

MAINE STATE LEGISLATURE

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SEVENTY-THIRD LEGISLATURE

HOUSE.

No. 169

STATE OF MAINE.

MAJORITY REPORT.

Majority of the Committee on Elections to which was referred the remonstrance of Alexis O. Robbins contesting the right of Dena L. Therriault to the seat occupied by him in this House, having heard and considered the same, ask leave to make the following report :

Alexis O. Robbins contests the right of Dena L. Therriault to the seat occupied by him in the House of Representatives of the State of Maine as representative in the Seventy-third Legislature from the district composed of the town of Fort Kent and the plantations of St. John, St. Francis, Wallagrass, Eagle Lake, New Canada, Hill and Allagash in Aroostook county.

From the official returns of said district of the election held on the tenth day of September, A. D. 1906, Dena L. Therriault, the nominee of the Republican party, appeared to have been elected, and a certificate of election was accordingly issued to him. From said returns it appeared that said Dena L. Therriault received at said election 517 votes and the contestant,

the said Alexis O. Robbins, received 472 votes, showing a majority of forty-five votes in favor of said Therriault. The contestant attacks the correctness of this return and alleges:

1. That in the town of Fort Kent, in said district, a town having more than five hundred voters, the selectmen, acting under the advice of the said Therriault, added a large number of names, to wit, seventy-three names of voters to the voting list of said town on the day of election, said names not being the names of voters inadvertently omitted by them in making up said list, and allowed said voters to vote contrary to law.

2. That foreigners, not naturalized citizens of the United States of America, were allowed to vote in said town of Fort Kent and in St. John Plantation in said district to the number of ten, against the protest of the contestant.

3. That in the various towns of said district a large number of voters sufficient to affect the result of said election were allowed to vote, against the protest of the contestant, who were not entitled to vote because of the educational qualification required by the Constitution of the State.

4. That in the plantations of St. John and Allagash in said district, a large number of voters, to wit, seventy-five voters were assisted illegally in the marking of their ballots against the protest of the contestant.

All of the above allegations were denied by the contestee. The evidence before your committee was in the form of depositions presented by the contestant and the certificate of election filed by the contestee.

It appeared that the town of Fort Kent had more than five hundred registered voters. Under the provisions of the Revised Statutes, Chapter 5, Section 40, applying to such towns, "No names shall be added to the list of voters on the day of election, by certificate or otherwise, except such as were upon the list used at the preceding election, and have been inadvertently omitted by the selectmen." It was shown by the depositions

of the town clerk and selectmen of the town of Fort Kent that names were added to the voting list on election day not exceeding twenty-eight in number, but there was no evidence to show whether these names so added had been "inadvertently omitted."

"The presumption of law is, that judges of elections and all other officers acting under the authority of law have done their duty and acted legally, and it is incumbent upon the party asserting the contrary, to prove satisfactorily that said judges and officers have violated their duty and disregarded the law."—*Piall v. People*, 29 Ill., 69.

The burden of proof is upon the contestant and he has failed to overcome the presumption that the officers were acting lawfully in adding these names to the list.

In support of the second allegation the contestant presented depositions to the effect that four persons voted who were born upon foreign soil and had never been naturalized. The allegation that such votes were illegal involves a charge of crime and the presumption is that they have voted legally and have not committed a crime. *Dorsey v. Brigham*, 177 Ill., 250. In the case of persons of foreign birth, mere proof that they have not been naturalized themselves, without any showing in regard to their fathers, is not sufficient to overcome the presumption of citizenship arising from the fact of their having voted. *Behrens-meyer v. Kreits*, 135 Ill., 591. In three of the cases the facts shown might all be true and the persons would still be legal voters. In the fourth case the evidence shows that the voter was not entitled to vote. It is not shown for whom this man voted.

Article XXIX of the constitution provides that "No person shall have the right to vote or be eligible to office under the constitution of this State, who shall not be able to read the constitution in the English language and write his name; provided, however, that the provisions of this amendment shall not apply to any person prevented by a physical disability from

complying with its requisitions, nor to any person who now has a right to vote, nor to any person who shall be sixty years of age or upwards at the time the amendment shall take effect.”

The evidence tended to show that several persons voted who could not read or write but failed to prove that these persons were not entitled to vote under the exceptions of this provision of the constitution.

Under the fourth reason alleged, the evidence showed that twenty-eight voters, including those mentioned in the preceding paragraph, were assisted in marking their ballots and that no certificate of the fact of such assistance was made by the proper officers, upon such ballots. It was shown that ten of these votes were thrown for the contestee. It was not shown that any person was deprived of his ballot, that there was any fault on the part of the voters, that there was any fraud or intent to perpetrate a fraud upon the part of any one, or that the result of the election was in any way affected thereby.

The voter had done all that was required of him under the law and the irregularity complained of was on the part of the election officers. Such officer may render himself liable to punishment under the law but cannot be allowed to disfranchise the voter by such neglect of his duty.

“It is a rule very generally recognized that the misconduct of election officers, or irregularities on their part will not vitiate an election unless it appears that the result was affected thereby.”
—10 Am. & Eng. Enc. of Law, 2nd Ed., 670, and cases cited.

Under the rule laid down in *Atty. General v. Newell*, 85 Me., 276, the contestee in an election contest sustains his title to the office by showing his certificate of election under which he claims the office. The Court says, “When these proofs are shown, regular in form, coming from the proper authority, the title to the office is *prima facie* shown; and until such evidence is impeached, it stands good. It may be impeached in various ways. It may be shown incorrect, if the office be elective, by

proving illegal votes to have been cast. In such case the proof must go further. It must show a sufficient number of votes to change the result, else the certificate still shows a valid choice, and the certificate is good until overthrown."

If it were conceded that the twenty-eight names added to the voting list in Fort Kent on election day were all unlawful voters, and to these were added all votes claimed by the contestant to be illegal under his second and third allegations, and if these votes were all deducted from the majority of the successful candidate, the contestant would still be unable to show a sufficient number of such votes to change the result.

The burden of proof is on the contestant to show that a majority of the legal votes cast at the election were for him, and this he has utterly failed to do. The certificate of election still stands. We beg leave to report that the contestant have leave to withdraw.

J. MERRILL LORD,
GEORGE R. HADLOCK,
A. J. FULTON,
FRANK A. EMERY.

MINORITY REPORT.

To the Honorable House of Representatives of the Seventy-third Legislature of Maine:

The Committee on Elections to which was referred the remonstrance of Alexis O. Robbins, in which he claims that Dena L. Therriault should not occupy a seat in this House as Representative from the District of Fort Kent, Maine, because he, the said Alexis O. Robbins, received a plurality of all the votes legally cast and given for representative to said Legislature, in the September election of 1906 in said District of Fort Kent, and that he, the said Alexis O. Robbins, should, therefore, be admitted to the seat now held and claimed by said Dena L. Therriault, having heard all the evidence in the case and the arguments of counsel, after full consideration beg leave to report:

That they are convinced by the evidence that there were, in said election in said Fort Kent District, practices of gross fraud and flagrant violations of those provisions of law calculated to insure the purity of the ballot; that public officers, whose sworn duty it was to surround the ballot box with all the protection of the law that the will of the people might be registered, were not only guilty of culpable negligence in the discharge of their duties, but were participants in a fraudulent combination to pervert the will of the majority.

Your committee further finds upon the evidence in the case that fifty-six (56) or more fraudulent and illegal ballots were deposited in the ballot boxes in the town of Fort Kent and in the plantations of St. John and Allagash through the connivance and consent of the Republican officials of said town and plantations, and that presumably such unlawful and fraudulent ballots were cast and counted for Dena L. Therriault; that at said election in said district, paupers, unnaturalized aliens, persons not authorized to vote because of illiteracy, and persons whose

names were not on the voting list previous to the election were unlawfully allowed to register and vote and did so unlawfully register and vote at said election.

Your committee further finds from the evidence, that in violation of law the municipal officers of Allagash Plantation appointed two Republicans as ballot clerks at said election; and your committee is lead to believe from the evidence furnished, although plenary proof thereof is not produced, that there was further extensive illegal and fraudulent voting at said election.

Your committee finds from the evidence that all said fraudulent and illegal votes were counted and returned for one candidate or the other, and that some of said fraudulent and illegal votes were given in, counted, and returned for Dena L. Therriault; and your committee is led to believe from the evidence, although plenary proof thereof was not produced, that all said fraudulent and illegal votes were given in, counted and returned for Dena L. Therriault, whose total plurality according to the returns was forty-five votes, some eleven less than the total number of votes proven to be fraudulent and illegal as aforesaid.

Wherefore your committee is unable to determine who was lawfully elected to the office of representative from said district and reports, that the accompanying resolve declaring said office to be vacant and that said Dena L. Therriault ought not and shall no longer sit as a member of this House, ought to be given a passage by this House, and that in fairness and justice to the parties and to the people of said district, the question should be determined by the lawful electors of said district at a special election.

Respectfully,

HENRY F. BRAWN,

CHARLES A. LYNCH,

CHARLES W. GALLAGHER,

Of the Committee on Elections.

RESOLVE in relation to Representative from the Fort Kent
District.

Resolved, That it is the judgment of this House, that
2 because of extensive fraudulent voting in the election last
3 September in the Fort Kent representative district there
4 was no choice of representative of said district to the Sev-
5 enty-third Legislature;

Resolved, That it is the judgment of this House that
7 there is a vacancy in the office of representative of said dis-
8 trict to the Seventy-third Legislature;

Resolved, That it is the judgment of this House that
10 Dena L. Therriault, who was given a certificate of election
11 as representative from said district to the Seventy-third
12 Legislature, is not entitled to and shall no longer sit in this
13 House as representative of said district.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,

Augusta, February 13, 1907.

Tabled pending acceptance of either report, by Mr. LORD of Parsons-
field, and ordered printed with accompanying resolve and Wednesday,
February 20, assigned for further consideration.

E. M. THOMPSON, *Clerk*.