

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. 1.

SENATE.

R E P O R T

ON

GUBERNATORIAL VOTES.

[G. ROBINSON, Printer.]



STATE OF MAINE.

THE Joint Select Committee to whom was referred the votes for Governor, given in the several cities, towns and plantations in this State, having had the same under consideration, ask leave to

REPORT:

That the whole number of votes for Governor, which have been legally and constitutionally returned, from the several cities, towns and plantations in the State, is sixty-eight thousand five hundred and twenty-three; that the number necessary to constitute an election is thirty-four thousand two hundred and sixty-two; that Edward Kent has thirty-four thousand three hundred and fifty-eight; that Gorham Parks has thirty-three thousand eight hundred and seventy-nine; that other persons have two hundred and eighty-six; and that Edward Kent having received one hundred and ninety-three votes more than all other persons voted for, is constitutionally elected Governor of the State of Maine.

The return of votes from the town of Bristol, was not certified on the inside by the Town Clerk; these votes were allowed and counted, for Edward Kent, two hundred and twenty-five, and for Gorham Parks, two hundred and twenty-eight. The returns from Dedham, Wesley, Wes-

ton, Kingsbury, Argyle Plantation, and Plantation No. 1, North Division in Hancock County, were not certified by either of the Selectmen, or town or plantation Clerks on the outside; the votes from said towns and plantations were allowed and counted, viz: for Edward Kent, one hundred and eleven, and for Gorham Parks, two hundred and three. The returns from Hiram, Lincoln, Roxbury, Edingburg, Beddington, Plantation No. 23, Snowsville and Mattawamkeag, north of Lincoln, contained no certificate of having been sealed up in open town or plantation meeting; and it was not certified in the return from No. 23, that they were declared in open meeting; these votes were allowed and counted, for Edward Kent, one hundred and seventy-two, and for Gorham Parks, two hundred and sixty-six. The return from Buckfield, states that "*five votes were given for Gorham Parks after the votes were declared and counted*"—these votes were allowed and counted for Gorham Parks. The return of votes from Amity, was attested by the Town Clerk, and by two persons inside, without designating their official character; they were not signed or certified on the outside by any one; these votes were allowed and counted, for Edward Kent, two, and for Gorham Parks, twenty. The return from Cornish was made upon a plantation blank return, and was signed by two persons, designated as "*Assessors*;" these votes were allowed and counted, for Edward Kent, fifty-two, and for Gorham Parks, one hundred and twenty-six. The returns from Moscow and Howland were signed by the Town Clerk and one Selectman only, on the inside; but on the outside by two Selectmen and the Town Clerk; these votes were allowed and counted, for Edward Kent, eighty-two, and for Gorham Parks, fifty-nine. The return from Calais, states that "*it appears in evidence that one person voted twice*;" the votes of said

town were allowed and counted, for Edward Kent, two hundred and nine, and for Gorham Parks, two hundred and fifty-three. The return from Chandlerville was not dated on the outside; these votes were allowed and counted, for Edward Kent, fourteen, and for Gorham Parks, twenty-seven. The return from Plymouth states that one vote for Gorham Parks was received while counting; this vote was allowed and counted for Mr. Parks. The return from Howland, states that "*a person calling himself an inhabitant of No. 3, Eighth Range was allowed to vote in Howland;*" which vote was given for Gorham Parks; this vote was allowed and counted for Gorham Parks. The return from Hallowell, on the inside, states that the meeting was held on the second Monday of September, being the eleventh day of said month, in the year of our Lord one thousand eight hundred and —, the blank for the date of the year was omitted to be filled up, it was perfect in all other respects; on the outside is the usual certificate signed by the Selectmen and attested by the Town Clerk, that it contained a list of votes given in by the inhabitants of Hallowell, for Governor, on the second Monday of September, 1837, and was sealed up in open town meeting; on the outside was also a memorandum in writing, that said return was received at the office of the Secretary of State, September 12th, 1837; these votes were allowed and counted, for Edward Kent, six hundred and eighteen; for Gorham Parks, one hundred and fifty-one. The return from Milford, on the outside, contains a memorandum in writing, signed by the Secretary of State, that "*it was not sealed when received at this office,*" but it contained the usual certificate on the outside, of the Selectmen and Town Clerk, that it was sealed up in open town meeting; it does not appear to have any post mark on it, nor is there

any appearance of mutilation or erasure on the return ; these votes were rejected, for Edward Kent, seventy-five ; for Gorham Parks, forty-one. The return from Paris, states that one vote was given "*for scattering* ;" this vote was rejected. The return from Lincolnvillle, states that one vote was given for "—— Kent ;" this vote was rejected. The return from Greenfield was not certified or signed by any one on the inside ; on the outside it was in proper form ; these votes were, for Edward Kent, sixteen, and for Gorham Parks, eighteen, and were rejected. There was no return from the town of Albany.

Remonstrances were referred to the Committee against the reception of the votes from the towns of Leeds, Fayette and Fairfield ; it is alleged in the remonstrance from the town of Leeds, that the votes were not sealed up in open town meeting ; but there is on the return, the certificate prescribed by law ; that the votes were sealed up in open town meeting, signed by the Selectmen and Town Clerk ; the Committee decided in relation to towns where the returns furnished no evidence of having been sealed up in open town meeting, that the votes should be accepted and counted ; they refused in this case to admit parole evidence to contradict the legal certificate made by the Selectmen and Town Clerk, which they had adjudged to be unnecessary in so large a class of cases, and accepted the votes.

It was alleged in the remonstrance from the town of Fayette, that during an adjournment of the meeting for Governor, &c., the box containing the ballots was placed in the window of the meeting-house, and that the Chairman observed to the Selectmen, who had charge of the same, not to suffer them to be handled or disturbed, but that an individual, other than the Selectmen, and not acting under the solemnities of an oath, did take the ballot

box and receive a number of votes. The Committee understood this as a distinct charge of fraud in relation to the votes, so alleged to have been given; and on that ground, and that ground only, went into a full examination of all the evidence offered. It appeared in evidence, that during a suspension, or adjournment, of the meeting for the purpose of transacting town business, the ballot box, containing the votes for Governor, &c., was placed on the sill of the window of the pulpit, and was exposed to the view of the meeting generally; that during a short period, when neither of the Selectmen were in the pulpit, nor any other person than the Town Clerk and Mr. Samuel Hersey, who had gone into the pulpit to write, that an individual came to the pulpit with three young men, all legal voters in the town, whose names were on the check list, and asked Mr. Hersey to hand down the box and let them vote,—that he took the box from the window, stepped to the side of the pulpit and received from each of the three persons a single vote for Governor, &c., and then replaced the box on the window sill; that these votes were for Edward Kent, and that these were the only votes thrown by these men on that day; and that they were received without the knowledge of the Selectmen; and that no other persons than the Selectmen, Town Clerk and Mr. Hersey were in the pulpit during the suspension or adjournment of the meeting; that the window stool of the pulpit was some six or ten steps above the floor of the house. The Committee believing that these facts did not require the disfranchisement of the electors of Fayette, accepted and counted the votes of that town, excepting the three as aforesaid.

It is alleged in the remonstrance from the town of Fairfield, that the Selectmen, did not themselves, sort, count

and declare all the votes for Governor, as required by the Constitution, but permitted some of the votes to be taken by an individual to a window beyond the supervision of the Selectmen, and not in the presence of the Town Clerk, to sort and count them; and that the individual so taking the votes, did count, and then throw away said votes, and returned to the Selectmen, a minute only, of the number of votes so counted; and that the Selectmen, without ever having counted said votes, added the votes so counted to those counted by themselves. The Committee admitted the evidence in relation to this allegation, in the remonstrance, for the same reason as in the remonstrance of Fayette, on the suggestion of fraud. And it appeared from the testimony in the case, that after sorting the votes, the Selectmen found a small number, of from five to seven, of what the witness called, "*mixed votes*," being such as did not contain the names of all the candidates generally voted for, for Governor and Senators; some of them being written votes, and one of them only having on it the name of any candidate for Governor, that being for Gorham Parks; that these mixed votes were replaced in the ballot box and handed by one of the Selectmen to Samuel Burrill, who was in the same pew with the Selectmen; and who had been Clerk of said town; that said Burrill counted and sorted said votes, and put them on a list of the votes which he made; and that after the Selectmen had counted and listed the other votes, he handed these votes back to one of the Selectmen; that they were then examined by the Selectmen and put on the list of votes kept by them; that the list kept by the Selectmen, and the list kept by Burrill, were then compared and found to correspond.

It is further alleged in said remonstrance that a meeting

was held under a Moderator for the transaction of town business, immediately after receiving the votes for Governor, which was first adjourned one hour, and finally adjourned to the second Saturday in October, and that after said final adjournment, the Selectmen proceeded to sort, count, and declare the votes for Governor. The committee do not perceive that these facts if true should have any influence on the legality of the meeting for receiving the votes for Governor, and as the Selectmen and Town Clerk had certified in their return, which is in the form prescribed by the constitution and law, inside and out; that the votes were sorted, counted, declared, recorded and sealed up in open town meeting, they declined to admit any testimony on this part of the remonstrance: and accepted and counted the votes of the town of Fairfield.

The Constitution of the State having provided that the votes for Governor, shall be received, sorted, counted declared, recorded and sealed up in open town meeting, and returned into the Secretary office, and laid by him before the Senate and House of Representatives, and a form of return having been established by law, the Committee believed that it might not be competent to them or the Legislature to go into any testimony to invalidate or contradict the returns, or disfranchise the electors of towns, whose returns are made according to the Constitution and the laws—except in cases where fraud is suggested or alleged.

Your Committee were disposed, distinctly to recognise this rule in relation to the returns from the towns of Leeds, Fairfield, and Fayette,—the evils resulting from a different course would in the opinion of your Committee, tend to protracting indefinitely the organization of the government,

and to removing the guards set by the Constitution and the laws around the rights of suffrage.

CHARLES FOX, *Per Order.*

HOUSE OF REPRESENTATIVES, Jan. 11, 1838.

Read and accepted. Sent up for concurrence.

E. H. ALLEN, *Speaker.*



STATE OF MAINE.

IN SENATE, January 12, 1838.

THE foregoing Report was read and laid upon the table,
and

ORDERED, That 200 copies be printed for the use of the
Senate.

[Extract from the Journal.]

ATTEST: WILLIAM TRAFTON, *Secretary.*