DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1833.

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STATE OF MAINE.

HOUSE OF REPRESENTATIVES, *January* 31, 1833.

The Committee of this House on Contested Elections, to whom was referred, by order of the House, the Remonstrance of William I. Farley and others against the right of Jonathan Cilley to hold a seat in this House, as a Representative from Thomaston, have had the same under consideration; and after a hearing and examination of the evidence adduced by said remonstrants and said Cilley, your Committee now

REPORT:

That it appears to your Committee that the inhabitants of Thomaston, qualified to vote for Representatives, legally assembled, on the second Monday of September last, to choose two Representatives to represent them in this Legislature, at which meeting no one received a majority of the votes given in, and the meeting, by a vote of said inhabitants was adjourned to the 24th day of September then current. And from the last named time, no choice having been effected to the first day of October last, when said

inhabitants again assembled and gave in their votes as aforesaid; and after they were sorted, counted and declared, and no one having had a majority of the votes, a motion was made and seconded, by legal voters of said town, to adjourn said meeting to the next day, at 9 o'clock, A. M., which motion the selectmen did not put for the determination of said inhabitants, but thereupon, without any other motion or any vote, declared the meeting adjourned to the first Monday of December last, at nine o'clock, A. M., against the expressed will of many of the voters, among whom were Mr. Cilley and Spear, hereinafter named. It was in proof before the Committee, that two of the board of selectmen, who thus adjourned said meeting, were themselves candidates for Representatives on the said first Monday of December; at which last named time, the inhabitants assembled and gave in their votes for two Representatives, to the selectmen, which were as follows, viz :—

For Jonathan Cilley, - - - - -	278
" Elkanah Spear, - - - - -	270
" John O'Brien, - - - - -	155
" William Heard, - - - - -	151
" Edward Robinson, - - - -	118
" Iddo Kimball, - - - - -	112
Scattering, - - - - -	16

at which meeting the said Cilley claims to have been elected. To the validity of which the remonstrants assign objections, consisting, in substance, of the following, viz :—

1. The Constitution gives no right to the town, or selectmen thereof, to adjourn a meeting for the choice of Representatives, nor authorizes an election of Representatives on any other day than the second Monday of September. Therefore, an election on any other day would be invalid.

2. If there is any right to adjourn such meeting, it is to

be exercised by the legal voters of the town, and not by the selectmen. Therefore, this election is invalid.

3. If the selectmen had a right to adjourn, and the last named meeting was legal, Mr. Cilley did not receive a majority of the votes given in.

As to the first objection, your Committee are of opinion it should not prevail. Notwithstanding the Constitution says, "the election of Representatives shall be on the second Monday of September," it is believed, if the election is begun on that day, it may be concluded on any other; that the "meetings," as spoken of in the Constitution, on the second Monday, continue by an adjournment duly made. In this, as in many other cases, an adjourned meeting has relation to, takes the date of, and in its operation is part of, the original or primary meeting. Therefore, whatever is done on any regular adjourned meeting, is *quasi* done on the first. This right of adjournment has long been exercised by electors, in effecting a choice of Representatives, and has as long been acquiesced in, if not sanctioned, by the people, and past Legislatures—the guardians of the Constitution. This seems to afford some evidence that the Constitution has not been abused, and a degree of assurance that we are within its spirit, in continuing to electors the right to exercise a privilege which is not unfrequently indispensable to effect the great object which the framers of the Constitution had in view, and which it is the true policy of our government to protect—popular representation. The provisions of the Constitution, regulating these elections, were made for the especial benefit of the electors, and for no other purpose. The necessity which often exists of continuing these meetings to effect a choice, could not have been overlooked by the framers of the Constitution; and we cannot impute to them the de-

sign of curtailing the exercise of this important right to "the precincts of a day;" nor give to the Constitution the unnatural power to defeat, in numerous cases, every year, the very object which it was created to accomplish. It had long been an established usage for the voters in a town to adjourn their meetings, if necessary to complete the business for which they assembled; and the framers of our Constitution probably regarded this usage as too necessary to be destroyed, and too well understood, as an incident to the "meeting," to need to be confirmed by an express provision. Moreover, the right of self preservation as electors would seem to originate the right to a continuance beyond a day of the unabused exertions of electors to effect their object.

Upon the several objections we are led to inquire who has the right to adjourn the meeting? We are aided in a solution of this question by examining the powers of Selectmen.

Selectmen are not created for the purpose of presiding at the meetings for Elections of State officers, but being Selectmen for town business, they are authorized by the Constitution to preside at such meetings. The Constitution says, "the meetings for the choice of Representatives shall be warned in due course of law by the Selectmen of the several towns, seven days at least before the Election, and the Selectmen thereof shall *preside* impartially at such meetings,—receive the votes of all the qualified Electors present, sort, count and declare them," &c. As the Selectmen derive their authority from this provision, it is believed they can exercise none at the meeting for the choice of Representatives, except what is here given. In this as in all cases where power is vested by the Constitution in any officer, the power of these officers should be limited by the

letter of the Constitution. If we once depart from this rule we destroy the only barrier between the rights of the people and the exercise of power over them. If we give to officers powers, not granted by the Constitution, we usurp them from the people, and if those officers assume them, they have no protection by the Constitution, and we think should have no indulgence from us, in their exercise of such powers.

The word "*preside*" as used in the Constitution must contain this right of the Selectmen, if they have it. It is believed a reasonable construction of this expression, will not justify the existence of such a right. Neither does it appear reasonable, that the Selectmen should have been invested with it. They might exercise it to the destruction of the right of suffrage. If they could adjourn once they could as many times as they pleased ;—if they could adjourn at one time of the meeting, they could at any other ; and if to one day, to any other, however inconvenient for the Electors: so that the people would be oppressed, and might, not unfrequently, be disfranchised. There seems to be found a sufficient reason why the Constitution did not confer this power upon the Selectmen, and not being so conferred, an unanswerable argument, independent of the rule of construction before given, why we should adhere in this instance to a strict construction of the Constitution, and not sanction as a precedent the exercise of this power.

Neither does there appear to be consistency with any settled custom or usage, in the exercise of this power. It is no less an innovation upon the Constitution, than upon all precedents of the exercise of power by Selectmen. Neither is there consistency in their own acts. At the two first meetings, the selectmen gave to the Electors of

Thomaston the right of adjournment refused it to them on the third, and assumed it themselves.

But it may be asked if the Electors of a town shall be deprived of their rights by the wrongful act of Selectmen? We believe they may. The Constitution is not responsible for the acts by officers made by these very Electors. It prescribes the modes of effecting an election, by following which all dispute and uncertainty will be avoided. Individuals will have no cause to complain. The right of suffrage will be dear because it will be certain. On the other hand if we disregard the provisions of the Constitution upon this subject, and permit towns to come in for representation, upon an *equitable* claim, but through a violation of the authority which gives them *any* claim; the Legislature will be able to do but little more than set as a Tribunal to settle cases of Contested Elections, and our Constitution will have nothing left, but "a local habitation and a name." It is believed to be better that one town should suffer for the faults of its officers, than that confusion, dispute, and encouragement to wily, ambitious politicians should be introduced to our Representative meetings throughout the State, which, we fear would be done, by sanctioning this practice. If the rights of Electors are not sufficiently protected against the misconduct of Selectmen, by the relation in which they stand to the citizens—by the right the Electors have of choosing them annually, and by the penalties already provided, it remains for the Legislature to provide other means of protection; but, as the Committee believe, not to disregard salutary provisions of the Constitution regulating Elections. As to the votes of the fourth meeting, your Committee believe Mr. Cilley had a majority.

The Committee beg leave to state that the foregoing conclusions have been made after a full and careful investi-

gation of the case, and not without an anxious regard for the rights of a large and respectable town, which were involved in the case. Neither have the Committee been unmindful of the importance of a precedent, which will be established by the determination of this case. The dictates of duty compel them unanimously to say, that in their opinion, the election of Mr. Cilley is void, all which, and the resolve, which they ask leave to have accompanied herewith are respectfully submitted.

GEO. M. CHASE, *per order of Committee.*

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 2, 1833. }

Resolved, That Jonathan Cilley is not entitled to a seat as Representative, in this House.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 2, 1833. }

Ordered, That three hundred copies of the foregoing Report and Resolve be printed for the use of the Legislature.

[Extract from the Journal.]

Attest: ASAPH R. NICHOLS, *Clerk.*

I. BERRY & CO., PRINTERS TO THE STATE.