

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1838.

EIGHTEENTH LEGISLATURE.

No. 5.

HOUSE.

The Committee on Elections, to whom were referred the certificates of John Chase and John Cunningham, each claiming to have a seat in this House as Representative from the District composed of the towns of Edgecomb and Westport, together with the remonstrance of Gardiner Gove and others, against the right of said Cunningham, have had the same under consideration, and now

R E P O R T :

That meetings for the choice of Representative were held in Edgecomb on the eleventh of September, and on the second of October; and in Westport on the eleventh and twenty-fifth of September, and on the second and twenty-third of October.

It was admitted by both parties, that no choice was effected in said district, at the annual meeting in September; and it was not pretended that the second meeting in Westport was a legal meeting, the same not having been held on the third Monday next following the day of election, at which no choice was effected, as is prescribed by Statute.

By the returns, it appears that on the second of October, there were thrown

	Chase	Cunningham	Scattering
In Edgecomb,	94	53	15
In Westport,	11	46	1
Total,	105	99	16

It was contended by Chase, that the votes thrown in Westport should be rejected, for the reason that the electors were

not duly notified of the meeting. The original warrant was before the Committee, and bears date "the thirtieth day of September, in the year of our Lord one thousand eight hundred and thirty-seven." On the back of the warrant is found a writing in the form of a Constable's return, but not signed. It does not appear, therefore, that the electors of Westport had any notice of the meeting whatever; but on the contrary, it does appear on the face of the warrant, that they could not have had more than two days' notice. And inasmuch as the Constitution evidently contemplates and requires, that "the meetings for the choice of Representatives shall be warned seven days at least before the election," your Committee were of the opinion, that the meeting held in Westport, on the second of October, was not a legal meeting, and that the votes should not be counted.

By Cunningham it was contended, that if, for the reason aforesaid, the votes thrown in Westport should be rejected, the votes thrown in Edgecomb should also be rejected, because of certain irregularities alleged to have taken place at the meeting, and to have vitiated the proceedings; and therefore, there having been no choice effected, it was the duty of the Selectmen of each town to call another meeting; and the Selectmen of Edgecomb having omitted to do this, and he (Cunningham) having received a majority of all the votes given in Westport at the meeting held on the twenty-third of October, should be declared elected and entitled to a seat—or at all events the election should be sent back to the people.

To establish this position, said Cunningham introduced and read the depositions of Ezra Cunningham, Ruglass Cunningham, Stephen Parsons, David Deering and Zadock Chapman, taken before John D. McCrate, Esq. on Saturday, the twentieth of January instant. They depose substantially that they were present at the meeting in Edgecomb, on the second of October, that they saw the ballot box several times passed into the hands of those who were not town officers, in order to re-

ceive the votes of Electors whose names had been called, and who sat at a considerable distance from the Deacon's seat which the Selectmen occupied. And two of them say, they believe the box must have been out of sight of the Selectmen. Ezra Cunningham and Stephen Parsons further depose, that they saw one Jackins put a ballot into the box—that his right to vote was disputed—that the Selectmen decided he had no right, and directed him to take out the ballot he had put in—that he did accordingly take out a ballot, but the Selectmen did not examine so as to determine if it were the same or not.

To rebut this evidence, and to show that the alleged irregularities did not take place, Rufus Sewall was called. He swore that he was one of the Selectmen of Edgecomb—that he had charge of the alphabetical list—that he called on the electors in their turn to come up and deposit their ballot, and checked their names as they obeyed the call—that he recollected of the box being passed to a Mr. Deering and a Mr. Patterson for their votes, they being aged and infirm men—that he kept a watchful eye on the box, and is confident it did not at any time, pass out of his sight—that he was aware it would be improper, and should not have allowed it to be done—that no complaint of any irregularities was made at any time to the Selectmen or in their hearing, and that no complaint of the kind had ever reached him till Saturday, when the depositions were taken. He further swears that Jackins was directed, and before any one else had voted, to take out the ballot which he had put in—that he did immediately take out one, the one which lay on the top of the pile, and though he did not examine it, he has no doubt it was the same.

The Counsel for Chase moved for a continuance, that he might have opportunity to produce the other Selectmen of Edgecomb, and stated that the deposition of one Brown, one of said Selectmen, had been taken by Cunningham, and supposing that the same would be exhibited to the Committee, they had omitted to summon him. But the Committee, inasmuch as

the certificate from Edgecomb was perfect, and purported to be a list of votes thrown at a legal meeting, were of opinion that the burden of proof was on the party objecting, to show positively and conclusively the irregularities complained of. They were satisfied that without further proof on the part of Cunningham, the votes given in Edgecomb could not be rejected, and accordingly overruled the motion—believing that to grant the continuance would be to accumulate expense without any adequate object.

Whether Jackins did actually take out the vote which he had put in, it is perhaps unimportant to be known—for it could not affect the result, as it is not pretended that he put in, or took out more than a single ballot.

That the ballot box was removed from the desk and passed into the hands of those who were not town officers, seems to have been proved, but this simple fact is surely not such an irregularity as would vitiate the doings of the meeting, and repel the evidence furnished by the certificate. It might have been highly proper to pass the ballot box to individual Electors present at the meeting, who from extreme age, bodily infirmity or other cause, found it difficult to get up to the desk. There is no satisfactory proof that the ballot box was at any time out of the view of the presiding officers. It is true that two of the deponents express their belief that it must have been, but they do not pretend to be positive, and from the nature of the case could not be certain. The Selectman, Rufus Sewall, who was present, swears that he did carefully watch the box and is confident that the box was at no time out of his sight. And it is not pretended that more votes were received, than there were voters present. Your Committee, therefore, in view of all the evidence, not feeling authorized to reject the votes cast in Edgecomb on the second of October, have directed me to report the resolve hereto annexed.

H. W. PAINE, *Chairman.*

RESOLUTION.

RESOLVED, That John Chase having been legally and constitutionally elected Representative, from the District composed of the towns of Edgecomb and Westport, is entitled to a seat in this House.



STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 26, 1838. }

Read and ordered that the same lie on the table, and that three hundred copies of this report, together with the resolve, be printed for the use of the Members of the House.

[Extract from the Journal.]

Attest:

GEO. C. GETCHELL, Clerk.