

Jan. 31, 1944, immediately upon submission of the committee report. The resolution, which dismissed the contest, was agreed to by the House by voice vote after a short debate. House Resolution 426 provided as follows:

Resolved, That the election contest of Lewis D. Thill, contestant, against Howard J. McMurray, contestee, Fifth Congressional District of the State of Wisconsin, be dismissed.

Note: Syllabi for *Thill v McMurray* may be found herein at § 10.4 (Corrupt Practices Act).

§ 53. Seventy-ninth Congress, 1945-46

§ 53.1 Hicks v Dondero

On Dec. 12, 1945, Mr. O. C. Fisher, of Texas, submitted the unanimous report⁽⁷⁾ of the Committee on Elections No. 3 in the contest of John W. L. Hicks against George A. Dondero, from the 17th Congressional District of Michigan. The contest had originated in the House on July 20, 1945, on which date the Speaker had laid before the House a letter from the Clerk⁽⁸⁾ relating that his

7. H. Rept. No. 1404, 91 CONG. REC. 11931, 79th Cong. 1st Sess.; H. Jour. 766.

8. H. Doc. No. 264, 91 CONG. REC. 7877, 79th Cong. 1st Sess.; H. Jour. 542, 543.

office had received packets of material which had not been addressed to the Clerk or adduced in the "manner contemplated by the provisions of the statutes." The Clerk had also received contestee's motion to dismiss the contest and contestant's affidavit in opposition to that motion.

The Clerk's letter related that "since this action has not proceeded in accordance with the provisions of the statutes, the Clerk is transmitting all of the material received in this matter to the House for its disposition." The Speaker referred the Clerk's letter to the Committee on Elections No. 3 and ordered it printed as a House document.

The committee's final report stated that contestant had not taken any testimony in support of his notice of contest within the time prescribed by law. The report then stated:

The contestant submitted two copies of transcripts of proceedings before the Wayne County, Mich., canvassing board on November 10, 11, and 30, 1944, which hearings were held on dates prior to the initiation of this contest. . . .

The said transcripts of evidence were entirely *ex parse* insofar as contestee was concerned, and even if properly transmitted, would be incompetent as proof of any issues urged by contestant.

The report stated that contestee had been elected on Nov. 7, 1944,

by a majority of 28,475 votes over contestant, and had been properly certified as elected.

On Dec. 12, 1945, the day of submittal of the committee report, Mr. Fisher called up as privileged House Resolution 455⁽⁹⁾ which incorporated the language recommended in the report. House Resolution 455 was agreed to by voice vote and without debate, and it—

Resolved, That the election contest of John W. L. Hicks, contestant, against George A. Dondero, contestee, Seventeenth Congressional District of the State of Michigan, be dismissed, and that the said George A. Dondero is entitled to his seat as a Representative of said district and State.

Note: Syllabi for Hicks v Dondero may be found herein at §6.12 (items transmitted by Clerk); §25.1 (failure to properly forward evidence); §27.2 (dismissal for failure to take testimony within statutory period); §34.3 (evidence from ex parse proceedings).

§ 53.2 In re Plunkett

On Feb. 14, 1945, Mr. Hatton W. Sumners, of Texas, was granted unanimous consent to address the House of Representatives for one minute. His speech, a letter

9. 91 CONG. REC. 11922, 11923, 79th Cong. 1st Sess.; H. Jour. 766.

inserted in the Record by him, and the ensuing debate, are as follows:⁽¹⁰⁾

MR. SUMNERS of Texas: Mr. Speaker, comparatively recently a private citizen in Virginia has entered upon a course of conduct claiming he is contesting the seats of, I believe, 71 Members of the House of Representatives. A colleague of mine the other day asked me to make some examination and write him a letter. I made that examination and have written him the following letter:

FEBRUARY 12, 1945.

MY DEAR COLLEAGUE: Supplementing the statement made to you over the telephone this morning with reference to notice to appear and give testimony in proceeding by Moss A. Plunkett, of Roanoke, Va., representing himself as contesting your right to a seat in the House of Representatives, beg to advise that I have looked over a copy of the paper served upon you and other Members of the House of Representatives, including myself, and have also made some examination of chapter 7, title 2, of the United States Code, which deals with the subject of contested elections.

The House of Representatives, under the Constitution, of course, is sovereign and independent with reference to the determination of the election and the qualification of its own Members. No act of Congress could, in the slightest degree, affect the exclusiveness of power of the House of Representatives to determine with reference to those who are entitled to be a part of its membership.

Section 7 of title 2 referred to therefore is merely an act of comity

10. 91 CONG. REC. 1083, 1084, 79th Cong. 1st Sess.

on the part of the Congress for the purpose of aiding the House of Representatives to whatever degree the House of Representatives may see fit to avail itself thereof. But this alleged contestant, Moss A. Plunkett, does not even come within the provision of this title.

Section 226, the last section of chapter 7, title 2, referred to, contains these words as the first part of the first sentence:

"No contestee or contestant for a seat in the House of Representatives shall be paid exceeding \$2,000 for expenses in election contests."

The contest contemplated by the Congress in which it sought to give aid by statute is a contest by a "contestant" and "contestee," "for a seat in the House of Representatives."

Even if this language were not incorporated in the statute, common sense and public necessity would preclude any notion that the Congress intended to put it within the power of any person so disposed to institute proceedings to oust many persons who happen to be Members of Congress, and require them to turn aside from the discharge of their public duties to appear and give testimony at the summons of such a person who had not even been a candidate for Congress and who could not therefore be a "contestant for a seat in the Congress."

It seems to me to be not only the right, but the duty, of the Members of the House against whom this proceeding has been attempted, not to turn aside from the discharge of their official duties to give attention in the slightest degree to that which the said Plunkett is attempting.

Sincerely yours,
HATTON W. SUMNERS.

MR. [JOHN W.] McCORMACK [of Massachusetts]: Mr. Speaker, will the gentleman yield?

MR. SUMNERS: I yield to the gentleman from Massachusetts.

MR. McCORMACK: Will the gentleman advise the House how, in his opinion, this unreasonable situation should be met?

MR. SUMNERS: By paying no attention to it.

THE SPEAKER:⁽¹¹⁾ The time of the gentleman from Texas has expired.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I ask unanimous consent to address the House for 1 minute.

THE SPEAKER: Is there objection to the request of the gentleman from Mississippi?

There was no objection.

MR. RANKIN: Mr. Speaker, following up what the Member from Texas [Mr. Sumners], the very able chairman of the Committee on the Judiciary, has said, I want to call attention to the fact these radicals who are attempting to harass Members of Congress about this matter [poll taxes] have not a leg to stand on. They really are acting in contempt of the House, and in contempt of the Senate, because they have attempted to subpoena Senators, as well as Members of the House.

This question has been thrashed out before. The fourteenth amendment to the Constitution provided that where certain people were denied the right to vote in any State, representation from such State should be proportionately reduced. . . .

If there is anything wrong with the State law, the place to contest it is in the courts. If there is anything wrong with a Member's right to sit in this House, the place to contest it is before a committee of the House. . . .

11. Sam Rayburn (Tex.).

So these attempts to harass the Members of the House and Senate are simply in contempt of both Houses, and as the chairman of the Judiciary Committee [Mr. Sumners] said, they should be ignored.

On May 17, 1945, the Speaker laid before the House a letter from the Clerk⁽¹²⁾ of the House which stated that the Clerk "does not regard the said Moss A. Plunkett as a person competent to bring a contest for a seat in the House under the provisions of the laws governing contested elections." Mr. Plunkett was attempting to contest the election of 79 returned Members from districts of various states, growing out of the election held Nov. 7, 1944, though it appeared from the four sealed packages of testimony that Mr. Plunkett had not been party to any of the elections. The Clerk's letter was ordered printed by the Speaker as a House document, and referred to the Committee on Elections No. 1. There is no record that the committee submitted a report in this case, or that the House acted in any way upon the contest.

Note: Syllabi for *In re Plunkett* may be found herein at § 5.1 (committee jurisdiction over contest under contested election statutes);

12. H. Doc. No. 181, 91 CONG. REC. 4726, 79th Cong. 1st Sess.; H. Jour. 347.

§ 6.6 (items transmitted by Clerk); § 19.6 (contestants as candidates in general election).

§ 54. Eightieth Congress, 1947-48

§ 54.1 *Lowe v Davis*

On Apr. 27, 1948, Mr. Karl M. LeCompte, of Iowa, submitted the unanimous report⁽¹³⁾ of the Committee on House Administration in the contested election case of *Lowe v Davis*, from the Fifth Congressional District of Georgia.

On July 25, 1947, the House had considered by unanimous consent and agreed to a resolution (H. Res. 337)⁽¹⁴⁾ as follows:

Resolved, That notwithstanding any adjournment or recess of the Eightieth Congress, testimony and papers received by the Clerk of the House in any contested-election case shall be transmitted by the Clerk to the Speaker for reference to the Committee on House Administration in the same manner as though such adjournment or recess had not occurred: *Provided*, That any such testimony and papers referred by the Speaker shall be printed as House documents of the next succeeding session of the Congress. (Emphasis supplied.)

13. H. Rept. No. 1823, 94 CONG. REC. 4922, 80th Cong. 2d Sess.; H. Jour. 377.

14. 93 CONG. REC. 10210, 80th Cong. 1st Sess.; H. Jour. 698.