

IN THE MATTER OF THE COMMISSION UNDER THE
INQUIRIES ACT TO INVESTIGATE INTO AND REPORT
UPON THE CONDUCT OF CERTAIN MILITARY OFFICERS
RE THE CHAMBLY AND VERCHERES ELECTION.

REPORT OF THE COMMISSIONER.

P.C. 2572-b- 17

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To
THE GOVERNOR GENERAL IN COUNCIL.
OTTAWA.

I have the honour to report the result of
the investigation held by me under the above Commis-
sion dated 10th June, 1918, as follows :-

Public sittings were held at St. Johns, Que.,
on 12th and 13th September, at Ottawa on 14th September,
at St. Johns on 17th and 18th September and in Montreal
on 3rd October 1918, for the purpose of examining wit-
nesses and taking evidence. I heard 36 witnesses.

This investigation was in consequence of
representations made by Mr. Joseph Archambault, Member
of Parliament for the Electoral District of Chambly
and Vercheres to the House of Commons on 22nd May 1918,
alleging that certain Military Officers at the barracks
of the Engineers Training Depot in St. Johns, in the
Province of Quebec, on 17th December 1917 and previously
thereto in connection with the general election held
on that date, committed perjury and were guilty of
other misconduct whereby certain military voters, being
members of said Engineers Training Depot, were alleged
to have been induced to commit perjury, by falsely
representing themselves upon oath to be unable to

specify or state in what place or places or electoral districts in Canada they had resided at any time preceding their appointment, enlistment or enrolment or calling out on active service for the purpose of having their votes applied to the electoral district of Chambly & Vercheres pursuant to the Military Voters Act 1917.

The charges and accusations are founded upon the answers which certain military officers and voters gave in connection with the voting at the St. Johns barracks, on 17th December 1917. The questions to which the answers were given form part of the certificate endorsed on the ballot-envelope set forth in form B in the schedule to the Military Voters Act 1917, 7-8 George V, chap.34, and those germane to this inquiry are 6, 7 & 8, which are in the following terms :-

6. Specify the names of the place or places in Canada (giving streets and numbers where possible) whereat you last continuously resided during at least four months of the twelve months immediately preceding your appointment, enlistment, enrolment or calling out on active service ?

7. State if you can the electoral district wherein such place or places in which you so resided are situate.

Electoral district

Province

8. If you cannot specify as required by question No.6, or state as required by question No.7, then state in what electoral district or place within Canada (giving

street and number where possible) you have resided at any other time than is referred to in question No.6.....

The officers whose conduct is impugned were almost all Civil Engineers in civil life before their enlistment in the Engineers Training Depot or their enrolment in the Canadian Expeditionary Force. Their work did not permit them to be in any one place permanently or for any fixed time and they had to move from place to place as duty called them. Such of them as were married men were frequently away from home. Those who were not engineers were also on the move at brief intervals as their occupations required them to travel more or less. About half of the officers of the Engineers Training Depot who voted at the general election had left for service overseas before Mr. Archambault had made his charges of perjury in the House of Commons and are still absent from Canada. All the remaining officers were brought before me and subjected to an exhaustive cross-examination by able and skilful Counsel selected by Mr. Archambault. Several of the officers who appeared had never voted before and none of them knew much about Electoral Districts. They were not politicians or political workers. They answered "I cannot say" or words equivalent thereto to questions Nos. 6 and 7, and several of them gave similar answers to question No.8. Question No.6 is not simply an inquiry as to where the military voter resided at a fixed and definite date, but it is complicated by the word "continuously" which must mean constantly and uninterruptedly and by reference to the period of

"four months of the twelve months immediately preceding appointment, enlistment or enrolment or calling out on active service". The question is rather indefinite, as an officer's appointment, enlistment, enrolment and calling out on active service in some cases were on different dates. It was so in the case of Col. Melville.

The place of a man's residence or where he resides is not always easy to determine. Laymen, lawyers and even judges are liable to confound it with "domicile", but "Residence" and "domicile" are two distinct things. A man's home or the home of his parents, if he is unmarried, may be his "residence", but it often is not; it is usually his "domicile". It is not the residence of an engineer who is following his profession or a salesman on the road at a place from which he is unable to return to his home in order to sleep there. An oft-quoted definition of the word "residence" is the place where a person abides, eats and sleeps. A person's residence to-day may not be his residence next week or next month, and within a given period of time he may have no continuous or uninterrupted residence. Some of the officers swore they did not know the meaning of residence or what was meant in these questions by the place where they resided. Question No. 7 contains an inquiry as to the electoral district in which the voter resided within the meaning of No. 6, and question No. 8 requires the voter to state in what electoral district or place within Canada he has resided at any other time than is referred in question No. 6. As the time referred to in question No. 6 is not definite, time in No. 8 is

necessarily so and the reference to electoral district or place within Canada where he had "resided" is of a character liable to lead to confusion and uncertainty. The right of soldiers as such to vote was new in Canada and it was abundantly proved in the inquiry that there was a widespread conviction among not only military voters but civilians that every military voter had a right to apply his or her vote wherever he or she saw fit, and all the officers who were examined swore that they believed they answered truthfully to the best of their knowledge and belief and that they had the right to specify Chambly & Vercheres as the electoral district where they wished to have their vote applied. These officers are charged with having committed perjury in their answers to the foregoing questions. Perjury by a witness as part of his evidence in a judicial proceeding is defined by section 170 and perjury in an affirmation or affidavit by section 172 of the Criminal Code. The statement must have been on oath, false to the knowledge of the deponent and made wilfully and corruptly. 1 Russell Law of Crimes, 7th Ed., p.476, says :-

"The false evidence must be given wilfully, i.e., "with some degree of deliberation. It cannot be regarded "as wilful or corrupt perjury if given through surprise "or inattention or mistake. And upon a trial for per- "jury it is necessary to shew that the prisoner's atten- "tion has been sufficiently drawn to the exact question "put to him and that the matter deposed to was known to "be false, or not known to be true."

Harris's Principles of Criminal Law, 12th Ed.,
p. 72, says :-

"The oath must be taken falsely, wilfully
"and absolutely, the question being, Did the Defendant
"believe what he said to be true? If not, he is
"guilty of perjury."

The officers here each and all testified to their belief in the truth of their answers as they understood the questions. Few words have been the subject of judicial consideration more frequently than the word "resides" and its derivative "residence" which has many different meanings varying according to circumstances between a transient presence for purposes purely temporary and a fixity and permanence of abode equivalent to domicile. In a case before the Supreme Court of Canada in which a judge was relieved from a finding of fraud in the Exchequer Court in connection with amounts paid for travelling allowance under The Judges' Act, the Judge having been held to have honestly but erroneously placed a wrong meaning on the word "resides", Mr. Justice Anglin, after having referred to a large number of cases where the meaning of the words "resides" and "residence" had been considered, said, 6 Western Weekly Reports, p.432 :-

"I have referred to these numerous authorities, which are only samples of many more, not because they throw any doubt on the meaning of the word "resides" in proviso (a) to s.18 of The Judges' Act (the purpose of the legislation and the context make that clear) and that is the supreme and final test: Ex.p. Breull, 16 Ch.D. 484, at pp.487,488; 50 L.J. Ch. 386), but to indicate what diversified shades of meaning the word "reside" may bear and the difficulty of safely or satisfactorily

"reaching the conclusion that because the particular
 "meaning to be assigned to such a word appears to
 "admit of no doubt, a person, however skilled and
 "able, who professes to ascribe to it a meaning some-
 "what different, is necessarily insincere and is ac-
 "tuated by improper motives in doing so. Yet that
 "would seem to have been the basis of the finding
 "of fraud against the defendant.

"The only fact in dispute in this case is
 "the defendant's honest belief in the construction
 "which he says he put on s.18 of The Judges' Act. Upon
 "the absence or presence of that belief depends the
 "conclusion of fraud or innocence. If that belief
 "was honestly entertained, that it resulted from want
 "of skill or incompetence on the part of the defendant,
 "or lacks reasonable grounds, does not warrant a con-
 "clusion of fraud."

In a case where the prisoner was indicted
 for perjury, having made two statements under oath
 one of which was directly at variance with the other
 Holroyd J., in instructing the Jury, said, 1 Lewin's
 Crown Reports, p.270 :-

"Although you may believe, that, on one or
 "other occasion, she swore that which was not true,
 "it is not a necessary consequence that she committed
 "perjury ; for there are cases in which a person might
 "very honestly and conscientiously swear to a particular
 "fact from the best of his recollection and belief, and,
 "from other circumstances at a subsequent time, be con-
 "vinced that he was wrong, and swear to the reverse,
 "without meaning to swear falsely either time."

The officers who were examined before me gave their evidence in a straightforward manner and their conduct and demeanor while under examination and the reasons which they gave for their answers, ~~inexplicable~~, established their good faith, and ~~established the fact~~ that they honestly believed they had a right to answer questions 6,7 and 8 as they did. The envelopes show that Col.Melville, Lt.Trow, Lt. Adney and Lt. Armer did not answer question No.8. That disposes of the charge of perjury against the officers. In my opinion these charges are unfounded. It was proved to my satisfaction that Col.Melville was not sworn by the deputy presiding officer when he polled his vote. None of the voters who voted before deputy presiding officer Lt.McCulloch were sworn as required by law. Capt. Knight, who was a deputy presiding officer, was not sworn for his own vote.

In view of the answers given to questions 6,7 and 8, the officers had the right to apply their votes to Chambly & Vercheres. Mr.Rainville, the Government candidate in that electoral district was known to some of the officers, but not to all of them, from having taken one meal, the date of which is not proved, at the officers' mess. There were no speeches and no votes asked for on that occasion and the suggestion that something improper occurred between the officers and Mr.Rainville is absolutely unfounded. The officers and soldiers at St.Johns were strong supporters of the Union Government. From patriotic motives they wished to see the Government returned. Mr.Rainville's public record as a supporter of the Government and his

stand in favour of conscription and of adequate reinforcements for the Canadian Army strongly appealed to the military voters and a considerable number of them, but not all who answered "I cannot say" to questions 6, 7 and 8, desired to have their votes applied to Chambly & Vercheres, as they honestly believed they had the right to do.

The officers were also accused of subornation of perjury by having induced certain military voters being non-commissioned officers and men of the Engineers Training Depot to commit perjury by falsely representing themselves upon oath to be unable to specify or state in what place or places or electoral district in Canada they had resided at any time preceding their appointment, enlistment or enrolment or calling out on active service for the purpose of having their votes applied to the electoral district of Chambly & Vercheres. The evidence clearly establishes that there was no canvassing for votes on the part of any officers. The men published a regimental newspaper called "Knots & Lashings". Lt. Knight was the editor; it is a weekly newspaper published every Saturday, and in the edition of the 15th December 1917, there were several articles of a partisan character, but in no way different from the usual political information to be found in party newspapers during an election campaign. On 17th December 1917, election day, an extra of the "Knots & Lashings" was issued in which appeared among other matter a "specimen envelope showing how questions may be answered". The answer to questions 6, 7 and 8 is "I cannot say", and to question 9 "Chambly & Vercheres". Any military voter who was a British subject and had not resided in

Canada would have a right to give the answers suggested in the printed specimen envelope. The applications for enlistment of 491 non-commissioned officers and men in the Engineers Training Depot were examined with the result that 399 gave Canadian addresses and 192 gave their residence as being outside of Canada. If the latter never resided in Canada, and there is no presumption that they had, their right to answer "I cannot say" to questions 6,7 and 8 and to select Chambly & Vercheres for their vote is undoubted. Every voter who did not understand the import of questions 6,7 and 8 or who was honestly unable to give the information asked for, would also be entitled to answer them in the manner suggested in the specimen envelope. There is the further circumstance that the prevailing impression in military circles was that the questions could be answered in the manner suggested. It is not shown that the specimen envelope in the extra had any effect in bringing about the general result of the vote at St. Johns. The men read the Montreal papers and were greatly interested in the result of the election. Mr. Rainville's public career and his stand on the important question before the Country met with their approval. Ten of the men and non-commissioned officers were brought before the Commission and subjected to a thorough examination as to where they had resided and why they answered "I cannot say" to questions 6,7 and 8 and chose Chambly & Vercheres as the place they wished to have their vote applied. These ten men were practically all that remained at St. Johns of the rank and file which was there at the time of the election and who had voted. Their evidence does not show that they were

influenced by anything which appeared in "Knots
 " Lashings". They gave, what appeared to me, to
 be good, valid and sufficient reasons for the answers
 which they gave to the questions and of their choice
 of Chambly & Vercheres. Forty envelopes certified
 by Lt. Stairs do not appear to have any connection
 with St. Johns. In all of these there is no answer
 to questions 6, 7 and 8. The charge of subornation
 of perjury by the officers of their men therefore fails.
 There were no improper inducements, representations,
 suggestions or other misconduct by the officers or
 any of them to influence any non-commissioned officer
 or man to commit perjury by giving false answers to
 the questions on the envelopes, and the non-commissioned
 officers and men who appeared and were examined did not,
 in my opinion, commit perjury in connection with their
 answers. The charges of perjury and subornation of perjury
 are unfounded.

Attached hereto is a List of persons involved
 in the Inquiry and the accusations against them, which
 was prepared by Mr. Archambault and handed to me by him
 before the Inquiry began. These accusations go far
 beyond the scope of the Commission and I refused to
 hear any evidence except on the charges of perjury
 and subornation of perjury which, I understood, were
 the only charges covered by the Commission.

All witnesses suggested by Mr. Archambault
 were summoned before me and every opportunity was given
 him to establish the charges of perjury and subornation
 of perjury. The evidence and all exhibits filed accom-
 pany this Report.

The whole respectfully submitted.

J. S. Maclellan