

MAINE STATE LEGISLATURE

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1837.

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SEVENTEENTH LEGISLATURE.

No. 36.

HOUSE.

REPORT

OF THE

COMMITTEE ON ELECTIONS.

STATE OF MAINE.



The Committee on Elections to which was referred the remonstrance of Charles Staples and others, against the right of Randolph A. L. Codman to hold a seat in this House, together with certain other papers thereto relating, having had the same under consideration, in obedience to the order of the House of the 10th inst., now REPORT the following statement of facts.

By the certificate of the Aldermen and Clerk of the City of Portland, it appears that the whole number of votes given in said City on the 12th of September last, for Representatives to the State Legislature, was seven thousand nine hundred and seventy-one: necessary to a choice, nine hundred and ninety-seven; and that said Codman received one thousand and thirteen. By the

deposition of Joseph Pope, City Clerk, it further appears that in the evening of the said 12th of September, he received a paper purporting to contain a list of the votes given on that day, by the inhabitants of the several Islands belonging to the City of Portland, "for Governor, Senators, Representative to Congress, Representatives to the Legislature, County Treasurer, and County Register." Said Pope's deposition sets forth a copy of that paper, from which it appears that one hundred and forty-four votes were given on said Islands for Representatives to the Legislature. And said Pope further deposes that these votes were rejected by the Aldermen, and of course were not included in the seven thousand nine hundred and seventy-one. Had these votes been received and counted, the whole number of votes given in said City would have been eight thousand one hundred and fifteen—necessary to a choice, one thousand and fifteen—and as the said Codman received but one thousand and thirteen, he would not have been duly elected. The only question then to be settled, is this. Should the said one hundred and forty-four votes be received and counted?

Two reasons only are suggested, why said votes should be rejected—whether sound or not, your Committee do not undertake to determine.

Under the Act of 1832, constituting Portland a City, the inhabitants were authorized to vote in wards for City Officers only; in the Election of State and County Officers, Representatives, &c., they were still required to vote in town meeting, as before the adoption of their charter. By an additional Act passed in 1833, the several Islands then being a part of Ward No. 1, were for certain purposes therein specified, made a distinct and entire ward. The inhabitants were empowered to hold their meetings on any one of the Islands a majority of the voters might select as

most convenient—to choose a Warden and Ward Clerk and one Common Council-man, and generally to vote for all City Officers—the votes so by them given to be deemed and taken as given in Ward No. 1. In 1834 an amendment to the Constitution was adopted, which authorized the inhabitants of the City to vote in their respective wards for State and County Officers, Representatives, &c. The question then arises, whether the Islands having been created a distinct ward for certain purposes only, were so far a ward as to be embraced within the provisions of this amendment. If they were not, the one hundred and forty-one votes were properly rejected, and said Codman is entitled to his seat. If they were, another question arises. The amendment of the Constitution above referred to, further provides that a copy of the list of votes given in the several wards for State and County Officers, Representatives, &c. shall be made and signed by their respective Wardens and Ward Clerks, and, within twenty-four hours, delivered to the board of canvassing officers. But the City Clerk deposes that the copy of the list of votes received from the Islands was signed by Simeon Skillin, Clerk only, and not by the Warden. It appears, however, by the deposition of Henry Trefethen, Jr., that he was Warden of the Islands on the said 12th of September, that he presided on that day at the meeting holden by the voters on said Islands, that he received the votes given by them for State and County Officers, Representatives, &c., that he assisted in sorting and counting the said votes, and saw a record thereof made by the Clerk. But whether the copy of the list of said votes delivered to the City Clerk, agreed with the record, he could not say. The question upon these facts, is this. Should said votes be received and counted, notwithstanding the copy of the

list aforesaid did not bear the signature of the Warden?
 On the questions so raised, your Committee decline giving
 any opinion, the order of the 10th inst. requiring only a
 statement of the facts.

All which is respectfully submitted.

H. W. PAINE, Per Order.

REMONSTRANCE

OF CHARLES STAPLES ET. AL. CITIZENS OF PORTLAND,
AGAINST THE RIGHT OF RANDOLPH A. L. CODMAN TO
HOLD HIS SEAT IN THE HOUSE OF REPRESENTATIVES OF
1837.

*To the Honorable House of Representatives of the State
of Maine, to be convened on the first Wednesday of
January, in the year of our Lord one thousand eight
hundred and thirty-seven:*

The undersigned, citizens of Portland, in the County of Cumberland, and State of Maine, respectfully remonstrate to your Honorable Body, against the claim and right to a seat as a member of your Body, of Randolph A. L. Codman, Esq., who has been reported by the Aldermen of the City of Portland, as duly elected a Representative of said City in the Legislature of the State for the year 1837. Said alleged election is believed by the undersigned to be illegal and unconstitutional, on the ground that said Codman did not receive, at the meetings of the several wards of said City where he is reported as aforesaid to have been elected, a constitutional majority of the legal votes cast by the electors and returned and certified by the several ward officers of said City to said Aldermen—but a large number of the votes of said electors given and sufficiently certified to said Aldermen, against said Codman, was illegally and unconstitutionally rejected and not counted by said Aldermen:—Whereas, if the votes, thus rejected and not counted, had been received and counted, it would have appeared and been manifest that said Codman was not, and had

not been, elected by a majority of the legal voters of said City, in the manner certified by said Aldermen. Wherefore, your remonstrants pray that their said representations may be inquired into by your Honorable Body, and said Codman's election be declared null and void, and the proper measures ordered in the premises for a new election of a Representative of said City. And as in duty bound will ever pray.

Portland, Nov. 17, 1836.

CHAS. STAPLES,
IRA BERRY,
OSGOOD NOYES,
H. C. BARNES.

CUMBERLAND, ss.—Portland, November 17th, 1836.

I have this day notified the within named Randolph A. L. Codman, Esq. by giving him in hand a certified copy of this paper.

JERE. MARTIN, DEP. SH'FF.

JOSEPH POPE'S DEPOSITION.

I, Joseph Pope, of Portland, in the County of Cumberland, and State of Maine, of lawlul age, on oath depose and testify and say, that I am the City Clerk of the City of Portland the current year, and was the City Clerk of said City last September, and was present in my official capacity as Clerk aforesaid, with the Board of Aldermen of said City, the thirteenth of last September, it being the day after the annual State Election. And on that thirteenth of September, the votes given in the several wards of the City aforesaid were counted by said Board, and the following is a correct copy of the original return of the votes cast in that part of Ward No. One, in said City, called the Islands, to wit:—

“ State of Maine, Cumberland County, City of Portland, at a legal meeting of the inhabitants of the Islands, in the City of Portland, qualified according to the Constitution to vote for State Officers, holden on the second Monday of September, being the twelfth day of said month, in the year of our Lord 1836. The said inhabitants gave in their votes for Governor, and likewise for Representative to Congress, Senators, County Treasurer, Register of Deeds and Representatives to Maine Legislature. And the same were received, sorted, counted and declared in open ward meeting, by the Warden, who presided, and in presence of the Ward Clerk, who formed a list of the persons voted for and made a record thereof as follows, to wit:

For Robert P. Dunlap, Governor,	36 votes.
For F. O. J. Smith, Representative to Congress,	36 “
Rufus Soule,	36 “
Nathaniel L. Woodbury,	36 “
Nathaniel S. Littlefield,	36 “
Roscoe G. Greene,	36 “

Mark Harris, County Treasurer,	36 votes.
Samuel Small, Register of Deeds,	34 "
Albert Winslow, Register of Deeds,	2 "
A. W. H. Clapp,	36 "
William H. Codman,	36 "
Charles Holden,	36 "
Ezra Carter, Jr.,	36 "
<i>Representatives to Maine Legislature, thirty-six votes.</i>	

Attest, SIMEON SKILLIN, CLERK."

Which return, of which the above is a copy, was handed me on the evening of the twelfth of September last, sealed up, and bearing an endorsement of which the following is a true copy, to wit.—“ Votes for Governor, Senators, Representative to Congress, Representatives to the Legislature, County Treasurer and County Register, given by the inhabitants of the Islands in the City of Portland, September 12, 1836.

Attest, SIMEON SKILLIN, CLERK."

The above votes from the Islands aforesaid, were not counted nor allowed by the Aldermen aforesaid, for the persons for whom they appear to have been cast, for the reasons given on former copies of the same return, which were sent to the Governor and Council of said State, they not having been considered by the Aldermen to have been constitutionally given or returned.

JOSEPH POPE.

CUMBERLAND, ss.—On the twenty-fourth day of December, in the year of our Lord eighteen hundred and thirty-six, the aforesaid deponent was examined and cautioned and sworn, agreeably to law, to the deposition aforesaid, by him subscribed, taken at the request of Charles Staples and others, and to be used in the trial of a case of contested election now pending between the said Staples and others, and Randolph A. L. Codman, before the House of Representatives of the State of Maine. And the adverse party was present, by William Pitt Fessenden, his Attorney, and the said deponent living more than thirty miles from Augusta, in said State, is the cause of taking this deposition.

AUGUSTINE HAINES, JUSTICE OF THE PEACE.

HENRY TREFETHEN, JR.'s DEPOSITION.

I, Henry Trefethen, Jr. of Portland, in the County of Cumberland, and State of Maine, of lawful age, on oath depose and testify and say, that I am Warden of the Islands in said Portland, the current year, and was Warden of said Islands on the twelfth day of September last, and on that day I presided at the meeting of the voters of said Islands, and was present during the whole of the time that the inhabitants of said Islands were assembled in meeting to cast their votes for State and County Officers, that I received all the votes thrown by the inhabitants of said Islands for State and County Officers on that day, that I presided at said meeting on that day, when the votes of said inhabitants were cast for Representatives from the City of Portland to the State Legislature, that as Warden and presiding officer of said meeting I received said votes cast for Representatives aforesaid, that I was present when the votes for State and County Officers and for Representatives to the State Legislature were sorted and counted, that I assisted in sorting and counting them, that I was present and saw a record of said votes made by the Clerk of said Islands, and that I was the last person that left the house where said meeting was held on that day.

Int. by Wm. Pitt Fessenden, Att'y for R. A. L. Codman.

Is a record kept upon the Islands of all the proceedings of their ward meetings?

Answer. Yes.

By same. Do you know of your own knowledge, that the return made, by the clerk, of the votes, agreed with the record kept upon the Islands?

Answer. I am not certain.

By same. How do you know that you were Warden of the Islands?

Answer. I was sworn in as such.

By same. When were you sworn in ?

Answer. Last spring, I do not remember the day—but it was on the day of spring election.

HENRY TREFETHEN, JR.

CUMBERLAND, SS:—On the twenty-fourth day of December, in the year of our Lord eighteen hundred and thirty-six, the aforesaid deponent was examined and cautioned and sworn, agreeably to law, to the deposition aforesaid by him subscribed, taken at the request of Charles Staples and others, and to be used in the trial of a case of contested election now pending between the said Staples and others, and Randolph A. L. Codman, before the House of Representatives of the State of Maine; and the adverse party was present by William Pitt Fessenden, his Attorney, and the said deponent living more thirty miles from Augusta, is the cause of taking this deposition.

AUGUSTINE HAINES, Justice of the Peace.



STATE OF MAINE.

**HOUSE OF REPRESENTATIVES, }
March 11, 1837. }**

This Report, on being read, was laid on the table, and five hundred copies of the Report, and accompanying Documents, ordered to be printed for the use of the Legislature.

(Extract from the Journal.)

Attest: CHARLES WATERHOUSE, Clerk.