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from the Nineteenth Congressional District of the State of Ohio, at the election held November 5, 1940, but was a candidate for the Democratic nomination from said district at the primary election held in said district, at which Michael J. Kirwan was chosen as the Democratic nominee: Therefore be it

Resolved, That the House of Representatives does not regard the said Locke Miller as a person competent to bring a contest for a seat in the House and his notice of contest, served upon the sitting Member, Michael J. Kirwan, is hereby dismissed; and no petition or other paper relating to the subject matter contained in this resolution shall be received by the House, or entertained in any way whatever.

The resolution was thereupon agreed to without debate and by voice vote by the House. Thus the House dismissed the contest without the contest having been referred to the Committee on House Administration, and therefore without committee action and consideration.

Note: Syllabi for Miller v Kirwan may be found herein at §§ 4.4, 4.5 (House power of summary dismissal of election contests); § 19.4 (contestants as candidates in general election); § 42.4 (resolution disposing of contest as privileged); § 44.2 (form of resolution disposing of contest).

§ 52. Seventy-eighth Congress, 1943–44

§ 52.1 Clark v Nichols

On May 11, 1943, the Speaker laid before the House a communication from the Clerk of the House[20] which notified the House of the pending election contest between E. O. Clark, contestant, and Jack Nichols, contestee, from the Second Congressional District of Oklahoma. It related that contestant had, on Dec. 5, 1942, notified contestee of his intention to contest his election of Nov. 3, 1942, and that contestee had filed timely answer thereto. Enclosed with it was a letter from contestee asking the House to prevent contestant from further proceeding in the contest, as contestant had not complied with the requirement that testimony taken for contestant be forwarded to the Clerk of the House within the 30 days (based on the former statute, 2 USC § 223, now 2 USC § 231). The Clerk's communication was referred on May 11, 1943, to the Committee on Elections No. 3 with accompanying papers and ordered printed as a House document.

20. H. Doc. No. 201, 89 CONG. REC. 4243, 4244, 78th Cong. 1st Sess.; H. Jour. 319.

Mr. Hugh Peterson, of Georgia, submitted the committee report,[1] which was unanimous, on Feb. 15, 1944. The report did not consider contestee's request that contestant be barred from continuing the contest. Rather, the committee recommended that the contest be dismissed for failure of contestant to bear "the burden of showing that, due to *fraud and irregularity,* the result of the election was contrary to the clearly defined wish of the constituency involved [emphasis supplied]." The committee determined that no fraud had been perpetrated by any election official whereby contestant was deprived of votes.

The committee determined that contestant had proven certain irregularities relating to the failure of local officials in certain precincts to keep registration books and to comply with certain other administrative requirements imposed by state law. Contestee offered no testimony to rebut this evidence. Nevertheless, the committee determined that such irregularities would not vitiate the election unless the procedures involved were declared by law to be essential to the validity of the election. As the pertinent state law did not contain such provisions, the committee regarded the state bookkeeping requirements as merely directory, and held that the committee could not void what it considered the certain decision of the electorate because of "the failure of those responsible for the administration of the law to do their duty."

The committee stated in its report that "the precedents are uniform in holding that the returns which are made by election officials regularly appointed by the laws of the State where the election is held are presumed to be correct until they are impeached by proof of irregularity and fraud."

On Feb. 16, 1944, Mr. Peterson called up as privileged House Resolution 440[2] which the House agreed to without debate and by voice vote, and which—

> *Resolved,* That the election contest of E. O. Clark, contestant, against, Jack Nichols, contestee, Second Congressional District of the State of Oklahoma, be dismissed.

In his extension of remarks in the *Congressional Record* at that point, Mr. Ross Rizley, of Oklahoma, discussed in detail the alleged irregularities which contestant had referred to in the evi-

1. H. Rept. No. 1120, 90 CONG. REC. 1675, 78th Cong. 2d Sess.; H. Jour. 117.

2. 90 CONG. REC. 1761–63, 78th Cong. 2d Sess.; H. Jour. 121.

dence he presented. He cited two House election cases [Bisbee v Finley (2 Hinds' Precedents § 980) and Benoit v Boatner (1 Hinds' Precedents § 340)] for the proposition that elections held in disregard of registration laws are to be considered void, regardless of whether such registration laws are to be considered directory or are made mandatory by statute. Mr. Rizley considered the evidence which was introduced by contestant and which as not contradicted by contestee——

> . . . [S]ufficient to warrant the investigation of an election in which the contestee as the candidate of the political party which had control and charge of the election, claims to have been elected in a congressional district by only approximately 385 votes. This would seem especially true where a State election board dominated by the same political party denied itself jurisdiction and by so doing suggested that the House should set itself up as a recount committee.

and where the House, in turn——

> . . . [S]ays that it cannot erect itself as a recount board . . . that there were "gross irregularities" and flagrant violations of the election laws, "fairly proven by the contestant."[3]

Note: Syllabi for Clark v Nichols may be found herein at § 6.1 (items transmitted by Clerk); § 10.11 (distinction between mandatory and directory state laws); § 27.6 (failure to forward testimony to Clerk); § 35.4 (burden of showing results of election would be changed); § 36.3 (official returns as presumptively correct).

§ 52.2 McEvoy v Peterson

On May 5, 1944, Mr. Ed L. Gossett, of Texas, submitted the report[4] from the Committee on Elections No. 2 in the contested election case brought by Edward T. McEvoy against Hugh Peterson, from the First Congressional District of Georgia. The case had been referred to the committee on Sept. 20, 1943, when the Speaker laid before the House a letter from the Clerk of the House[5] transmitting the necessary papers and documents as required by the statute governing contested election cases. This letter was ordered printed as a House document.

The unanimous committee report, which accompanied House Resolution 534, recommended that the election contest be dismissed. The report related that contestant (Mr. McEvoy) had attempted to run for the First Congressional District of Georgia seat as an

3. *Id.* at p. 1763.

4. H. Rept. No. 1423, 90 CONG. REC. 4087, 78th Cong. 2d Sess.; H. Jour. 288.

5. 89 CONG. REC. 7682, 78th Cong. 1st Sess.; H. Jour. 607.

independent Republican though there was no such political party in Georgia, and that contestant's name had not appeared on any ballots and that he had not received any votes. The committee further found that contestant had failed to exhaust available state legal remedies, had not filed the election contest in good faith, and had failed to make out a prima facie case. The committee disallowed contestant's petition for reimbursement of expenses.

House Resolution 534 was called up as privileged[6] by Mr. Gossett and agreed to without debate on May 5, 1944. Thereby the House dismissed the election contest by voice vote. The resolution provided—

> *Resolved*, That the election contest of Edward T. McEvoy, contestant, against Hugh Peterson, contestee, First Congressional District of the State of Georgia, be dismissed.

Note: Syllabi for McEvoy v Peterson may be found herein at § 13.1 (permissible defenses to election contests); § 14.1 (contestant's standing); § 45.7 (payments conditioned on good faith in filing of contest).

§ 52.3 Moreland v Schuetz

On Feb. 17, 1944, Mr. Hugh Peterson, of Georgia, from the Committee on Elections No. 1 submitted the final report[7] in the contested election case brought by James C. Moreland against Leonard W. Schuetz from the Seventh Congressional District of Illinois. The case had been initiated in the House on Nov. 15, 1943, at which time a letter from the Clerk of the House[8] had been laid before the House by the Speaker and referred by him to the committee.

On Mar. 1, 1943, the Speaker had laid before the House, during the period permitted by statute for taking of testimony for an election contest, a letter from the Clerk.[9] This letter conveyed contestant's request that the House grant him additional time for taking testimony so as to permit him to substantiate his claim of certain voting irregularities and miscounts which would change the 1,975-vote margin of contestee to contestant's favor.

Specifically, contestant claimed that ballots which had been counted for contestee (more than 2,000) should be totally voided, as such

6. 90 CONG. REC. 4074, 78th Cong. 2d Sess.; H. Jour. 288.

7. H. Rept. No. 1158, 90 CONG. REC. 1833, 1834, 78th Cong. 2d Sess.; H. Jour. 132.

8. H. Doc. No. 357, 89 CONG. REC. 9529, 78th Cong. 1st Sess.; H. Jour. 731.

9. H. Doc. No. 120, 89 CONG. REC. 1456, 78th Cong. 1st Sess.; H. Jour. 134, 136.

ballots had been illegally marked by write-in attempts to vote for certain local judicial candidates in contravention of state law. Contestant also alleged error by election officials in that they failed to credit him with "split-ticket" ballots, bearing votes cast for him, and that they counted such ballots as "straight-ticket" ballots for the Democratic party and, therefore, for contestee. Contestant asked for an extension of time to establish these allegations, which he could not do in the time required by law, as the time and facilities of the responsible election officials was then being totally consumed in preparation for local elections.

Mr. Peterson submitted House Report No. 345[10] on Apr. 6, 1943, to accompany House Resolution 201,[11] which was agreed to without debate on that date, and which extended time for taking testimony for a total of 65 days. The report unanimously agreed that the circumstances as cited above by contestant set forth "good cause" as required by House precedents cited in the report.

The resolution recommended in the committee report was agreed to by the House as follows:

> *Resolved,* That the time allowed for taking testimony in the election contest, James C. Moreland, contestant, against Leonard W. Schuetz, contestee, Seventh Congressional District of Illinois, shall be extended for a period of 65 days, beginning April 12, 1943, and the testimony shall be taken in the following order:
>
> The contestant shall take testimony during the first 30 days, the contestee shall take the testimony during the succeeding 30 days, and the contestant shall take testimony in rebuttal only during the remaining 5 days of said period.

After the extension of time, the final committee report related that the parties to the contest had agreed to conduct a recount in those wards where the vote had been questioned by contestant. This recount, which was terminated by contestant prior to expiration of his time for taking additional testimony, covered 42 percent of total votes cast and included over 56 percent of the votes cast for contestee. The committee found that the recount reduced contestee's majority by 898 votes, an insufficient number to change the outcome, and that contestant had not sustained the burden of proving, from this partial recount in precincts where contestee had received a heavy vote, that a recount of all votes would establish a majority for contestant. Thus, the committee concluded that the contestant had not introduced sufficient evidence to warrant a complete recount.

10. 89 CONG. REC. 3024, 78th Cong. 1st Sess.; H. Jour. 219.

11. *Id.* at p. 2982.

The committee report made reference to such errors as improper initialing of ballots by election holders, improper marking of ballots, failure of election holders to initial ballots, spoilation of ballots, etc., but said:

> There is no evidence whatsoever of fraud on the part of the election officials. So, it is evident that this condition was general and prevailed among all of the ballots cast and it can, therefore, be seen that the gains made by the contestant in the partial review or recount which included only 42 percent of the total ballots cast, but which included at the same time over 56 percent of the ballots cast for the contestee, is by no means conclusive proof that the trend of the change as shown by the recount in favor of the contestant would have continued throughout the recount of all the remainder of the ballots.
>
> [Whether] the contestant desired to recount all of the ballots cast in this election for the purpose of securing evidence to submit in support of his contest, he did not exhaust the remedy afforded him for such a recount.
>
> It is the duty of the contestant to produce evidence sufficient to support the allegations set forth in his petition, and, as this committee has heretofore held, it is not the duty of this committee to take upon itself the obligation of securing evidence for either party.

Mr. Peterson called up as privileged House Resolution 444,[12] on the same day he submitted the report of the Committee on Elections No. 3 for printing in the Record. House Resolution 444 was agreed to by the House without debate and by voice vote, and it—

> *Resolved*, That the election contest of James C. Moreland, contestant, against Leonard W. Schuetz, contestee, Seventh Congressional District of the State of Illinois, be dismissed.

Note: Syllabi for Moreland v Schuetz may be found herein at § 6.3 (items transmitted by Clerk); § 27.10 (extensions of time for taking testimony); § 27.11 (extensions of time for good cause); § 39.1 (recount by stipulation of parties); § 40.5 (burden of proving recount would change election result); § 43.4 (resolution accompanying report).

§ 52.4 Schafer v Wasielewski

On Mar. 29, 1944, Mr. James Domengeaux, of Louisiana, submitted the unanimous report[13] of the Committee on Elections No. 1 in the contested election case of John C. Schafer against Thaddeus F. Wasielewski, from the Fourth Congressional District of Wisconsin. The case had come to the House pursuant to the provisions of the federal statute (see 2 USC §§ 381 et seq.), governing election

12. 90 CONG REC. 1834, 78th Cong. 2d Sess., Feb. 17, 1944; H. Jour. 127.

13. 90 CONG. REC. 3252, 78th Cong. 2d Sess.; H. Jour. 227.

contests on Sept. 20, 1943, when the Speaker laid before the House a letter from the Clerk[14] transmitting the necessary testimony and documents. The letter was referred to the committee on that date and ordered printed by the Speaker.

The contestant, defeated in the election by contestee by approximately 17,000 votes, alleged that contestee had himself expended more money during his campaign than was permitted by the Federal Corrupt Practices Act and by the election laws of Wisconsin and that contestee had failed to file correct reports of expenditures as required by law. As stated in the report, "the Wisconsin statutes limit to $875 the amount of money that can be spent by a candidate for Congress in the general election. The Wisconsin statutes, however, place no limitation upon receipts and expenditures of individuals or groups that might voluntarily interest themselves in behalf of a candidate."

The Federal Corrupt Practices Act (2 USC § 248) requires:

> (a) A candidate, in his campaign for election, shall not make expenditures in excess of the amount which he may lawfully make under the laws of the State in which he is a candidate, not in excess of the amount which he may lawfully make under the provisions of this title ($2,500).

As further stated in the report—

> Thaddeus F. Wasielewski filed with the Clerk of the House of Representatives on November 5, 1942, a statement, as required by Federal law, showing receipts of $1,689 and total expenditures of $1,172.

The committee determined that the expense reports filed by contestee had disclosed on their face, figures in excess of amounts permitted by state law and by the Federal Corrupt Practices Act. The committee found, however, that certain sums listed actually represented expenditures of a "voluntary committee" rather than expenditures of a "personal campaign committee" as defined by state law, and were, therefore, not to be considered personal expenditures of contestee, and, thus, not limited by state law.

The committee also determined that it should not deprive contestee of his seat as a result of his negligence in preparing expenditure accounts filed with the Clerk. The committee found no evidence of fraud.

Immediately upon submission of the committee report (H. Rept. No. 1308), Mr. Domengeaux called up as privileged House Resolution

14. H. Doc. No. 282, 89 CONG. REC. 7682, 78th Cong. 1st Sess.; H. Jour. 607.

490,[15] which was agreed to by the House without debate and by voice vote, and which—

> *Resolved*, That the election contest of John C. Schafer, contestant, against Thaddeus F. Wasielewski, contestee, Fourth Congressional District of the State of Wisconsin, be dismissed.

Note: Syllabi for Schafer v Wasielewski may be found herein at §§ 10.1, 10.3 (Corrupt Practices Act).

§ 52.5 Sullivan v Miller

On Jan. 25, 1943, the Speaker laid before the House a letter[16] from the Clerk of the House, relating that his office had unofficial knowledge that the election held on Nov. 3, 1942, for a House seat from the 11th Congressional District of Missouri was being contested. On Dec. 9, 1942, contestant John B. Sullivan served notice of intention to contest the election on contestee Louis E. Miller, with answer by contestee on Dec. 28, 1942, from which date the time for taking testimony under the statute (2 USC § 203) began to run. The Clerk's letter related that on Jan. 20, 1943, the parties had filed a joint application proposing that the House order the Missouri Board of Election Commissioners to conduct a recount. The Clerk's letter, accompanied by the joint letter signed by the parties to the contest and by drafts of resolutions ordering the recount and extending time for taking testimony, together with depositions in support thereof taken of members of the Board of Election Commissioners in St. Louis, and accompanied by contestant's charts showing recapitulation of all votes cast in the district, were referred to the Committee on Elections No. 3 on Jan. 25 and "ordered printed with an illustration," as a House document.

The parties' application for a recount and accompanying supporting documents alleged that a state recount which had been conducted in a local election for Recorder, where those candidates had been on the same ballot as the parties in this case, indicated a miscount of 1,385 votes. On Feb. 25, 1943, Mr. Hugh Peterson, of Georgia, submitted a report,[17] which was unanimous, to accompany House Resolution 137,[18] which Mr. Peterson called up as

15. 90 CONG. REC. 3253, 78th Cong. 2d Sess.; H. Jour. 227.

16. H. Doc. No. 58, 89 CONG. REC. 368, 369, 78th Cong. 1st Sess.; H. Jour. 67.

17. H. Rept. No. 180 (joint application for recount not granted), 89 CONG. REC. 1353, 78th Cong. 1st Sess.; H. Jour. 129.

18. 89 CONG. REC. 1324, 78th Cong. 1st Sess.; H. Jour. 129.

privileged on that date. The report stated that no election contest had been formally presented to the House at that time, and there was thus no contest pending before the Committee on Elections, nor did this filing of a joint application for recount constitute such a presentation. The report recommended, therefore, that the House should not "intervene in an election contest that has been initiated but has not been brought officially to the House of Representatives simply for the purpose of procuring evidence for the use of the parties to the contest." The report expressed no opinion as to whether a recount of the ballots should be made in the event that an election contest was properly brought before the House. The report stated—

> It appears to the committee that the parties to this application could bring or might have brought this election contest to the House of Representatives in the manner prescribed by law and the House of Representatives could then itself determine whether or not it desired to recount the ballots.

The committee report stated that there was no precedent in the House whereby the House had ordered a state or local board of election commissioners to take a recount. The report distinguished cases cited in the joint application brief where recounts were made by the House itself through an elections committee.

In the brief debate in the House on House Resolution 137, Mr. Charles A. Plumley, of Vermont, stated that the Committee on Elections, by its unanimous report, would establish—

> . . . [T]he fact, the law, and a precedent for all time that jurisdiction of an alleged contested-election case cannot be conferred on the House or on one of its committees by any joint agreement of parties to an alleged election contest unofficially or otherwise submitted.

House Resolution 137 was thereupon agreed to without further debate and by voice vote, and it—

> *Resolved,* That the joint application for order of recount of John B. Sullivan, contestant, against Louis E. Miller, contestee, Eleventh District of Missouri, be not granted.

On Mar. 2, 1943, the Speaker laid before the House a letter (19) from the Clerk of the House transmitting contestant's application for an extension of time for taking testimony, which request was based upon time consumed by both parties in preparing their joint application for order of recount and supporting papers thereto. Contestant asked for 40

19. H. Doc. No. 122, 89 CONG. REC. 1473, 78th Cong. 1st Sess.; H. Jour. 137, 138.

additional days in which to prepare his testimony, and for 40 days thereafter for contestee to take testimony. The Clerk's letter was referred to the Committee on Elections No. 3 and ordered printed with accompanying papers (contestant's application) by the Speaker as a House document.

On May 17, 1943, Mr. Peterson submitted the unanimous committee report[20] which recommended that each party be given a 30-day extension of time for taking testimony, with an additional five days for contestant to compile rebuttal testimony. The report reviewed and affirmed six House contested election precedents wherein the House had determined that extensions of time for taking testimony are to be permitted "for good and sufficient reason only." Upon submission of the report, Mr. Peterson called up as privileged House Resolution 240,[1] which was agreed to without debate and by voice vote and which adopted the following committee recommendation:

> *Resolved,* That the time allowed for taking testimony in the election contest, John B. Sullivan, contestant, against Louis E. Miller, contestee, Eleventh Congressional District of Missouri, shall be extended for a period of 65 days, beginning May 18, 1943, and the testimony shall be taken in the following order:
>
> The contestant shall take testimony during the first 30 days, the contestee shall take testimony during the succeeding 30 days, and the contestant shall take testimony in rebuttal only during the remaining 5 days of said period.

On Nov. 24, 1943, Mr. Peterson submitted the unanimous final report[2] from the Committee on Elections No. 3, which accompanied House Resolution 368, with the recommendation that the contest be dismissed. The report related that the parties had, between the time their joint application for recount had been denied and the time the House had granted the extension of time for taking testimony, agreed to conduct their own recount. The results of this informal recount were determined on May 4, 1943, and they showed that contestee had received a majority of all votes cast, regardless of certain changes in the vote. Thus, both parties had "entered into a stipulation in which the contestant agreed that his pending election contest be dismissed and the contestee

20. H. Rept. No. 454, 89 CONG. REC. 4562, 78th Cong. 1st Sess.; H. Jour. 328.

1. 89 CONG. REC. 4529, 78th Cong. 1st Sess.; H. Jour. 328.

2. H. Rept. No. 887, 89 CONG. REC. 9975, 78th Cong. 1st Sess.; H. Jour. 757.

agreed that his pending counter election contest be dismissed."

House Resolution 368[3] was called up as privileged by Mr. Peterson on Nov. 24, 1943, and agreed to without debate and by voice vote. The resolution provided—

> *Resolved*, That the election contest of John B. Sullivan, contestant, against Louis E. Miller, contestee, Eleventh Congressional District of Missouri, be dismissed.

Note: Syllabi for Sullivan v Miller may be found herein at § 3.1 (House lacking authority over state or local election boards); § 3.2 (intervention by House in state or local elections); § 4.1 (notice of contest as basis for House jurisdiction); § 6.9 (items transmitted by Clerk); § 18.2 (compliance with statutory requisites); § 27.12 (extensions of time for good cause); § 39.2 (recount by stipulation of parties); § 41.4 (joint applications for recount); § 42.10 (disposal by stipulation of parties).

§ 52.6 Thill v McMurray

On Jan. 31, 1944, Mr. Hugh Peterson, of Georgia, submitted the unanimous report[4] of the Committee on Elections No. 3 in the contested election case brought by Lewis D. Thill against Howard J. McMurray from the Fifth Congressional District of Wisconsin. The contest had been first brought to the attention of the House, when, on Sept. 20, 1943, the Speaker laid before the House a letter from the Clerk[5] transmitting the required testimony and documents. The Speaker had referred the communication and accompanying papers to the committee, and had ordered it printed as a House document.

Contestant claimed that contestee, who had been elected by a majority of 6,000 votes, had received contributions and made expenditures in violation of the Federal Corrupt Practices Act and of Wisconsin law by filing incorrect statements of expenditures and contributions.

Contestee had filed statements with state officials showing no personal contributions or expenditures and showing about $8,000 "voluntary committee" contributions. This was consistent with the state statute. As stated in the report—

> The Wisconsin statutes limit to $875 the amount of money that can be spent

3. 89 CONG. REC. 9974, 78th Cong. 1st Sess.; H. Jour. 756.

4. H. Rept. No. 1032, 90 CONG. REC. 962, 78th Cong. 2d Sess.; H. Jour. 66.

5. H. Doc. No. 284, 89 CONG. REC. 7683, 78th Cong. 1st Sess.; H. Jour. 607.

by a candidate for Congress in the general election. The Wisconsin statutes, however, place no limitation upon receipts and expenditures of individuals or groups that might voluntarily interest themselves in behalf of a candidate.

Contestant alleged that contestee's statement filed with the Clerk of the House as required by federal law listed sizable personal contributions and expenditures in contradiction of his statement filed with the state. As stated in the committee report—

> (Contestee) filed with the Clerk of the House of Representatives on December 1, 1942, a statement, as required by Federal law, showing receipts of $8,458.78 and total expenditures of $7,360.91. This statement . . . contradicted the statements filed by him with the secretary of state of the State of Wisconsin which showed "no receipts, disbursements, or obligations."

Contestant had filed a petition under state law challenging contestee's expenditure statement filed with the state, which petition had been denied.

With respect to contestee's statement filed with the Clerk of the House pursuant to federal law, the committee considered evidence which showed that it had been erroneously prepared by counsel and signed by contestee without knowledge of its contents. Contestee, upon discovery thereof, "had contacted the Clerk of the House of Representatives admitting the mistake and attempting to correct the same by filing an amended statement" showing that the expenditures had been made by two "voluntary committees" without his consent.

The report stated that—

> The committee in this report does not attempt to express any opinion on the laws of the State of Wisconsin which seem to limit the personal contributions and expenditures of the candidate himself, while placing no limit upon the contributions or expenditures which may be made through volunteer groups. Neither does it attempt to condone the action of the contestee, Mr. McMurray, in signing under oath the statement filed with the Clerk of the House of Representatives, without being familiar with the contents of the statement or the irregularities which it contained.

The report recommended that—

> Under these circumstances, the committee is of the opinion that Mr. McMurray, who received a substantial majority of votes in the general election of November 3, 1942, over Mr. Thill, his nearest opponent, should not be denied his seat in the House of Representatives on account of this error made in the statement filed by Mr. McMurray with the Clerk of the House of Representatives.

Mr. Peterson called up as privileged House Resolution 426[6] on

6. 90 CONG. REC. 933, 78th Cong. 2d Sess.; H. Jour. 65.

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 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,

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.