be read intelligently is that no poll shall commence, no poll relating to any constituency shall commence before the day following that of the nomination of candidates, nor can it continue after 8 o'clock in the evening of the day for holding the poll in that constituency within Canada. It seems to me that it is capable of no other interpretation than that because I need not impress upon the committee the absurdity of holding an election at the time the candidates are not known and the unfairness of doing that is shocking to any one who ever had anything to do with an election. Subsection 3 of the same section 8, says:—

"In Canada, and, where conditions make it reasonably possible, without Canada, the deputy presiding officer shall give public notice of the time and place of an intended poll, and, in cases of polls to be held without Canada, a special notice to any person whose appointment as a scrutineer or deputy scrutineer has been communicated to him, with a request that he so notify."

A further absurd part of the contention is that not only could the votes not be taken before the nomination of the candidates in the Yukon, but they could not be taken afterwards, because if the poll began on the 19th November it could not have been continued beyond the 17th December, so that the whole poll must be in before the nomination took place in the Yukon Territory. But I rely upon the plain common-sense view that when the Act talks about the returning officer, it is talking about a returning officer for a particular constituency, and it is not talking about the nomination of candidates elsewhere, and the only sane and reasonable way in which to read this Act is that the polls for the Yukon cannot commence until the 1st January under subsection 8, and must conclude at 8 o'clock of the evening of the 28th January, the day on which the poll was taken in the Yukon Territory.

Mr. JACOBS: What would happen if this vote had been given for the Government candidate before the day of nomination, or on the day of nomination, and the Government candidate had afterwards died, would the returning officer declare him elected?

The CHAIRMAN: The election is voided when the candidate dies after the nomination and before polling.

Mr. CONGDON: According to the argument here that does not apply.

Mr. DEVLIN: Would it not appear to you if your contention is correct, that in the case Mr. Jacobs suggests, he would find himself in exactly the same position that you are arguing, that that election would not really be an election as far as the soldiers' vote is concerned.

Mr. CONGDON: That goes without saying. I want to call attention to one other subsection of section 8, that is subsection 5:—

“In any case where, for any reason, unless the vote of a military elector is immediately taken it is likely that he may not subsequently be able to vote, the deputy presiding officer may take such vote otherwise than at a formally held poll, but such vote shall be so taken in the presence of the deputy scrutineers, or failing either or both, of a military elector, or two military electors, who shall, together with the deputy presiding officer, sign upon the envelope in which the ballot is inserted a certificate that the vote was taken under this subsection, and the reasons which made it necessary.”

I only refer to that subsection for this reason that a casual reading of it might interpret it as an exception to subsection 1, that it is an exception to the provision for taking the poll, between the day after the nomination and the evening of election day, but what I want to point out is that I think it is not that, but it is merely an exception permitting the taking of the vote without the formalities provided for in subsections 3 and 4. That is that a case might arise, and I say with regard to the Yukon that it must have arisen between the 31st day of December and the evening of the 28th day of January—a case might have arisen where a battalion of men were leaving Canada, and unless their votes were taken before leaving, they could not be taken at all; then, in such case their votes could be taken without waiting the formality for notifying any officials that should be notified under subsection 3. If it were an exception it would be a much stronger argument in my favour, because if it were necessary to treat it as an exception permitting the taking of a vote before the nomination, without the formalities for which the section specially provides, it would show that the general idea was that it should not be so taken. But I think any gentleman carefully reading that section will see that this is not an exception permitting the votes to be taken before nomination day, but merely an exception permitting the votes to be taken without the ordinary formalities provided for in the earlier sections. No votes apparently were taken under it in this case, because no event so far as the report shows has arisen such as would require the operation of subsection 5. There is just one other section to which I want to draw the attention of the Committee, and that is section 16 which is as follows:—

“In case any military elector shall, at the time of or subsequent to the issue of the writs for a general election, be under orders to leave Canada prior to the day for holding the polls in Canada, the Governor General in Council may make provision for the polling of their votes in the manner by these Parts provided, on a day prior to their departure, and may modify the provisions of this part relating to time or procedure in so far as may be necessary to render such polling possible.”

That section only relates to votes in Canada and I say that the intent there is that the votes shall be taken before the proper time at which they could have been taken under section 8 and I submit that the fact that it was necessary to have an Order in Council under section 16, shows that it could not have been taken except under the provision of such an Order in Council. I would once more submit to the Committee this, that if in the opinion of the Committee these votes are illegal, that

makes it unnecessary for further investigation; but I do most earnestly submit to the Committee that if in their opinion these votes ought to have been counted so far as this object is concerned, it should permit that investigation which could have been made but for the delay in transmitting the return. There is no return to-day, even up till to-day one could not present a petition, and one cannot now present a petition. I ask the opportunity to file before the Committee definite allegations in respect to the mode in which the election was held, and I ask the Committee to report that further investigation be held into the mode of taking the election and of the allegations of irregularities in regard to it.

Mr. F. D. HOGG: The question to be determined, or probably the main question to be determined is as to the disposition of the votes taken by those entitled to take them under the Military Voters' Act which is part 4 of the Elections Act. The disposition of the votes is to be determined by this Committee. Now these votes of soldiers, or military electors, are all taken by virtue of the Military Voters' Act. I submit on behalf of Dr. Thompson that these votes were taken at the only time, and within the only period laid down by the Military Voters' Act for the taking of those votes, and that was the period generally applicable to the whole of Canada, that the Yukon election is not excepted from that period, and that period ended on the 17th December. The question as it presents itself to me is: what is the time or period within the Act for taking the soldiers' votes? Were these votes taken during that period, and was that the only time set out in the Act for taking the soldiers' votes? If these votes were taken at the only time prescribed by the Military Voters' Act, and if there be no other time set out in that Act for the taking of these votes, then they were taken properly, at the only time fixed for the taking of such votes, and those given for him should therefore be allotted to Dr. Thompson, and those given to Mr. Congdon should be allotted to him. Now, it will be seen by section 1 of the Military Voters' Act that this part of the Act shall apply only to a general election held during the present war or after the conclusion of peace, but before demobilization. The election in the Yukon was a postponement of the general election, but it was part and parcel of the general election, it was not a by-election, or a special election, it was one of the general elections, it was an election in one of the constituencies which was concerned in the general election and therefore the Military Voters' Act applied to that election. Now turning to sections 7 and 8 of the Military Voters' Act in order to determine what is the intention of the Act as to the time for taking the soldiers' votes it will be noticed that section 7 states that "notwithstanding sections 89 and 90 of part 3, all nominations of candidates for all electoral districts except the Yukon Territory shall be fixed for and made on one and the same day, and notwithstanding section 131 of the said part the day for holding the poll within Canada, whether under this part or otherwise, in or for all electoral districts, shall be the 28th day, after that fixed for the nomination of candidates." Now I submit that section is fixing a general day for the taking of the soldiers' vote in every constituency in Canada. You will notice that sections 89 and 90 of Part 3 are the sections which fix the date for the nomination for the constituencies in Canada except the Yukon, and section 131 fixes the date for the polling within Canada except the Yukon.

The CHAIRMAN: It does not say in section 131 "except in the Yukon," does it?

Mr. HOGG: 131 is fixing the date for general polling in Canada, the constituency of Yukon has a date of its own; with respect to nomination day and polling, that is fixed by section 36 which fixes the day for nomination in the Yukon, and section 58 fixes the day for the voting in the Yukon. Neither 58 nor 36 refers in any way to the Military Voters' Act. The day for nomination generally within Canada and the day for polling generally within Canada, are stated and set out specifically in sections 7 and 8 of the Military Voters' Act, but there is no mention made in the sections which deal with fixing the nomination and polling days in the Yukon to the Military Voters' Act. These sections refer solely to the day or days for nominating candidates and for

polling generally within Canada. Now, I submit that the time for holding the poll within Canada, whether in this part or the others, for all electoral districts, that is including the Yukon, shall be the 28th day next after the day fixed for nomination generally in Canada—that is, twenty-eight days after the 19th day of November—and that the day, therefore, for polling would be the 17th day of December, and that these sections apply as much to the Yukon as to all other constituencies within Canada. These sections, as I have said, refer solely to the election, solely to the nomination and polling days generally within Canada—that is, the 19th November and the 17th December—but they do not mention that there is any special provision made in any way for the Yukon Territory. The Yukon Territory, which was one of the general elections, has its polling day, and in so far as the soldiers' votes are concerned the date fixed by this section is the same day as that on which the voting was to take place in every other constituency in Canada. Therefore these votes, I submit, were taken at the time set out in the Act, and therefore were taken properly. Now, there is another matter which I think corroborates that statement, and that is the fact that it would not be feasible or practical in any shape or form to have the elections taken among the soldiers, especially overseas, at any other than the one time. By sections 91 and 105 of the General Elections Act in case of accidents or in case of death the returning officer has the power to postpone the election. I do not think it can be argued that if, say for instance, there were a dozen constituencies in Canada in which either accident or death occurred the returning officers were compelled to postpone the election, that there should be a dozen or more times fixed for the taking of the soldiers' vote. That would leave the taking of the soldiers' votes at the will of the returning officers in the different districts.

The CHAIRMAN: Neither 91 nor 105 applies to the Yukon.

Mr. HOGG: Neither 91 nor 105 applies to the Yukon; they exclude the Yukon from the operation of those sections, but that does not affect the argument. The Yukon was a postponed election in the general elections. Now, the elections in a dozen or more constituencies might have been postponed under the Act by the returning officers; can it be assumed that if such postponements had taken place that a dozen or more different times would have been fixed for the taking of the soldiers' votes? It does not seem to me to be conceivable that that is the intention of the Act; and that corroborates the argument that the day which is fixed by sections 7 and 8 as the 28th day next after the nomination of the candidates is the day fixed generally to apply for the whole of Canada, because, as I have said, the Yukon is not dealt with in any special way in these sections. Now, it is plain from the Act that it is intended that the soldiers' vote could be taken before any nomination. Section 16 of the Act sets that out. Section 16 has been referred to by Mr. Congdon; that section sets out that in case any military electors shall at the time of or subsequent to the issue of the writs for a general election be under orders to leave Canada prior to the day for holding the poll within Canada, the Governor General in Council may make provision for the polling of their votes in the manner by this part provided, on a day prior to their departure. It sets out there specifically that the polling may take place under this Act before the nomination day. Now, there is also the point that section 131 of the Act, fixing the general day for polling within Canada—that is, the 17th day of December—section 131 provided that was before it was changed by the Military Voters' Act, that it was seven days after nomination day; seven days elapsed and then the polling takes place; that has not been amended, but it has been changed by these sections of the Military Voters' Act. Evidence of that is found in the fact that in the by-election which was to have been held in Lanark the polling day was seven days after the day of nomination; not twenty-eight days. Section 131 was not amended; it was merely changed by section 7 of the Military Voters' Act, and 131, you will see, refers to section 7 of the Military Voters' Act, but nothing is said as to the Yukon. It changes the nomination day generally for Canada. The

Yukon is excepted in section 7, but this section does not amend, it merely changes; it refers to the general Act, to the general day, the day fixed by the Act. The day fixed by 7 and 8 of the Military Voters' Act is the only day, the only voting period fixed for the whole of Canada, not a period for the most of Canada; neither the Yukon nor other elections which might have been postponed were excepted, but it was recognized that the soldiers' vote could only be taken during the one period, and that period applies to every constituency in Canada.

Now, as to the matter of the recognition of candidates, I submit that the intention of the Act is that the soldiers in the great majority of cases voted, because the reports show that, for the party and not for the candidates; they voted for abstract parties or principles leaving it to the Leader of the Government and the Leader of the Opposition to name the candidate. You will find that in the Yukon election out of 141 soldiers' votes cast in North America only three of them designated the name of the candidate; on three ballots out of 141 there was the name of Dr. Thompson. On the continent 85 votes were polled for the Government ten for Mr. Congdon, but on none of them were the names of either designated. In Great Britain 171 votes were polled for the Government, 15 for Mr. Congdon, and Mr. Congdon's name appeared on 3, Dr. Thompson's on none. That is evidence, I submit, of the way the soldiers were voting, and their evident intention would not have been changed by the fact that they did not know at the time they voted who the candidates were; and it was the same all over Canada.

From the voting in the Yukon election it may be gathered and that is an evident fact that the soldiers voted for the party, they did not vote for the candidate, that it was left to the two leaders of the parties who those candidates might be that under section 12 subsection 5 "A vote for a party shall be counted as a vote for the candidate or candidates who has or have been recognized, in the manner hereinafter prescribed, as the candidate or candidates representing that party in the electoral district to which the vote has been applied." Dr. Thompson was recognized by the Leader of the Government, and Mr. Congdon was recognized by the Leader of the Opposition; at the time they were recognized—

Mr. JACOBS: They were recognized after the vote was taken.

Mr. HOGG: Yes, after the vote was taken they were recognized, on the 4th January, that was published in the Canada Gazette on the 5th of January, but none of the ballots were opened at that time, they were not counted until long after the recognition. That is the case, Mr. Chairman and Gentlemen, for Dr. Thompson. On that branch it rests on the contention which I think is plain from the Act that one voting period only is fixed for taking the soldiers' vote in every constituency in Canada, not excepting the Yukon; that the general voting period is laid down for all constituencies, and that the day for holding the poll within Canada is the day fixed by section 131 which is specifically mentioned in section 7 which fixes the date for the military votes. Section 131 is referred to, but the Yukon sections are not, and I submit that this, from the nature of the matter, is the only one voting period at which the voting could be held in France and in England.

The CHAIRMAN: Do you contend, Mr. Hogg, that if the returning officer, on account of some unforeseen accident had postponed the nominations in a dozen ridings in Canada until January that the soldiers' vote, notwithstanding, could have been given in regard to these elections up to the 17th December?

Mr. HOGG: That is my contention, Mr. Chairman, because only one day for the taking the soldiers' votes is fixed for all constituencies, and the Yukon election was postponed but there may have been dozens of them.

The CHAIRMAN: There might have been a dozen or more.

Mr. HOGG: Certainly, but from the very nature of the case there could not have been a dozen or more days fixed for taking the soldiers' vote, at the will of returning officers all over Canada. Section 17 very clearly indicates that it is the intention of

the Act that it is within the power of the Act to have the soldiers' votes taken at any time subsequent to the nomination, long before the polling either generally throughout Canada or in the Yukon. Now just one other point, therefore I might sum up as I stated that there is that one period fixed by sections 7 and 8 for taking the vote within the whole of Canada, that is the only period fixed by the Act, that is the general period for every constituency, and that general period ended on the 17th December, and that it applied to the Yukon and to every other constituency in Canada, because the sections refer only to the sections of part 3 which fixes the day for the general polling within Canada, and do not refer in any of those sections to the Yukon. Now there is the other point which was discussed to some extent by Mr. Congdon, and that is with respect to his nomination paper.

Mr. KEEFER: I understand that it is conceded that both persons were properly nominated.

Mr. HOGG: I do not concede that he was properly nominated by the decision in the case of Fautaux against Ethier, the omission of the addition and description is a fatal defect.

Mr. KEEFER: Do you think that this committee should pay any attention to that?

The CHAIRMAN: What do you think of Mr. Congdon's argument that there was a waiver for that?

Mr. HOGG: In that case, I have referred to the Supreme Court reports.

The CHAIRMAN: Even if the Supreme Court is right in that case, and we shall presume it is, that the omission of the addition is fatal, Mr. Congdon argues that the objection should have been made at the time, and that not having been made at the time, the objection is waived.

Mr. HOGG: I am just going to lean on the Supreme Court, which on that very point said that the returning officer may take objection at the time, I do not know that it says it must be taken. Such rejection and declarations of election by acclamation may properly be made by the returning officer, after the expiration of the time limited for the nomination of candidates by section 100 of the Act. It may properly be made, it does not lay down in the headnote that it must be made. I am quoting from 47 Supreme Court reports page 185.

The CHAIRMAN: Then have you anything on this point: the returning officer not having taken any action at the time, and its having passed from him to the General Returning Officer, has he any jurisdiction?

Mr. HOGG: I have nothing on that point, Mr. Chairman.

Mr. TWEEDIE: In Alberta elections that the omission is cured by the receipt from the returning officer, but if there is a question that the affidavits were not taken before the proper officials the case was taken up and it was held that there was no valid nomination.

Mr. HOGG: I am not citing anything like the main judgment in that case, but merely the headnote. The judgment may go on to say that the returning officer is compelled to do that, but I do not know as to that. It is very clear from the statement that the nomination paper in the Yukon case must comply with form H which is referred to in section 40, it is also set out in the schedule, and the schedule refers to sections 40 and 94, both the Yukon section and the general section.

The CHAIRMAN: Form H may be changed or varied.

Mr. HOGG: It has been held that the general form may be altered, but it does not change the intentions. That is the case with Dr. Thompson. The case rests, as far as the law is concerned, as I have stated, on the contention that the day for taking the soldiers' votes as set out in part 4 applies to every constituency in Canada whether there has been a postponed election held in it or not, and therefore applies to the

Yukon, and I submit that the votes cast by virtue of this Act, and by virtue of sections 7 and 8 should be allotted to Dr. Thompson and that he should be declared elected.

Mr. CONGDON: I want to point out that the notices of election after the nomination is governed by section 41 and not 107. The reason I call attention to that is that in the case which you have before you, 47 Supreme Court of Canada, some stress was laid on 107 which has nothing to do with it, but it is section 41 which provides.

"In the Yukon Territory immediately after having granted a poll, the Returning Officer shall cause to be posted up at all places where he has fixed polling stations for the taking of the votes at the election and in four other of the most conspicuous places in each polling division an election proclamation in Form L."

Nothing is said in 41 about the addition or description, whereas in 107 it is repeated.

"On a poll being granted the returning officer should cause to be posted up notices of his having granted such poll, indicating the names, residences and occupations of the candidates named."

Now, L only says "insert the names and additions of each candidate, as given in the nomination papers."

Mr. TWEEDIE: The general instructions provides that in H may be given the "residence and additions;" what do you understand by residence and additions?

Mr. CONGDON: I think they are synonomous words with the words "additions or descriptions."

Mr. KEEFER: These votes were cast before you were nominated, and they were either cast for the Government candidate or for the Opposition candidate, is that right? They must have been cast for somebody, at the time they were cast, either for or against the Government were they not?

Mr. CONGDON: For the individual?

Mr. KEEFER: When these men voted overseas how were they voting? For whom were they voting—for or against the Government?

Mr. CONGDON: No, voting for individuals.

Mr. KEEFER: Would it not be reasonable to infer that they would be voting for whoever would be the Government candidate?

Mr. CONGDON: In the future?

Mr. KEEFER: In the future.

Mr. CONGDON: That is the only assumption to take out of it.

Mr. KEEFER: I am speaking aside from the technicality but getting down to the merits.

Mr. CONGDON: But I do not think it is technical.

Mr. KEEFER: You can very strongly urge they were voting for the Government candidate, but had they known that you were the candidate they would have voted for you.

Mr. CONGDON: Further I want to point out that the mode of operating this Act suggested by my learned friend might lead to numberable absurdities, whereas the mode I suggest would have secured fair play and a fair vote in every case.

Mr. KEEFER: Does this not necessarily follow that if we grant your request and set aside the report of the returning officer, we disfranchise these men overseas?

Mr. CONGDON: There were disfranchised 15,000 votes that were held by the Clerk of the Crown in Chancery, to be illegal.

Mr. KEEFER: How do you mean?

Mr. CONGDON: I understand that 15,000 votes were set aside throughout Canada. Soldiers' votes ought to be counted or not counted the same as if they were civilian votes.

Mr. KEEFER: I do not see why you brought the 15,000 votes.

Mr. CONGDON: Except that the same rule should apply everywhere. Why should you reject the soldiers' votes in other constituencies without compunction and only lament over Yukon?

Mr. KEEFER: They were objected to on the ground of form, and had not been properly registered, but if the vote for the parties had been properly registered, you say it should not be counted.

Mr. CONGDON: Of course I am very glad if this objection were sustained, I am precluded from objecting on the ground which I endeavoured to go into in the earlier part of my argument. I can understand the committee recommending a new election. That might be the proper solution, although I think it is much more important that the committee should apply to this the recognized rules of interpretation than that it should recommend a new election merely on account of the soldiers' vote.

Mr. MOWAT: Would a new election include the vote in Europe?

Mr. CONGDON: Certainly, I think myself that the contention might be strongly made that neither one of us is elected, I am quite willing to take that position. I wish in conclusion to point out that if you read these sections distributively you have no trouble at all. It is utterly absurd to see any difficulty in taking 500 votes, or less than that between the 31st December and the 28th January; it is as easy to take them then as it was to take them between the 1st December and the 17th, and in the same way in the case of the death of the candidate or candidates. All candidates are not going to die before election day, but a certain percentage of candidates may die, and it is not a very unreasonable thing to read that distributively, and to say that the votes must be taken after the nomination day and before the election day. It is simplicity itself to accept that whilst it is an absurdity to say, as my learned friend, that you must take them all at the one time. It must be taken between nomination day and polling.

Mr. KEEFER: Is there anything in the return to show what votes were rejected relating to this constituency.

Mr. CONGDON: I think so, I think it is on pages 24 and 25.

Mr. HOGG: Three were rejected in France.

Mr. KEEFER: I understand there was a total of three in your constituency, is that right?

Mr. CONGDON: A total of three rejected, I understand.

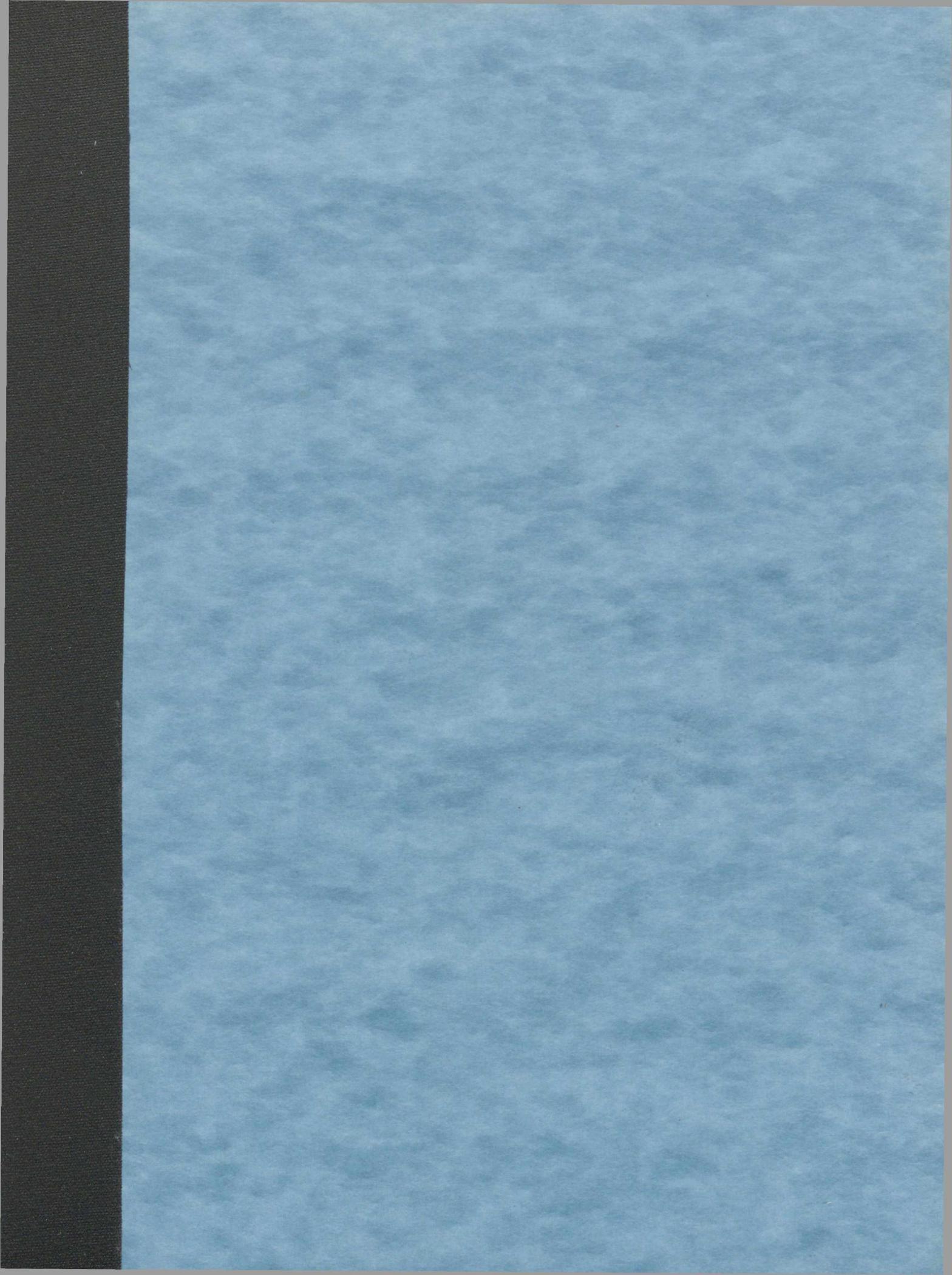
Mr. TWEEDIE: Coming back to the form which says clearly: "Signatures with residence and additions" and in the body of the paper it says, "names, residences and additions or descriptions of person or persons nominated."

Mr. CONGDON: But you will notice that the Supreme Court of Canada makes that distinction. There was no address or addition, only the bare name. In this case the address removed any doubts as to identity.

Debate followed.

Mr. McKenzie moved that a stated case be prepared and submitted to the Supreme Court, or to any two judges of the Supreme Court of Ontario for decision.

Motion carried and committee adjourned.



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