

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

Seventy-First Legislature

OF THE

STATE OF MAINE.

1903.

HOUSE.

Thursday, Feb. 5, 1903.

Prayer by the Rev. Mr. Chappell of Presque Isle.

Papers from the Senate disposed of in concurrence.

Senate Bills on First Reading.

An Act to increase and fix the salary of the Assistant Librarian.

An Act to authorize the town of Boothbay Harbor to construct a bridge across the harbor in said town.

An Act to incorporate the Auburn and Turner Railroad Company.

An Act to amend the charter of the Maine General Hospital.

The following bills, petitions, etc., were presented and referred:—

Judiciary.

By Mr. Low of Portland: Petition of W. W. Sabin and 147 others relating to the erection of structures on the shores of interior waters of State of Maine.

Also: Petition of Dr. H. S. Emery and 86 others in relation to same.

Also: Petition of Dr. F. H. Gardner and 40 others in relation to same.

Also: Petition of Alfred Burnell and 75 others of Westbrook in relation to same.

By Mr. Mead of Bridgton: Petition of F. W. Seavey and 20 others of Bridgton for a bill relating to the drainage of structures built on shores of the interior waters of Maine.

Also: Petition of C. W. Hill and four others of North Bridgton for same.

Also: Petition of A. S. Brown and 42 others of Bridgton for same.

By Mr. Sturgis of Standish: Petition of W. E. Weymouth and 15 others for a law regulating the drainage of structures erected upon the shores of the interior waters of Maine.

By Mr. Cook of Casco: Petition of H. W. Hanson and 30 others for same.

Also: Petition of Dr. A. P. Reed and 52 others for same.

Also: Petition of C. D. Sylvester, M. D. and 29 others for same.

Also: Petition of S. D. Meserve and five others for same.

By Mr. Purinton of Gorham: Petition of Henry R. Stickney and 22 others for same.

By Mr. Drew of Portland: Bill, An Act to enlarge the powers of the Prout's Neck Water Company.

Legal Affairs.

By Mr. Farnsworth of Pembroke: Remonstrance of J. B. Nutt and 40 others against the establishment of a municipal court in the city of Eastport.

By Mr. Buzzell of Old Town: Remonstrance against the passage of bill authorizing the Orono Pulp and Paper Company to generate, use and sell electricity.

Also: Remonstrance against the passage of bill authorizing the Bodwell Water Power Company to generate, use and sell electricity.

By Mr. Knowlton of New Portland: Bill, An Act to enlarge the powers of the Carrabassett stock farms.

By Mr. Brewster of Dexter: Bill, An Act to extend the charter of the Dexter Water Company.

Also: Bill, An Act to extend the time for the acceptance of the charter of the city of Dexter.

Education.

By Mr. Smith of Presque Isle: Petition of Mrs. G. W. Johnson and 37 other ladies of Presque Isle in favor of Normal school in Aroostook county, same to be located at Presque Isle.

Also: Petition of Mrs. G. C. Upham and 114 other ladies of Presque Isle in favor of same.

By Mr. Hall of Fort Fairfield: Petition of R. S. D. Jackson and 24 others of Fort Fairfield in favor of same.

By Mr. Dilling of Easton: Petition of Mrs. F. E. Smith and 99 other women of Easton in favor of same.

By Mr. Mead of Bridgton: Bill, An Act to amend Chapter 80 of the Public Laws of 1899 relating to truant officers.

By Mr. Thomas of Topsham: Bill, An Act to amend Chapter 216 of the Public Laws of 1893 relating to the maintenance of schools.

By Mr. Randall of Freeport: Bill, An Act to amend Chapter 332 of the Public Laws of 1897 relating to school committees and superintendents.

Also: Bill, An Act to amend Chapter 152 of the Public Laws of 1895 relating to State examination and certification of teachers.

By Mr. Purinton of Gorham: Resolve in favor of Gorham Normal school.

Railroads, Telegraphs and Expresses.

By Mr. Hill of Winterport: Bill, An Act to incorporate the Winterport, Frankfort and Prospect Electric railway.

Ways and Bridges.

By Mr. Gagnon of Van Buren: Petition of assessors and inhabitants of Connor Plantation for an appropriation to build bridge across the Little Madawaska river in Connor Plantation.

Inland Fisheries and Game.

By Mr. Shackford of Harrington: Petition of Joseph A. Coffin and 39 others recommending the passage of an act to prohibit all persons to hunt or shoot game or catch fish on township No. 13, Washington county.

By Mr. Waterhouse of Westbrook: Petition of Springvale Fish and Game club asking for the establishment of a fish hatchery at Sebago lake.

Also: Petition of Charles L. Foss and 11 others for same.

By Mr. Furbish of Rangeley: Petition of W. S. Heath and 29 others to regulate fishing in streams in Salem.

By Mr. Foss of Hancock: Petition of Will R. Havey and 36 others asking for an act to regulate the taking of black bass in the waters of Hancock county.

By Mr. Morrison of Eden: Petition of Osman Emery and 24 others of Eden to regulate the taking of sea birds.

Shore Fisheries.

By Mr. McNamara of Thomaston: Petition of R. E. Butler and 142 others of Thomaston, Cushing and St. George in favor of repeal of Section 41 of Chapter 284 of the Public Laws of 1901, in relation to the taking of smelts from the Georges river.

Also: Bill, An Act to amend Section 41 of Chapter 284 of the Public Laws of 1901.

Commerce.

By Mr. McNamara of Thomaston: Bill, An Act to amend Section 43 of Chapter 284 of the Public Laws of 1901.

Counties.

By Mr. Boyd of Linneus: Remonstrance of L. H. Floyd and 46 others against proposed change of county line between Reed and Drew Plantations.

Also: Remonstrance to proposed change of county line between Reed Plantation and Drew Plantation.

Towns.

By Mr. Patterson of Industry: Petition of A. D. Hines, Frank Hutchins and I. N. Stanley selectmen of Kingfield and 22 others to set off 600 acres of the town of Freeman and annex same to the town of Kingfield.

By Mr. Thornton of Ashland: Petition of Israel Gardner and 115 others of Ashland praying for separation of Sheridan Plantation, so called, from Ashland.

Also: Bill, An Act for the separation of Sheridan Plantation, so called, from Ashland.

Public Charities and State Beneficiaries.

By Mr. Garcelon of Lewiston: A statement of facts accompanying a resolve in favor of the society of the Sisters of Charity of Lewiston.

Temperance.

By Mr. Maybury of Saco: Petition of Daniel I. Lord and 56 others in favor of resubmission.

By Mr. Weeks of Fairfield: Petition of A. B. Page and 70 others of Fairfield for same.

By Mr. Cole of East Livermore: Protest of H. D. Bryant and 30 others of Lewiston against resubmission.

Also: Protest of A. K. Spofford and 23 others of Lewiston against same.

Also: Protest of E. K. Smith and 8 others of Lewiston against same.

Also: Protest of O. B. Cheney and 11 members of the faculty of Bates College of Lewiston against same.

Also: Protest of Ellen C. Salley and 8 others of Lewiston against same.

Also: Protest of the W. C. T. U. of Lewiston consisting of 75 members against same.

Also: Protest of Rev. G. D. Holmes and 42 others of Lewiston against same.

By Mr. Allan of Portland: Remonstrance of Henry W. Noyes and 52

others of New Gloucester against same.

Also: Remonstrance of A. H. Granell and others against same.

By Mr. Weatherbee of Lincoln: Remonstrance of Rev. M. Kearney and 27 others of Lincoln against same.

By Mr. Page of Skowhegan: Remonstrance of H. C. Judkins and 23 others of Skowhegan against same.

By Mr. Purinton of Gorham: Remonstrance of Lorana H. Strout and 27 others against same.

By Mr. Littlefield of Rockland: Remonstrance of W. E. Lombard and 68 others of Camden against same.

Also: Remonstrance of M. F. Hanley and 174 others of Appleton and vicinity against same.

By Mr. Wentworth of Lebanon: Remonstrance of Rev. James Boyd and 2 others of North Berwick against same.

By Mr. Randall of Freeport: Remonstrance of R. H. Gilman and 125 others citizens of Freeport against same.

By Mr. Abbott of Shapleigh: Remonstrance of E. H. Day and 24 others of Waterboro against same.

By Mr. Hill of Winterport: Remonstrance of F. L. Marston and 44 others of Brownfield against same.

Also: Remonstrance of Walter A. Danforth and 16 others residents of Bangor against same.

By Mr. Twambly of Kennebunkport: Remonstrance of S. E. Sennett and 144 others of Kennebunkport against same.

By Mr. Mewer of Old Orchard: Remonstrance of Rev. J. Burnham Davis of Ocean Park and 25 others against same.

By Mr. Tripp of Lyman: Remonstrance of Thomas Clark and 45 others of Lyman against same.

By Mr. Wentworth of Lebanon: Remonstrance of C. W. Kelly and 92 others of North Berwick against same.

By Mr. Thomas of Topsham: Protest of Mrs. L. D. Small and 29 others against same.

By Mr. Hill of Winterport: Resolve of favor of the Winterport Civic association against same.

By Mr. Dilling of Easton: Remonstrance of John Banks and 169 others of Mars Hill against same.

Also: Remonstrance of Roland Pierce and 46 others of Blaine against same.

By Mr. Clarke of Nobleboro: Remonstrance of J. P. Huston and 19 others of Newcastle against same.

Also: Remonstrance of James Stetson and 33 others against same.

By Mr. Bailey of Bradford: Remonstrance of Thomas H. Wentworth and 81 others of Bradford against same.

By Mr. Williams of Williamsburg: Petition of M. F. Hobbs and 180 others of Milo for retaining and enforcing the prohibitory liquor law and respectfully protesting against the resubmission of said law.

By Mr. Josselyn of Portland: Remonstrance of Rev. Louis Malvern and 143 others of Portland against same.

By Mr. Davis of Waterville: Petition of I. S. Bangs and 120 others of Waterville in favor of resubmission; of M. D. Butterfield of Hartland and 50 others for same; of B. L. Blagden of Wiscasset and 17 others for same; of R. E. Bradley and 19 others of Portland for same.

Taxation.

By Mr. Taylor of Wiscasset: Remonstrance of H. W. Barter and 11 others members of Wiscasset Grange against reduction of savings bank tax.

Also: Remonstrance of Charles G. Hall and 15 others of Dresden against same.

Also: Remonstrance of Charles E. Allen of Dresden against same.

On motion of Mr. Weeks of Fairfield these three remonstrances were placed on file, as the bill has already been reported by the committee.

Waldo County Delegation.

By Mr. Clark of Prospect: Bill, An Act regulating the compensation of the county commissioners of Waldo county.

York County Delegation.

By Mr. Abbott of Shapleigh: Bill, An Act for the better protection of deer in the county of York.

Orders.

On motion of Mr. Merriam of Morrill, Ordered, That the use of the Hall of Representatives be given to the speaker of the national road congress this evening to discuss the question of good roads.

On motion of Mr. Oakes of Auburn, the order extending an invitation to

Hon. Martin Dodge and President Morse to address a joint session of the Legislature, was taken from the table, and on further motion by the same gentleman it was indefinitely postponed.

Mr. Williams of Williamsburg, presented the following petition out of order: Petition of U. H. Sumner and 16 others of Williamsburg to make valid the doings of the town of Williamsburg, and moved its reference to the committee on legal affairs.

Report of Committees.

Mr. Coyne from the committee on Governor's message, reported that that portion of the message relating to forestry be referred to the committee on agriculture.

Same gentleman from same committee, reported that that portion of the message relating to schools for the deaf be referred to the committee on education.

Mr. McFaul from the committee on legal affairs, on bill, An Act to incorporate the Hancock Water, Light and Power Company, reported that the same be printed and recommitted.

Mr. Oakes from the same committee, on bill, An Act to amend Chapter 42 of the Revised Statutes relating to timbers upon rivers, streams and adjacent lands and to extend its provisions to timber found in the ocean or any inlet thereof, reported ought not to pass.

Mr. Daniels from the committee on railroads, telegraphs and expresses, on bill, An Act to authorize the Wiscasset, Waterville & Farmington Railroad Company to build branches in Winslow, Waterville and Oakland, reported ought not to pass.

Mr. Libby from the committee on judiciary, on bill, An Act to authorize the town of Monson to remove the bodies of deceased persons, reported a bill in a new draft under same title and that it ought to pass.

Mr. Littlefield from same committee, on bill, An Act to legalize the doings of the Portland & Rumford Falls Railroad, reported ought to pass.

Mr. Weeks from same committee, on bill, An Act to increase the corporate powers of the Newport Light and Power Company, reported a bill

in a new draft under same title and that it ought to pass.

Same gentleman from same committee, on bill, An Act to legalize the doings of the Rumford & Rangeley Lakes Railroad Company, reported ought to pass.

Mr. Shaw from the committee on on bill, An Act to grant additional power to the Portland & Brunswick Street Railway, reported ought to pass.

Mr. Shaw from same committee on Bill, An Act to amend the Charter of the Lewiston, Brunswick and Bath Street Railway, reported ought to pass.

Mr. Burrill from same committee on Bill, An Act to authorize the Norway and Paris Street Railway to lease the property and franchises of the Oxford Light Company, reported ought to pass.

Mr. Daniels from same committee on Bill, An Act to extend certain franchises held by the Wiscasset, Waterville & Farmington Railroad Company, reported ought to pass.

Mr. Boyd from same committee on bill, An Act to amend and extend the charter of the Waldo Street Railway, reported ought to pass.

Mr. Kimball from same committee on bill, An Act to amend the charter of the Augusta, Winthrop & Gardiner Railway, reported ought to pass.

Mr. Clarke from same committee on bill, An Act to grant additional powers to the Waterville & Oakland Street Railway, reported ought to pass.

Mr. Burrill from same committee on bill, An Act to amend the charter of the Rockland, Thomaston & Camden Street Railway, reported ought to pass.

Mr. Shaw from same committee on bill, An Act to incorporate the Swan's Island Telephone & Telegraph Company, reported ought to pass.

Mr. Maybury from the committee on banks and banking on bill, An Act to extend the charter of the Cumberland Trust Company, reported ought to pass.

Mr. Maybury from same committee on bill, An Act to extend the charter of the Camden Trust Company, reported ought to pass.

Mr. Maybury from same committee on bill, An Act to incorporate the Pittsfield Trust & Banking Company, reported bill in a new draft under same title and that it ought to pass.

Mr. Knowlton from the committee on ways and bridges on bill, An Act to amend Section 10 of Chapter 19 of the Revised Statutes relating to the law of the road, reported ought to pass.

Mr. Oakes of Milford, from same committee on bill, An Act to amend Section 84 of Chapter 6 of the Revised Statutes relating to ways and bridges in unincorporated townships, reported ought to pass.

Mr. Shackford of Harrington, from the committee on shore fisheries on petition reported bill, An Act to amend Chapter 25 of the Private and Special Laws of 1839 relating to taking eels in Bagaduce river, bay and tributaries, and that it ought to pass.

Mr. Stearns from the committee on claims on resolve in favor of the town of Island Falls. Reported ought to pass. (Referred to committee on appropriations and financial affairs under joint rules.

Mr. Barker from the Penobscot county delegation reported in a new draft bill, An Act to amend Chapter 52 of the Public Laws of 1895 relating to the salary of the register of probate for the county of Penobscot, and that it ought to pass.

The reports were accepted and bills and resolves ordered printed under joint rules.

First Reading of Printed Bills and Resolves.

An Act to amend Section 47 of Chapter 77 of the Revised Statutes relating to the times of holding terms of supreme judicial court in Knox county.

An Act to extend the charter of the Eastport bridge.

An Act to amend Section 4 of Chapter 91 of the Revised Statutes relating to notice of foreclosure on a mortgage of personal property.

Resolve in aid of the Temporary Home for Women and Children at Portland.

Passed to Be Engrossed.

An Act to regulate the placing of permanent moorings in harbors.

An Act to authorize the Kennebec Light & Heat Company to issue bonds.

An Act to ratify mortgage of Fish River Railroad.

An Act to ratify the lease or authorize the sale of the Fish River Railroad to the Bangor & Aroostook Railroad Company.

An Act to ratify and confirm the consolidated mortgage made by the Bangor & Aroostook Railroad Company.

Passed to Be Enacted.

An Act to provide in part for the expenditures of government for the year 1903.

Orders of the Day.

On motion of Mr. Allan of Portland, House document No. 36 was taken from the table, and on further motion by the same gentleman was referred to the committee on banks and banking.

On motion of Mr. Smith of Presque Isle, House document No. 39 was taken from the table, and on further motion by the same gentleman it was referred to the committee on counties.

On motion of Mr. Oakes of Milford, the vote was reconsidered whereby the House referred to the committee on ways and bridges, Resolve for repairs of highways in Upton, Lincoln Plantation, Township C, in Oxford county, and on further motion by the same gentleman it was referred to the committee on State lands and State roads.

On motion of Mr. Putnam of Houlton, House document No. 40 was taken from the table, and on further motion by the same gentleman it was referred to the committee on legal affairs.

Lewiston Contested Election Cases.

Mr. WEATHERBEE of Lincoln: Mr. Speaker, I move that the minority report of the committee on elections be substituted for the majority report.

I will say that, at the September election, held in Lewiston, Messrs. Garcelon, Morey and Coyne were the nominees of the Democratic ticket for Representatives to this Legislature. Messrs. Haskell, Little and Kelley were the nominees upon the Republican ticket. Upon the votes as they appear to have been cast that day by the ward officials whose duty it was to count them, Garcelon appears to have 1652 ballots, Morey 1645, Coyne 1644, Haskell 1598, Little 1594 and Kelley 1613. On the face of the returns, Garcelon, Morey and Coyne appear to have been elected; and those returns were sent to the Governor and Council; and they, as it is their duty in such cases, decided that Messrs. Garcelon, Morey and Coyne were elected on the face of the returns. It was not in their power to go behind the

returns and inquire into the validity of the election—whether any fraud entered into the balloting or to eliminate the illegal or improper votes. Their duty was to declare the results upon the face of the returns as they came from the city of Lewiston; and they did that.

Now, the contestants—the Republican nominees, Haskell, Little and Kelley,—came to this House with a remonstrance; and they allege that there were gross frauds perpetrated in the city of Lewiston upon that election day; and that, by virtue of those frauds, the Democratic nominees were elected. They charge, among other things, that the Democratic city clerk, prior to the election, abstracted a bunch containing 60 ballots from each of several wards; and that, in Ward 6 there were 26 more votes in that ballot box than had been delivered out during the day by the ballot clerks; and they have also alleged that 8 persons whose names were checked as the men having voted in Ward 6 that day were not in the city and did not participate in the election. They allege further that, subsequent to the election, the ballots were mutilated or changed, and that the checklists used in Ward 6 were subsequently to the election mutilated and changed.

The burden of proof is upon them, in the first instance. The sitting members have only to show their certificate of election to make out a prima facie case. That they have done. Your committee upon elections have devoted considerable time to the examination of all the evidence in the case, and have come to an agreement, practically upon all the facts connected with this case. They allege that it has been sufficiently proven that the Democratic city clerk did abstract 60 ballots from each of several wards in the city of Lewiston; and it must be admitted that that abstraction was done for a purpose. It was an unlawful act; and the man who committed it must have had some object in view; and the only object he could have had was either to vote or have those ballots voted, that the candidates of his party might be successful in that contest. We are satisfied that at least 26 of those ballots were fraudulently deposited in Ward 6 ballot box. A majority of this committee contend that the fraud stopped there—that it goes no further. A minority of the committee say that they do not know the extent of the fraud—that they are unable to tell—that the fraud is of such a nature that it is almost impossible to define its limits. Now, I cannot say how many of those ballots might have been used to the advantage of the Democratic party in wards other than six and escape detection by your committee. Men, who are so contemptible as to sell their votes are men whose words are not to be taken; and if Democratic officials are to buy ballots, they desire to know that they have received their goods before they pay for them, and they have ballots on hand. They mark a ballot and they desire it to be deposited in the box. They

tell the person whom they have purchased that he must take that ballot which they have marked and which they can distinguish later on, to the polls, and that, at the polls they will receive a ballot from the ballot clerk. The ballot so received they must place in their pocket, and the ballot which the Democratic official has given the voter is deposited in the box, and then the voter returns and gives up the ballot which he has received from the ballot clerk. In this way, many of the ballots abstracted in other wards than Ward 6 may have been unlawfully used.

Now, the facts in this case, as they have been established, are that subsequent to the election, ballots deposited in the ballot boxes in the city of Lewiston on that day were mutilated and changed. The evidence of that fact is indisputable, because when the ballots are counted at the polls they are left in a pile, one upon another; and upon an inspection of those ballots it was found that the Republican nominee's name was scratched out and the name of Michael A. Coyne written in. Upon examining that ballot they find that the indentation of the writing extended the ballot below with such definiteness that the name of Michael A. Coyne could be read; and it even extended to the third ballot; and there were several such cases. It clearly demonstrates the fact that those ballots were tampered with subsequent to the election; and, your minority, contend, and I think the majority also, that such tampering with the ballots renders those ballots worthless for any purposes of recounting and that the contestants in this case were deprived of their privilege of a recount, as the law provides.

We find that, even at the polls upon that day and upon that morning—and the majority agree to this—that that ballot box was not sealed as the law contemplates. It was sealed by dropping a little sealing wax upon one or two screws which held the cover to the box; and this cover could have been removed, and the box tampered with and the screws replaced, and detection would not have followed, by the simple act of breaking the seals—and that the checklists which the law provides shall be sealed and sent to the clerk, were not sealed at all. They were so indifferent about the care of that checklist that the ward officials are unable to tell you who took it to the city clerk; and they also admit that it never was sealed; and it went to the city clerk in a manner in violation of our laws.

Now, we find, at 4 o'clock on the afternoon of the election, that upon counting the number of ballots which were left in the hands of the ballot clerk in Ward 6, deducting that from the number which he had on hand when the polls opened—we are able to tell the number of ballots which he had delivered out and which should have been in the ballot box; and the count of the checklist at that time revealed the exact number of names checked as ballots given out. They tallied

exactly. Upon counting the ballots they found that they overran 26.

Now, those are the facts in the case and they are agreed to by both the minority and the majority of your committees. But, after we agree upon these facts, we are unable to agree further. The majority of the committee say that the proper solution is to eliminate the 26 votes which were unlawfully placed in the ballot box, and either to eliminate the eight votes which were proven to have been put in there by men whose names were upon the list or placed in there and fictitious names checked off to tally with them—that those eight, with one more of the same nature thrown elsewhere in the city, with the 26, should be deducted from the count of the Democratic nominees. That result would unseat Michael A. Coyne and seat in his place Stephen J. Kelley, and would place the majority of Mr. Garcelon at 19 and the majority for Mr. Morey at 16.

But the minority say that it is not the proper solution—that since you have established fraud and have connected it with the officials of the ward, the whole returns of that ward is so contaminated that it is not to be believed, and that you are unable to separate the false from the true or the good from the bad; and we contend we have sound legal precedent to establish our position.

Now there is a great difference between general fraud which is attributable to the officers of a ward themselves, and to improper or illegal ballots. We claim that if a person who has no right to vote in Lewiston participated in the election, that that is an illegal ballot and that it should properly be deducted from the count; and the majority contends that that is true. The majority of the committee also contends that if you show general fraud, then you must limit that fraud and show that its extent is sufficient to change the results, or you should not eliminate the returns from the ward or town, as the case may be; and I contend here, that that is not sound law—that there are numerous decisions which disprove that; but I shall occupy your time with the reading of but one decision, and that is one rendered by one who now occupies a seat upon the bench of one of the highest tribunals in the whole world—a member of the United States supreme court.

(See Kansas Reports, Vol. II, Webb, p. 320 et seq., Russell vs The State, ex rel. Nicholson.)

In the case now before you we do not say that you should deprive legal voters of their votes, but we do say that the returns—the prima facie evidence that attaches to the returns—has been overcome and that the returns from that ward should be eliminated; and those honest voters who voted in that ward should prove by testimony that they so voted, and then their votes should be counted.

But, aside from the law touching this case, I believe that this Legislature, upon

even higher grounds—upon the question of good morals and good government—will see to it that their action, today, is not a precedent that will permit base and lawless persons to pervert the will of a majority of the people. If you contend, as the majority of this committee has contended, that you are only to eliminate the fraud—the general fraud to the extent which you find it—then you simply invite the commission of a fraud. You say to the people of Lewiston and the people of the entire State: "You may commit what what fraud—all the fraud you can—you may stuff your ballot boxes and mutilate your checklists—you may vote non-residents and others who have no right to vote, and so far as we cannot detect the actual extent of that fraud, you shall profit by such unlawful acts. You have everything to gain and nothing to lose."

Now, whether the ward officers of Ward 6 were in any conspiracy to pollute the ballot box: John Finn, a Democratic ex-alderman of Lewiston, says that a Democratic police officer came to him and said that Lambert was putting in a whole bunch of ballots into the box. He went right to the Democratic warden and asked him if it were true—if Lambert had put in a bunch of ballots. The reply was: "Keep still about it. He will fix it all right." He then went to Mr. Lambert himself and asked him about it, and Lambert said: "Keep still about it. I can check off enough of Canadian names to offset it." Now, Lambert denies that, and well he might. He is in such a position that he must deny it; but there are circumstances which surround the transaction that corroborate the testimony of Mr. Finn. The fact is that names were checked off to cover up the frauds committed by the Democratic officials in that ward that day.

This is not a question of men, nor of policy, but of principle. It is not right to say, because we have such a great majority in this House, that we will be generous with the minority. We shall be most generous when we are just; and whoever would settle this contest upon such a basis as that would also say that whenever the Democratic party is nearly equal to us in strength in this House, we have a perfect right by policy to unseat some in order that we may have a good working majority.

I ask you, gentlemen, simply to do justice—set such a precedent that in years to come your acts may be an honor to yourself and a protection to the ballot box. (Applause.)

Mr. ABEOTT of Shapleigh: Mr. Speaker—in deciding this case which is now before us we should not be influenced by any thoughts or offers of compromise, neither should we be influenced solely by a question of what we think right.

What then should guide us in the determining this case?

I answer; the law as applied to the facts of the case. We have no right to take the bit in our teeth and bolt and decide this use awarding to sentiment or

awarding to our ideas of what is right without regard to the law.

We should be fair to the Democratic candidates. Politics should not enter into the consideration of this case. On the other hand; we should not shrink from our duty through fear of being called unfair partisans.

In looking over the majority report we find some parties we wish to criticize. Right here I want to say that I do not for a moment question the honesty of the members of the committee making the majority report. They are honest but misguided. They have misconstrued the law in the cases cited. In my business as lecturer if I should make such propositions of law as were made by the committee in this report and cite the cases cited by the committee as authorities to establish the truth of those propositions, there would be a perfect storm of protest at the next lecture. In other words a body of undergraduate students in a law school would, on reading the cases, have at once detected the fallacy of the propositions. We shall expect and find even more intelligence in this deliberative body which is now trying to determine this case. In the case of Prince vs. Skillin, 71 Me., 373, the court said "The extra vote should never be rejected, when it is possible to ascertain the fraudulent vote." "Now there is no allegation whatever that illegal or fraudulent votes were cast." We agree that such is the law. The majority report agrees that such is the law. How then with this statement of the law do they reach the conclusions found in their report? They agree there were at least 26 illegal votes and probably at least 9 others on the one hand and 6 on another that were fraudulent, and yet they ask us to believe that only that number of votes were fraudulently cast. We agree with them that when it is possible to ascertain the fraudulent vote the whole should not be rejected. But have they shown the exact extent of the fraud committed? The evidence shows that at least so many votes were fraudulent. What evidence have we, except perhaps the unsupported testimony of the very perpetrators of the fraud, that many other votes were not fraudulent?

Prince vs. Skillin is not in point at all in this case. In that case the question arose simply over whether or not two ballots marked scattering should be returned. No fraud whatever entered into the case. The fact then that in the case of P. & S. the extra vote was not rejected is of no value in determining this case because no fraud was proven and the votes which it was claimed should have been counted were two and two only and could not possibly have changed the result. In other words there was no fraudulent voting, but merely a question of counting two votes.

In the committee report, page 9, about half way down the page, we find the following: "No one will, for a moment, intend that, if fraud is proved, which by no possibility could extend beyond five votes, in a case where a majority for the successful candidate was one hundred,

that on that account the whole poll should be excluded."

The words, "by no possibility could extend beyond five votes were well put," and this body of intelligent men cannot fail to see at once that they play right into the hands of the minority report. Answer me this question, "Does the evidence show, that by no possibility," could this fraud have extended beyond 26 votes or even beyond 53 votes?" They admit that if by any possibility, (they can't complain of that, I'm using their own words), the fraud could have extended beyond 53 votes then Ward 6 should be rejected, and yet, in the report they ask that the contestants have 100, prove beyond a reasonable doubt that enough fraudulent ballots were cast to change the election. It is self evident in reading the case of Prince vs. Skillin that it is directly contra to the conclusions as rendered by the committee. Our next point is in regard to the burden of proof as explained by the committee on page 10, in their report. They cite Attorney-General vs. Newell, 8 Maine, 277, and attempt to show that it is not authority for the statement that the burden is on the incumbent to prove his valid election. Without giving any authorities or reasons, except those stated a few moments ago, and which were shown to have been based on defective reasoning, they assume that the burden of proof rests on the contestants in this case, and that they must prove a sufficient number of illegal votes to have changed the election, thus in effect allowing the parties who have been proven guilty of fraud to lie complacently back while the contestants, having fairly proven fraud, fail to obtain their just deserts, simply because they cannot prove beyond a reasonable doubt (see page 11 of the report) that a few votes which would have changed the election were fraudulent.

In the name of right, commonsense and justice, such should not be the law. By judicial decision such is not the law.

In the case of Attorney-General vs. Newell, cited in the report, it was held that the returns being shown to be fraudulent, the burden is on the incumbent to show enough legal votes to elect him.

The report in citing this case, attempts to show that this principle does not apply to the case before us. Why does it not apply? The statement of error on page 10 as to quo warranto, why shouldn't the same principle apply here. A person who has been seated as a member of this House, has a certificate of election. If that is shown to be fraudulent he stands as if he had no such certificate at all, and the burden is on him to show a sufficient number of legal votes to elect him. How, then, can it be claimed that the burden is on a contestant to prove beyond a reasonable doubt just how many fraudulent votes were cast.

The report says near top of page 10 that the burden of proof does not shift as the case progresses. True, and on that one point we will sustain our case. You will admit that any incumbent of the office cannot take his seat and hold it

without giving sure evidence of his right to it. If he is challenged by anyone can he lie back and say: "Prove that I am not entitled to it?" No, he must produce his certificate or other evidence of his valid election. On whom, then is the burden of proof? On the incumbent, isn't it? and yet, the report says and we agree with it that the burden never shifts. From the beginning the burden is on the incumbent to prove his election valid. That burden is so shown in the first instance by the production of his certificate of election, this certificate having been rebutted by evidence of fraud which might possibly have changed the result of the votes, then the certificate being shown to be invalid, the incumbent stands as if he had no certificate, and he must go on and prove that in spite of the fraud yet he has a sufficient number of legal votes to elect him.

In other words, an uncertain number of votes having been shown to be illegal in this case, and, according to law, the returns for Ward 6 should be thrown out and the incumbents should be allowed only such votes in this ward as they proved were legally cast for them. They have shown no such votes, they should be entitled to none.

The claim has been made that both sides cheated in this ward. We have no evidence of such, and, if such is true, all the more reason why the whole ward should be thrown out.

The fact that it happens to be three Republicans who would gain by adopting the minority report is immaterial in deciding the law or the justice in this case. Politics should not enter into it, and I believe that influence in it has not. The fact that Democrats committed the fraud should not. On the other hand we should not be blinded by sentiment, nor a false sense of what constitutes unfairness. Our zest to be fair to the Democratic incumbents should not cause us to overstep the bounds and be unfair to the Republican constituents. It is no worse for the innocent incumbents to suffer that it would be to keep the would-be incumbents from their just deserts.

The opposition will attempt to show that 26 ballots were the extent of the fraud. What evidence have we that the first count was not correct? Those ballots were counted and then as soon as it was known a recount would be asked for they were mutilated so as to render an accurate recount impossible. (See committee report, page 13.)

Does not that fact alone prove that if there had been a recount the three Republican constituents could have gained? Else why were the ballots mutilated?

To sum up, the evidence shows that at least 26 ballots were added, very good evidence that nine other votes were illegally cast, and that the ballots were mutilated to prevent a recount which is conclusive evidence that the first count was not correct. What reasonable man can claim that the fraud has been shown to have been confined to such limits that it could not possibly have change the result?

We claim that it has been shown to have been so general that it not only might possibly have changed the result, but that without doubt it did change the result.

The majority and minority agree on the facts and the only conclusion to be reached is that had the majority rightly construed the law in the cases cited in support of their report they would have reached the same conclusion as was reached by the minority.

Sir, it is not solely a question of right and wrong, it is never a question of compromise or sentiment, but shall we decide this case according to the law as the law clearly exists, today. I think we should and I sincerely hope the minority report will be adopted. (Applause.)

Mr. POTTER of Brunswick: Mr. Speaker, I remember, a good many years ago, in one of the galleries of this House, of hearing the then member from Ellsworth, now a senator from this State, say: "Nothing is more fundamental and vital to us here than the membership of this House." That proposition is as true now as it was then. Then the political complexion of the House turned on the members. Now, the political result is a matter of indifference. There is no strong demand now to divide on party lines. All of us are partisans more or less but we ought to be able in a case like this, with some approach to impartiality to pass on the question of who were in fact elected from Lewiston to this House.

My information in regard to this case comes almost wholly from the reports of the committees, because I could not hear the testimony at the hearing. I am not, therefore, I suppose, in a position to enlighten others, but I want to state briefly my position. I understand that the two reports do not differ much as to the facts. They do not differ materially as to the law. They differ almost wholly as to the inferences to be drawn from admitted facts under what I understand to be admitted rules of law. Now I understand that both reports agree that the contestants in this case have set up and proved two kinds of fraud, with different rules of law applicable to each. In the first place, particular instances of fraudulent voting which can affect the result here as a matter of law only to the extent to which they are proved to exist; and secondly, what may be called general fraud or conspiracy, and the nature of that I understand to be such that, depending upon the extent of it and the kind of it, and whether or not participated in by the election officials, it may or may not be sufficient, even if the boundaries of it are indefinite, not only to justify this House but to require it to throw out the votes of an entire ward. Now what is the evidence as to the particular fraud, the specific acts of fraud? The specific acts of fraud, as I understand it—I am speaking now of Ward 6—are confined to the depositing in the ballot box in that ward 26 ballots at one time, probably by the Lewiston city clerk, presumably for the

benefit of the sitting members. There were also, I think, in that ward eight names checked of men as having voted who, for one reason or another, did not as a matter of fact, vote. I understand that it is agreed that the 26 votes, or the 34 votes in case the eight are not regarded as a part of the 26, should be excluded. What effect does that have on the election in Lewiston? It wipes out the majority of Coyne and elects Kelley. It divides by two the majority of the other two sitting members and reduces it to less than 30, according to one view to less than 20. That is all the effect that the specific fraud that has been done has upon the election. If that is all there were in this case, we should all agree that the majority report be accepted by the House. But the contestants have set up and proved, as I understand, fraud of a general nature; and what is the correct rule or law as to that? I understand it to be this: That if the fraud that is shown is of such a nature and extent, especially if participated in by election officials, that it makes the general result really uncertain, then the entire vote of the ward should be thrown out—if it makes the general result uncertain, not the result as to Ward 6. I assume that that is usually and perhaps always a Democratic ward. There is no question, I assume, but what that ward under a free and fair vote would be a Democratic ward. But considering that the majorities have been reduced to 10 or 20, the question is whether the fraud that has been done renders uncertain the general result and makes it doubtful whether or not the 10 or 20 majority of the other two sitting members may not reasonably have been accounted for by the fraud in Ward 6. If so, I understand the rule to be that it is even the duty of the House to exclude the vote of that ward.

Now I say two things in regard to a vote excluding an entire ward. I say we should be reluctant to do that. We are disfranchising honest voters when we do that, and therefore we should be slow in doing it. That is one proposition. And the other proposition is that when the result of the general election is rendered uncertain by reason of the fraud, then I say we should not hesitate to throw out the vote of Ward 6. And so the question is, whether the result is uncertain or not. Let me read a line from an Illinois decision: "When the people select election officers and they disregard their duties and aid in committing frauds in the election, the voter must be responsible for the conduct of the officer to the extent of losing his vote although he may be innocent of fraud." And further: "The interest of the public should not be sacrificed for the purpose of avoiding a wrong to the individual voter."

Briefly, what is the evidence of general fraudulent conspiracy? I understand that official ballots intended for Ward 6 were abstracted before the election with fraudulent intent. I understand

that after the election the ballots were not sealed as required by law. I understand that that omission to have been probably with fraudulent intent. I understand that ballots and the check list in Ward 6 were altered after the election, altered after the declaration of the result, and altered of course with fraudulent intent. I understand that these things were done by the election officials placed there to guard the purity of the election. I understand they belong to the party to which the sitting members belong; and I understand that what they did was presumably for the benefit of the sitting members. A fraudulent conspiracy against the purity of the election is therefore proved with absolute clearness, it seems to me. And it is further proved that that fraudulent conspiracy was to some extent carried into effect, carried into effect by the depositing of the 26 ballots and by the checking of eight names of men as having voted but who did not vote.

Now, is that all? That is all the fraud I understand that is absolutely and clearly proved. What are we to infer. Are we to infer that that is all the fraud there was? Are we to infer that the other 447 ballots in Ward 6, or 439 ballots, were legal and valid? Is that a fair presumption of law and fact? Or is it rather to be presumed, considering the nature and extent of the fraud, considering the participation in it of election officials, considering the very small majority of the two sitting members, is it a fair inference that the fraud in Ward 6 rendered the general results in Lewiston really uncertain? That is the question on which able members of this House differ, and honestly differ. As for me, without attempting any further analysis of the evidence, it seems to me that the presumption fairly leads us to conclude that the result in Lewiston, not in Ward 6, but in Lewiston was fairly made uncertain, really uncertain, by that attempted fraud that is proved in Ward 6; and therefore I shall vote to exclude the entire vote of that ward, and I support the motion to substitute the minority for the majority report. (Applause.)

Mr. MOREY of Lewiston: Mr. Speaker, It has been said by two or three gentlemen who have preceded me in this debate, that they desire to try this matter according to the law and according to the evidence. Upon that position I meet them. But from the remarks of one of the speakers who preceded me, we gather the statements that have been going around this House under secret cover, for two or three days, when we have not had an opportunity to meet them and contradict these reports that are most false and defamatory. Now, gentlemen of the House, I ask you as men to meet this question as a man should meet another. I do not ask, because I am of the minority party, that there should be any sympathy exercised on my behalf, but I ask it in the sense of justice; and before I am done I am going with you to the room where this fraud was committed that they have alleged, and I will show who committed

it and in whose behalf it was committed.

We will first take the question of the marked ballots which they said appeared in the recount which was held by mutual consent in the city of Lewiston, at which all the interested parties were present by themselves or by attorney. Now it has been claimed that those ballots were so mutilated and so destroyed that it is impossible to get at the correct returns. Nothing could be farther from the facts. I will take the three wards, and the figures that I now give you are those that were by agreement presented to this committee; and if I make any error in the statement I will request any gentleman to correct me. It is claimed that in Ward 7, Ward 3 and Ward 4, certain markings appear upon the ballots that showed through to those beneath. Results are what tell, and what was the result of what took place? The result of what took place in these three wards when it was counted up, shows an increase for the Republican contestants and a decrease for the Democrats who sit here in your body. In Ward 7, George B. Haskell, according to the official returns, had 320 votes; according to the recount, 320. Had there been any mistake, would not his majority have been reduced? Jacob R. Little—his official return was 321, and the recount, at which we were all present, and the figures we agreed upon were 323, making an increase of two in Ward 7, where they claim that this occurred. Stephen J. Kelley received 320; at the recount, 319, a loss of one. Mr. Tremblay received 325 on the official count; 322 on the recount, a loss of three. Now would you naturally expect, if fraud had been committed of the nature they charge that it would not have inured to the advantage of the Democratic members? Mr. Garcelon received, according to the official returns, 206 votes; according to the official returns and 203 according to the recount. Mr. Coyne received 200 and 201 according to the recount. Marcotte received 191 by the official returns and 190 by the recount, a total of one vote gained in that ward for the Republican members.

Let us go to Wards 3 and 4 and it is only in those wards that they claim, in addition to Ward 7, that there were any markings on the ballots. Ward 4: According to the official count Haskell received 207; according to the recount he received 208, a gain of one. Little received 202 by the official count and by the recount 205, a gain of three. Kelley received 206 by the official count and 207 by the recount, a gain of one. Tremblay received 209 by the official count and 205 by the recount.

Now as to the Democratic sitting members. Every man except one of the Republicans gained in that ward, and he held his own. Garcelon received 221 by the official count and on the recount 219, a loss of two. Morey received 218 official and 216 on the recount, a loss of two. Coyne received 220 on the official count and 219 on the recount, a loss of one.

Marcotte received 218 official and 216 on the recount, a loss of two. Three of the Democrats lost two and one of them lost one in that ward, and every Republican gained except one and he held his own.

Now we come to one more ward, Ward 3, where it is alleged these markings occurred. Haskell received 172 official, 172 on the recount. Little received 169 official and 170 on the recount, a gain of one. Kelley received 171 official and 169 on the recount, a loss of two. Tremblay received 176 official and 177 on the recount, a gain of one. Garcelon received 253 official and 252 on the recount, a loss of one. Morey received 252 official and 251 on the recount, a loss of one. Coyne received 249 official and on the recount 248, a loss of one. Marcotte received 249 official and on the recount 246, a loss of three.

There in those wards where they claim the markings appeared on the ballots the Democratic sitting members are the ones that lost, and the Republican contestants are the ones that gained, and now they charge us with marking the ballots. (Applause).

Let us take the total of the official count in this matter, and then let us take the total of the recount in that city. We feel indignant and hurt and ashamed that we are obliged to come here to the members of this House and be gazed upon and be treated by some of the members as though we had done something wrong; and that is my excuse for going into details, because I want to impress upon the members of this House that when we are done with the figures here this minority report can only be accepted by the most arbitrary usurpation of power; but I believe that the fair-minded men from Aroostook to York in this Legislature will never accept that report when they answer by yea and nay.

Look at the official count. Haskell received 1598, his recount was 1595, a loss of three in the entire city. Little received 1594, his recount was 1591, a loss of three in the entire city. Kelley received 1613, his recount was 1601, a loss of 12 in the entire city. Tremblay received 1641, his recount was 1621, a loss of 10 in the entire city. Garcelon received 1652, his recount was 1655, a gain of three. Morey received 1645, his recount was 1649, a gain of four. Coyne received 1624, his recount was 1621, a loss of three. Marcotte received 1616, his recount was 1612, a loss of four. And had it not been in Ward 1, where in a pile of straight Republican ballots there were discovered four marked straight Democratic lying in the pile, which were found by no less a distinguished person than the Hon. Seth M. Carter, who can bear witness to that statement, every Democrat would have run away behind the list here.

Now, we come down to the question of Ward 6 and what took place there on election day. The minority report charges fraud on the part of the Democratic city clerk and Democratic officials, and they rest secure in their report from any in

ference of any fraud committed on the part of the Republican officials. I do not say this as meaning in any sense that your fellow was worse than ours, but I ask you as fair-minded men to go with me to that ward room, look at the facts that are beyond dispute and then say who committed the fraud and whom did it affect. In Ward 6, according to the testimony in this case, a most significant thing happened at the opening of the polls. One M. B. Costello, who has been the Republican ballot clerk of that ward for six years, acted as ballot clerk during the first part of that morning of election day. He took all the ballots from the warden and they had not been counted by anybody, and he took them to the other side of the ward room and acted as ballot clerk, mind you, for a little while, and then he asks permission to change places with the Republican election clerk, one Edward M. Sayers. What is the meaning of that insignificant request on the morning of election day? He does change places with him, he goes out three or four times during the forenoon. Then he has become the election clerk in Ward 6. What does he do then? Here is what we are able to bring home to the knowledge of the members of this House as a fact, because in this State of Maine we depend upon our courts to see that justice is done, and it is a matter of court record that cannot be impeached and the evidence of which is with the committee in this hearing. One Peter Radigan comes in to vote at 11 o'clock. He goes inside the rail. John Finn was on guard for the Democratic party, a man who was a defeated candidate at our caucus for the nomination for representative to this body, a man who was sore in regard to the candidates upon the Democratic ticket, who was the only Democrat at that end of the ward. It was this man Sayers that had taken the place of Costello, and he sat by his side, a man who had served a sentence but a few months before for selling rum, and he was placed there to guard the purity of the ballot box. Radigan came in to vote. Remember that he had become election clerk, Costello had. He had no business with any ballots. He had no business to check any man's name on the list when he came in. By his own request he had changed places. Then when Radigan came to vote he handed him a ballot already marked. He had no business with the ballots; his duty was as election clerk; but Costello handed a ballot already marked to this man, and Radigan refused to vote the ballot, saying that he could mark his own ballot. Now that ballot was marked in the straight Republican column with the sheriff's name stricken out, and the Democratic name written in. Where did he get the ballot to hand to Radigan? Did he take it from his pocket? He had no business with the ballots, and we say that it is a fair inference, if there was a bundle of ballots missing from that ward in the morning, that they came into the posses-

sion of M. B. Costello. Then this matter was taken to the grand jury of the county of Androscoggin. Every one in the city desired that this matter be sifted to its final conclusion; and it was brought before a grand jury composed of at least three to one of the party to which the most of you belong. And the grand jury as a result of the entire investigation only indicted M. B. Costello who was handing ballots marked in that way. Now that is the result of the courts, that is the result of the grand jury; and I ask you if that should not weigh somewhat with the deliberations of this body?

What was the result in Ward 6 on that day? The Governor received 109 votes in that ward. If you subtract from those 109 votes the 26 ballots marked as the ballot Costello was indicted for handing to Radigan already marked, it would leave 83, which is exactly the vote that Cummings, the candidate for sheriff, received. If you add 26 ballots to the vote of the Democratic sheriff you get 364, which is within one of the votes that he received—he received 363.

We say that these contestants come before you and say that every Republican gained over his gubernatorial vote and every Democratic lost under his gubernatorial vote in the ward where they claim fraud existed. Now Haskell gained one over the gubernatorial vote in that ward; Little gained seven; Kelley gained 19 over the Governor's vote, and Tremblay gained 11, making a total gain of 38 votes over the Governor's vote on the part of the Republican contestants in this case. What happened to the Democratic vote? If a fraud was committed there in the interests of the Democratic party, would we not have gained? But instead of that we lost. Garcelon ran behind the Governor's vote five votes. Morey ran behind 11. Coyne ran behind nine. Marcotte ran behind 27, a total of 52 votes that the Democratic members ran behind the Governor's vote, and a total gain of 38 votes that the Republican ran ahead of their vote in that ward. Now in the face of those facts, with the action of the court upon them, with the finding of the grand jury where 25 witnesses were examined in one case before the grand jury, as appears from the testimony here—when all these are presented I ask you this, to leave it where the grand jury left it.

But they say, we cannot tell how far the fraud went. All we can do is to produce our lists, all we can do is to produce the votes and have them counted. It is for them to show how far the fraud went. And I ask gentlemen here, when they vote upon this measure, that they do not regard it from a party standpoint, because from a party standpoint we haven't got but one vote where you have got seven. I ask you to look at the future and establish a precedent governing the actions of this body, when two members come here with a clear majority over any possible fraud that can be fairly inferred from the returns in the case—I ask you

not to say that you don't know, that there may be fraud somewhere else and that we must step aside. Gentlemen, you cannot afford to take a position of that kind when your honor is at stake as is the honor of the sitting members whose seats are contested; and I ask, gentlemen, when you vote on this question that it be as honorable men, and that when you decide it, it be according to these facts and upon the law which will be given to you by the chairman of this committee. (Applause).

Mr. MAYBURY of Saco: Mr. Speaker and Gentlemen of this House: The time has about arrived when it becomes necessary for us to express ourselves by a yea and nay vote on the question that means so much not only to the gentlemen whose seats are involved in this contest, but to the city of Lewiston, which is entitled to a fair and equitable representation on the floor of this House.

Of course we can by a strict party vote deprive these gentlemen of their seats, but I seriously question whether it is right, just or equitable so to do. In a limited and somewhat varied political career, I have learned that the best time to count ballots is on election day, and having listened to the evidence with ordinary diligence, have heard nothing to controvert that lesson. If I understand this matter, there is no one that for a moment questions the honesty, integrity or patriotism of the gentlemen involved in this contest. Then is it not a grand opportunity to make a practical application of the Golden Rule? To be sure, we are in an overwhelming majority. Then can we not afford to be magnanimous? We must remember that there are many of us who hold our own seats on dangerously narrow margins. There are a goodly number of us who appear to have received a much smaller majority than the gentlemen whose seats are involved in this contest.

I freely admit, though with some chagrin, that I held my own certificate of election with fear and trembling till the time had expired when it was possible for a contest to be made.

Now, gentlemen of the House, I shall be compelled as a matter of principle, as a matter of justice to all concerned, to support the majority report. I sincerely hope that my associates will do the same, for if you do not you will be trampling forever under the feet of political prejudice that great principle of eternal justice, "Do as ye would be done by." (Applause)

Mr. DAVIS of Waterville: Mr. Speaker, I did not intend to trespass upon the time of the House at this time, and I promise that I will take but a few moments in what I have to say. It seems to me that there is one very important thing that has been omitted thus far in the discussion of this matter. This House, at its formation, selects from its members to fill its various committees men in whom we have confidence, men who can act intelligently; and, Mr. Speaker, this ques-

tion which not only concerns the parties interested but which concerns the purity of the ballot and of the State itself, has been given to this committee chosen by this House, and they, with all the evidence, with better facilities than we as individual members possess, have dug into that question, and they come before you with these reports, one a minority report and one a majority report, and there seems to be an intent expressed on the part of members here to set aside the majority report and to act upon the minority report. Now, unless it shall appear that there is good and sufficient reason for setting aside reports that have been adopted by the majority, it seems to me that we are in duty bound at least not to accept the minority report. I have in mind two years ago when one ballot that was stamped by the election clerk for a man who could not mark his ballot, and when instead of being marked with the cross-end of the stamp it was marked with the butt-end of the stamp, that little error was worked into an elaborate argument before the election committee and they were asked to believe that possibly that might have been a distinguishing mark, and on that decision, while no fraud was alleged, on that decision that election went back to the city of Waterville and it cost several thousand dollars to determine the rights at issue. And, Mr. Speaker, I want to protest in the name of the minority party in this House, against any wish, intention or desire expressed or that ever will be expressed that this party be treated other than with justice and fairness. We do not ask for sympathy, it would require an immense amount of it to give us satisfaction. (Laughter). But, Mr. Speaker, we do ask that this House shall consider fairly, equitably and reasonably the majority report which is submitted to it. (Applause).

Mr. LITTLEFIELD of Rockland: Mr. Speaker and gentlemen of the House, in approaching the discussion of this question I am aware that I may not be in accord with my own sympathies or with the sympathies of a majority of the House. But I have been inquiring since the case was submitted to us, for someone to explain to me why we could not determine how extensive the fraud was in Ward 6 in Lewiston. I have not had it explained to me, I have not heard it explained on the floor of this House.

This is not a case to be decided on party lines. I trust that I have never been accused of trying to be so eminently fair towards the party with whom I was not in sympathy that I bend backwards. I have been compelled to come to the conclusion to which I have arrived in this matter. The majority of your committee are willing and anxious to give the city of Lewiston in purifying its politics what benefit we can consistently with a determination of this case on its merits; we are not willing to go beyond that and I trust that there are still in this po-

litical Sodom sufficient honest men so that the city will escape destruction. (Laughter and applause.)

Those who have discussed this case, with the exception of the gentleman from Brunswick (Mr. Potter), have absolutely misunderstood or misrepresented the position of the majority of this committee. The committee differs about the facts; we do not differ as to the law, and the only fact there is in this case is the fact as to what the fraud was in Ward 6, and whether we can say that it did not extend beyond a certain point. First let me say in regard to the burden of proof that this case was presented to the committee by eminent counsel, and they were informed before they started in that the committee would proceed on any rules that they might agree on which the committee thought were proper, and that in the absence of any agreement on their part the hearing would be conducted under the ordinary rules applying to a case in court. They did not agree, they went on that basis, and the contestants assumed the burden of proof. They properly assumed it. They specially claimed the advantage of that position before they got through. Who claimed the right to close? The contestants. The committee ruled that they had it, and they gave it to them; and I am surprised to find members on this floor who need to dispute the eminent counsel who presented this case for the contestants in order to justify themselves in voting for the minority report.

As has been said you should not decide this case on party lines or on any other lines except the law and the facts. No member has had the temerity to say on this floor that the urgency of politics, rebuke or punishment required that he should sustain the minority report. But is not that the argument that has been made off this floor? By their failure to urge such on this floor they admit that they are not a proper consideration. You are made by the constitution of Maine, not the electors of representatives in this House, you are made the judge of the election of your members. You are to pass upon this case as judges and those who advocate the minority report acknowledge that when they do not dare to urge any other considerations before you. Have they urged any other anywhere else? The Lewiston Journal of January 27th, said: "We expect the same dispassionate ruling from the eminent gentlemen of the committee on elections as we do from the supreme court of the State that knows no party." That is the mind in which the members of the committee approached this case. What does the Lewiston Journal of this morning say? They have perused the report. They say now: "The Legislature has a moral duty as well as a legal obligation to discharge." They urge the moral consideration, this morning; a week ago they urged that it should be decided as a judge in the court would decide it.

The gentleman from Lincoln (Mr. Weatherbee) states that these various ballots abstracted may have been used, to be marked and then delivered to someone to be put into the box. I can imagine a hundred ways in which fraud might have been committed in the city of Lewiston or anywhere else. But we are not deciding this case on imagination. It is a significant fact that the only evidence of that kind of a thing is the evidence that such was attempted by a Republican ballot clerk. Gentlemen, I blush for shame when that thing is mentioned. It has been urged here that the ballot box and the checklists were not sealed. Whether they were sealed or not can make no difference in the vote that was cast. The sealing took place after the election was over. The minority of the committee say that they cannot tell how extensive the fraud was. "Your committee believe that the effect of said fraud in said Ward 6 was sufficient to change or render uncertain the results of said election." They say they believe that in their report; have they given you any good reason for it? No, gentlemen, they don't believe it. It is not a matter of belief; it is simply a matter of faith. They don't explain it, they don't see it. They "walk by faith, and not by sight." A conviction of mind for which a reason cannot be given is not a belief; it is simply a faith. It is that peculiar element which the Scriptures say is the "substance of things hoped for; the evidence of things not seen." (Laughter and applause.)

There is no difference in the committee as to the law. No one of the majority of this committee says you shall only reject fraud in so far as it has been shown to exist. There is no such thing in the report. We simply say that a poll should not be wholly rejected unless by fraud the general result has been made uncertain. I agree with the gentleman from Brunswick in the conclusion to which he arrived until he reached the point where he says that the ballots being marked after election in the various wards show such fraud that we should throw out a majority of 12 or six or whatever it may be, by excluding the whole vote of ward 6. He admits that without that he cannot unseat the city members. Now what is the fact as to the marking of the ballots afterwards. It simply destroys one form of evidence. The gentleman from Brunswick says that that renders the result on these small margins doubtful and therefore we should throw out ward 6. But if we throw out ward 6 for this reason why should we not throw out the wards in which the marking occurred. I do not recollect any evidence that the votes in ward 6 were marked after election. Your committee assumed that it might have been done in all the wards. But if the markings throw out the wards in which they occur, if they render the results doubtful, does that elect the contestants? You can only elect the contestants by throwing out Ward 6

and you are not justified in doing it by any such means as that.

The real grist of this case is whether the fraud in Ward 6 was such that it is not possible to arrive, nevertheless, at what the result of the election in Lewiston was. This question we are to decide upon the evidence in this case as it was presented. There are two classes of votes here, fraudulent votes and illegal votes. The illegal votes are to be deducted in so far as they are proved. That is the accepted rule in such cases. How far are they proved? They are proved to the extent of nine votes. Then if nine votes will not affect the result, we have nothing to do with those unless the nine added to another conclusion you may reach would affect the result. Now there are fraudulent votes in Ward 6; and it is a peculiar fact that every gentleman who has spoken of the fraudulent votes in Ward 6 has said "twenty-six." But they say they do not know that there were not more fraudulent votes. The case for the contestants showed you how extensive the fraud was in Ward 6. And that is really all there is to this case. About 4 o'clock the check-list and the remaining ballots were counted up and it was found that they both agreed as to the number that should have been in the ballot box at that time. After the polls were closed, the check list was again counted. There were on that check-list 447 names checked. That is the contention of the contestants themselves. There were 540 ballots that had been delivered to the ballot clerk. Of that 540 ballots, taking out what was left, the 93, there were 477 ballots that had been properly deposited in the ballot box. There were 447 ballots given out to the legal voters, one at a time. The necessary conclusion is that there were 447 proper and legitimate votes in that ballot box. When the votes were counted there were found to be 26 more votes in the box. Is there one of those 447 votes that is not a proper vote and that ought not to be counted, unless it has been shown (and the minority admit this proposition) that they were illegal votes from the fact that the party casting them did not have a right to vote? Now, how extensive is the

fraud? Can it go beyond the 26? There are 447 ballots that were properly given out by the election clerk that were put into that ballot box. The fraud is necessarily limited by 26. If it appeared that they carried the ballot box off and had brought it back before the votes were counted and so would have had an opportunity to take some ballots out and put others in, then I would agree that it was uncertain and that we could not tell how many legal votes there were in that ballot box, but here we are compelled to the conclusion that the number of legal votes in that box was 447. I do not care whom the burden of proof is on to prove it. It is proved and undisputed. There is no way on the facts and figures to escape from it.

Whom were those votes for? We will assume that those returns have been destroyed as to their full value, but they are still evidence as to how the vote was actually counted after the close of the polls in Ward 6. If they do not show what the legal vote was they show what the vote was that came out of the ballot box. According to those returns Mr. Morey in Ward 6 had 337 votes. Now there were 26 illegal votes. Subtract those from Morey—and assume every fact you can against the sitting members and I will assume that there those eight votes also in Ward 6, and we deduct them in addition to the 26—then we clearly believe that Mr. Morey who has the smallest majority of the two members that the majority of the committee say were elected—we leave him with a majority of 12—what uncertainty is there in that proposition? There is no uncertainty about the number of fraudulent votes. We have no right to take out any more illegal votes than have been proved. And when we add them both together we have 34. That leaves Morey a majority of 12. There is another element of uncertainty, but that is the final element of uncertainty, and that is all there is of it. I differ with the gentleman from Brunswick when he goes to some other ward to affect the result of Ward 6. These ballots are evidence of their present condition, although they may not be in the same

condition as when they were counted. You may examine the ballots in Ward 6 and give the Republican contestants the benefit of every possible doubt by assuming all markings therein which can be considered to have been made after the original count to have been so made and you cannot find that that would make any difference of more than six, in one case, and three in the other, six against Morey and three as to Dr. Garcelon.

Now, is there any element of uncertainty as to how many votes must have been cast for the Democratic members in Ward 6? I do not care whether there are more or less. I say that we cannot on the figures arrive at any conclusion except that there must have been at least enough Democratic votes cast in Ward 6 to have elected Mr. Morey and Dr. Garcelon. I am not anxious to reach that conclusion, nevertheless I am compelled to find, whether I wish it or not, that Messrs. Garcelon and Morey were elected by the fair and legitimate votes of the city of Lewiston so far as the evidence that has been brought before the committee of this House is concerned. I do not know on what considerations you will vote; I know on what considerations you ought to vote. You are the judges of this election. You are not to vote as you wish. I did not come to the conclusion that might have been most agreeable to me but I am not ready to stand here on one excuse or another and say that I could come to any other conclusion than the one I have reached. If that reason has any weight you must throw out the whole city and as judges we are compelled to this result. We are not justified in any other unless we can give some intelligent reason other than party feeling or expediency for it. (Applause.)

MR. LIBBY of Mechanic Falls: Mr. Speaker, I am not a contestant in this case nor a sitting member whose seat is in doubt, but I stand here as I hope we all do, with an eye single to the honor and glory of our State to do our duty as men, to hew to the line or right principles and let the chips fall where they will.

Now, all this hurly-burly about a rotten election down in Lewiston from the moment that the polls closed on the night of the election, has not all been for nothing. The fact is, and it is patent to everybody that there is a rotten spot in the body politic down there and that medicine needs to be applied here to cure the patient if possible. If we cannot as honest men put ourselves down upon the foundation and bed rock and decide this case as it ought to be decided, I will not complain on the ground that the Journal takes that it ought to be decided on moral grounds. I do not know whether my brother thinks it ought to be decided on immoral grounds or not; I say let us decide it upon moral grounds if we can.

I cannot trespass upon your time to go into the details of this matter, but I take it that there is no question that there were illegal ballots cast in Ward 6 and that there were fraudulent ballots cast in Ward 6. All the courts of the country hold that where fraud is proven, where a general connivance and conspiracy of the election officers is shown—although I would call attention to what the gentleman from Lewiston (Mr. Morey) alludes to, that although this miserable devil who is proven here to have cast 26 ballots into that box in the face and eyes of the warden of that ward could not be indicted by a grand jury in Androscoggin county, the poor miserable Republican who undertook to mark one ballot which did not get into the box could be indicted. (Laughter.) I ask you gentlemen what kind of a commentary is that upon affairs in Lewiston and Androscoggin county where Lewiston holds the balance of power upon the grand jury? Fraud and corruption have been allowed to dwell there in that city, and we have an opportunity here and now to exercise our God given right to put the seal of our condemnation upon it. It is of more importance to the people of this State that we pronounce a verdict which shall give every man in the State of Maine to understand that we believe in honest elections and fair counts, than it is to seat any man or any number of men in this House. That is

really the thing in issue here. The law upholds and has upheld by every decision that I can find fairly considered, that when the election officers of a precinct or ward or town are shown to be in collusion and in the exercise of corrupt practices at the polls, in conspiracy in carrying out fraud that the only remedy is to throw out that ward and tell the people, "If you cannot put in officers who are above those things you must stand the penalty and you must lose your ballot."

It is shown here that this city clerk who was a resident of Ward 6, and whose tool was Gravelly by name, who had the charge of that ballot box that day—that this man had abstracted 60 ballots from the allotment of that ward before the polls opened in the morning. That of itself indicates fraud. What good could it have done to that man or his party simply to abstract 60 ballots unless they were to be used for some purpose? And my Brother Morey undertakes to throw the burden of the abstraction of those ballots upon poor Costello, a renegade traitor. A Judas Iscariot Republican who turned up there that day working in harmony with the Democrats and who carried that ward by fraud. My brother says Costello was the man who stole the ballots, but I ask you, gentlemen, who put the 26 ballots in? Did Lambert have to steal them back from Costello in order to get 26 ballots to throw into that box? (Laughter and applause.)

Or was he the legal custodian of those ballots and the man who stole them and had them in his possession to work out his sweet will with them all day long? I say it is a fair presumption that those ballots were intended to be used during used, and this committee has a right so to infer and so have you. They have never been found since. These 26 that Lambert put into the box in one bunch were found, and they were found in his possession, and he put them into the box and a warden and a Democratic policeman stood there and saw the thing done and were cognizant of it. My brother says that you must limit the fraud in that ward down to the place where my brother says a little Republican by the name of Sayers was indicted at some time

for selling liquor and he was the ballot clerk there. Good Lord, gentlemen, in that locality the fact that a man has been indicted for selling rum is a certificate of good moral character. (Laughter and Applause.)

Where should you place the limit? You can place it with his disposition and desire and ability with the 60 ballots, or where will you put it? The court once told me in answer to a question as to how much proof I would be required to produce in order to substantiate a certain defence, "You prove the disposition and the opportunity and the Court will take care of the rest." (Laughter.)

In this case I claim that the disposition has been shown. Down in this fertile field of Ward 6, in the city of Lewiston, don't you suppose that the purchasable vote in that Ward 6 was manipulated from one end of the 47 ballots that my brother talks about here to the other? And when at last Lambert got round he had the 26 votes left out of his 60 and he dumped in the bunch. (Laughter.) That is the way the thing went. How much proof do you want of limitation? I claim that this thing is amply proved and the fraud is proved and it cannot be successfully denied.

The courts in this country hold to this proposition, that when you have established the fact of general fraud, participated in by the officers of an election, then the burden shifts upon the party who would extract any benefit from the election to show by other evidence than his certificate how many legal votes he actually received. I fear no dispute about the law. The law is settled and plain and clear, and it is for you to apply it here and now. I undertake to say that from the verdict which you give here there is going out one or two things, that either from this time on in the city of Lewiston—and not only in Lewiston but elsewhere—you shall vote to condone this proven fraud by officers of elections, you simply tell to every ward and precinct, "You put in any miserable devil you see fit for an official and let him commit all the fraud he can and you can have the benefit of it if you can cover up your tracks." That is what one verdict will say. The other

one will say, "Gentlemen of Ward 6 in Lewiston, if you propose hereafter or at this time to have anything to say about the results of elections in the city of Lewiston, you must purge that rotten condition that exists there in the body politic of that ward. If you cannot select officers to run your elections who are above the commission of absolute and actual fraud, as has been proven in this case, you cannot and you shall not have anything to say about the verdict." That puts them back on the ground of decent government that we want to see prevail in the State of Maine.

One word more. I have heard it said by some in the discussion of this case that this is a local affair, that if they have any dirty linen in Lewiston, let them wash it out. I want you to remember that in Ward 6 on that day when this stupendous fraud was undertaken, the blood of which today is upon the hands of this man Lambert and his colleagues in that affair, and which the waters of great Neptune's ocean cannot wash out nor all the perfumes of Arabia sweeten, I say, that you want to look before you act. They say it is local, simply. Every ballot cast in that ballot box had upon its head the name of the Governor of this State. When that political assassin Lambert threw 26 ballots into that box he disenfranchised me and you, did he not? He nullified your vote and mine and made it of the same effect as if we never had gone to the polls on that day. And are you to say that that is a local matter simply and affects nobody else when every man in this State was affected by it? Are you to advertise by your action that such things can be carried on with impunity, or will you set the seal of your condemnation and disapproval upon it and forever drive out and bury these iniquitous practices? (Applause.)

Mr. Allan of Portland: Mr. Speaker, I move to adjourn.

The motion was lost.

Mr. WEATHERBEE of Lincoln: Mr. Speaker, I move that when we vote upon this question it be by a yea and nay vote.

The motion was agreed to.

Mr. LITTLEFIELD of Rockland: I

wish to call the attention of the Speaker and members of the House to the misrepresentations of the last member who spoke as to the position of the majority report in this matter. He insists on the same thing which I have attempted to show was not true. The majority are with you in punishing fraud. If the fraud is uncertain they are with you in stamping out the whole of it. The law does not allow us to go any further, and the same case which the gentleman who presented this case for the contestants refers to, says the same thing. "It has been settled that the allegations of fraud perpetrated by the officers of election are not sufficient to authorize the court to set aside an election unless it be also stated that by such fraud the true declaration of the will of the people has been perverted." That is the contention of the majority in this case; and I have not yet found an explanation of the 447 votes that were put in there. If you wish to decide this on the basis of punishing fraud, no man will go farther than I will in voting in that way, but I cannot reach that conclusion.

The yeas and nays were ordered.

YEA:—Abbott, Allen of Sanford, Blake, Bodwell, Boyd, Brewster, Briggs, Burrill, Campbell, Clarke of Nobleboro, Clark of Prospect, Cole, Cook, Cordwell, Dilling, Drew, Eaton of Calais, Eaton of Wells, Farnsworth of Tremont, Favour, Foss, Furbish, Gannett, Gardner, Greenleaf, Hill of Brownfield, Hill of Buxton, Hinckley, Howe, Irving, Jones, Josselyn, Kimball, Knowlton of New Portland, Leavitt, Libby of Mechanic Falls, Libby of Newfield, Low, McFaul, McGregor, Mead, Mewer, Morrison, Nash, Newcomb, Norton, Oakes of Auburn, Page of Drew Plantation, Parrott, Patterson, Perkins, Potter, Purinton, Putnam of Danforth, Putnam of Houlton, Ross, Ruggles, Sargent, Sewall, Shackford of Harrington, Shackford of Poland, Shaw, Smith of Madison, Snowe, Stearns, Sturgis, Sutherland, Tartre, Thomas of Topsham, Thompson of China, Thornton, Tremblay, Twambly, Weatherbee, Weeks, Wentworth—76.

NAY:—Allan, Allen of Wellington, Bailey, Benner, Blanchard, Bussey, Butler, Buxton, Buzzell, Carleton, Coburn, Curtis, Daniels, Davidson, Davis, Downing, Farnsworth of Pembroke, Gagnon, Hayes, Hill of Winterport, Howes, Hubbard, Knapp, Knowlton of Camden, Lamb, Littlefield, Manson, Maybury, McIntire, McKusick, Merriam, Mills, Nelson, Nickerson, Oakes of Milford, Page of Skowhegan, Peaslee, Pike, Pooler, Poor, Randall, Reynolds, Smith of Hartland, Smith of Presque Isle, Stover, Swett, Tapley, Taylor, Thomas of Harpswell, Thompson of Orono, Thurlow, Todd, Tripp, Water-

house, Watson, White, Williams—58.

ABSENT:—Albert, Barker, Cameron, Dodge Dudley, Hall, Hawkes, Libby of Oakland, McNamara, Pettengill, Rice, Savage, Spear, Sweeney—14.

So the minority report was substituted for that of the majority.

Mr. Weatherbee of Lincoln moved to accept the minority report.

The motion was agreed to.

On motion of Mr. Newcomb of Eastport, adjourned.

Mr. Weatherbee moved to adopt the resolve of the minority report of the committee.

The motion was agreed to.

Mr. WEATHERBEE: Mr. Speaker, I move in order that this matter may be settled for all time, that we reconsider the vote whereby we accepted the resolution; and I hope that everybody will vote not to reconsider.

The motion was lost.

On motion of Mr. Mewer of Old Orchard, Senate Bill, No. 21, Bill, An Act to authorize the Biddeford and Saco Water Company to issue bonds and for other purposes, was taken from the table.

Mr. Mewer offered amendment A, which was adopted, the bill was twice and assigned for tomorrow morning.