

# MAINE STATE LEGISLATURE

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*Charles F. Rice*

DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1840.

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1840.

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**TWENTIETH LEGISLATURE.**

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**NO. 8.**

**HOUSE.**

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**R E P O R T**

**OF THE**

**COMMITTEE ON ELECTIONS.**

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**SMITH & ROBINSON,.....Printers to the State.**



# REPORT.

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## STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
*January 22, A. D. 1840.* }

THE Committee on Elections to whom was referred the cases of William Hunnewell and Corydon Chadwick, each claiming a right to a seat in this House from the town of China, in the County of Kennebec, having had the same before them, and having investigated the facts, and duly deliberated upon their bearing, ask leave to

### REPORT.

That they have, during a laborious and protracted examination, of several days continuance, given to the subject their careful attention, with the anxious desire of ascertaining from the voluminous testimony submitted to them, the true state of the facts and the justice of the case.

In the result to be submitted to you a majority of your Committee concur, and it may be proper in communicating that result, to submit to the

House without unnecessary particularity of detail, the leading facts which have brought them to such conclusion.

No choice of Representative having been effected in said China on the day of the annual Election, *to wit*, on the ninth day of September last, an adjourned meeting was held on the sixteenth day of said month, and the votes as returned and certified by the Selectmen and Town Clerk, stood as follows, viz:

The whole number thrown, four hundred and seventy-seven.

William Hunnewell had two hundred and forty.

Corydon Chadwick had two hundred and thirty-six.

Sanford A. Kingsbury one.

Upon the development of the evidence, it was contended on the part of the remonstrants that there should be added to the votes returned for said Chadwick three votes given for him, and omitted to be counted through the miscount of James H. Brainard, the Town Clerk, in a pile counted by him. That two more votes for said Chadwick were also omitted and brushed off the table by T. B. Lincoln, one of the Selectmen, and consequently not counted. That two more votes tendered for said Chadwick during the balloting; one by Oliver Thompson and the other by H. W. Ferguson, both claiming to be legal voters in said town, whose votes were rejected; and that there should be deducted

from the votes returned for said Hunnewell the votes given in for him by three persons of the names of Handy, Casey and Ward, on the ground that they were not legal voters in said town. It was also contended, that there was unfairness in receiving certain votes after those before received had been counted and the result known, and refusing a certain other vote, or upon its being offered immediately announcing the result, without extending a proper opportunity to said voter to put in his ballot.

It was proved that the votes received on the day above referred to, were turned from the box upon a temporary table, formed by placing a door about six and one half feet long and two and one half feet wide, upon the top of some high seats, for the purpose of sorting, counting, &c. That they were sorted into three piles. The centre pile upon the table, containing the votes for Hunnewell, and the piles near each end of the table, containing those for Chadwick. Dr. Brainard undertook to count the pile to the left of the centre. He testified that he counted, and made one hundred and twenty-eight votes in his pile, or the pile counted by him for Chadwick. He counted them but once, and none of the other officers of the town counted this *pile at all*. Gen. Alfred Marshall, testified that in consequence of a want of confidence in the former counting of votes, and in the accuracy of Dr. Brainard, he determined to watch and count after

him. For this purpose, he took a position directly opposite to Brainard, when he began to count the votes, and counted with him. He testified that he was in a situation, having a *full* and *fair* view of all the votes in Brainard's pile; that he watched with a determination of counting and knowing how many votes there were; and that he did count them and *knows* that there was one hundred and thirty-one in said pile, and not one hundred and twenty-eight, as stated by Brainard. To this fact, he testified positively, giving the reasons for his care in watching the count of Brainard.

Mr. Jonathan D. Estis, testified that as Brainard began to count, he *brushed off* the votes from the table, and that he requested him not to brush them off. He said he made the request in a manner so distinct, that he might have been heard by Brainard. Several witnesses standing by, testified that they heard the request. Gen. Marshall testified, that as soon as he had got through with the counting, he asked Brainard how many votes he made; that he (Brainard) *hesitated* a moment, and then said one hundred and twenty-eight, whereupon he (Marshall) told him there was one hundred and thirty-one; that he was sure there was that number, and he requested Brainard to pick up the votes from off the floor, and recount, to show that he (Marshall) was correct. Brainard testified that he did not hear the request of Estis, to not brush



off the votes, nor that of Gen. Marshall to pick them up, and see what light a recount might afford. But it was in evidence from several witnesses, (some of them for each party,) and proved beyond a doubt, to the minds of a majority of your Committee, that Brainard actually replied to the pressing request of Gen. Marshall, and gave the reason of his declining to take up the votes from the floor for a recount, that there might be other votes upon the floor where those were brushed; this testimony would seem to establish the fact of his hearing one request at least, for he could hardly reply to what he did not hear.

It is certainly a novel procedure for one town officer, and this one the clerk, to undertake in an important and exciting election, to count the votes, without allowing, so far as it lay in him, the usual privilege of having his count made certain by others, and of counting but once himself, and then brushing from the table the votes as he proceeded. Brainard testified that when he begun, a few votes fell from the table upon the floor, and that then he purposely drew the others off. He further stated, that he had for several years counted in this way, brushing off the votes as he proceeded, and that he had heard no dissatisfaction, and was not aware of any complaint, or of his having made any errors by miscounting. Gen. Marshall, however, testified that he at one time detected Brainard in a mistake of

three votes, in the number of eighteen, and that he convinced him of the error on the spot; and that this was one of the circumstances that called forth his great care and vigilance in watching him at this time.

There was another circumstance to which our attention was called. One Kempis Clark was called to sustain the counting of Brainard, and he stated that he looked over Brainard's shoulder, and that he made the number "one hundred and thirty odd, or two hundred and thirty odd"—he could not state the number, but that he saw the figuring of Brainard, and that he made the same number Brainard did. He said he heard Gen. Marshall request Brainard to have the votes picked up and recounted, and heard Brainard reply. It was proved by two witnesses, that this Clark, during the time that Gen. Marshall was urging a recount, stooped down and picked up some three or four votes, closed his hand upon them, placed his hand behind him, and presently went towards the door. Clark upon cross examination admitted the fact, but said he had no design in it. He could not tell what he did with the votes nor what he picked them up for.

Another witness, Seth Hall, corroborated Gen. Marshall, as to the true number of votes. He testified that he stood by the side of the table, close to the votes, carefully counted them at the time Brai-

nard did, and that he *saw and counted* one hundred and thirty-one votes.

It was in evidence, that there was no necessity whatever of brushing those votes from the table as they were counted, as there was abundant room to separate, count, and leave them upon the table. The testimony that there was one hundred and thirty-one votes in this pile, when but one hundred and twenty-eight was counted, is positive and affirmative in its nature, and taken in connection with the suspicious circumstances (to say the least of them) that surround this part of the case, we cannot hesitate to say that there should be allowed for Corydon Chadwick, three votes uncounted by Brainard, so as to bring the pile referred to, up to one hundred and thirty-one votes, the true number ascertained as aforesaid.

It was proved also, by Mr. Lot Jones, (a very intelligent witness,) that T. B. Lincoln, one of the selectmen who counted the centre pile of votes for Hunnewell, as he pushed them back from the edge of the table for the purpose of recounting, brushed off two votes that lay near the place whence he was pushing his votes, and in the range of his pile, and not in that of Brainard. This pile was about a foot and one half from Brainard's pile. Mr. Lincoln, being called by the other side, testified that he did brush off the two votes referred to, and that they were for Corydon Chadwick. He said they were

near the range of Brainard's votes, and that on seeing them, he spoke to Brainard, who told him that they were some of his votes, that he had counted, and then he (Lincoln) *brushed* them off the table. Brainard testified to the same effect, saying also, that he presumed that they were votes left on the table after he had done counting, and had been counted by him. Lot Jones testified positively as to the position of these two votes, and that they were not in the range of the votes counted by Brainard, nor within a foot of the place. Prince Crowel testified that he on the day of the meeting, and after it was over, was with Mr. Chadwick, and T. B. Lincoln came up and asked him if he was satisfied with the proceedings? Chadwick replied he was not, for he understood he (Lincoln) brushed off two of his votes, and that Lincoln denied it, and challenged him to bring on the man who said so. He further testified, that Lincoln did not speak of having brushed off any votes. Mr. Lot Jones, who saw those votes brushed off, testified that subsequent to this time he had a conversation with Mr. Lincoln and told him of his seeing the votes brushed off. Lincoln in his cross examination testified as to having the conversation with Chadwick, but said he understood Chadwick to charge him with having brushed off two votes for Kingsbury, and that he replied that he did not brush off any votes for Kingsbury, and stopt *there*, without explaining to

Chadwick he had brushed off any votes that were thrown for him, or intimating that he had brushed off any votes, when he seemed to have sought Chadwick to inquire into the report of the two votes being brushed off. Mr. Estes witnessed the same thing, and testified, that if any votes passed from Brainard's pile to the part of the table where Lot Jones saw these two votes brushed off, it must have been from the part of the pile not counted, and could not have been from those that were counted. It is certain that these two votes were received and were upon the table, and that they were for Chadwick, and it would hardly seem satisfactory to the majority of your Committee to take the *presumption* of Brainard that they were of those votes that he had counted, as establishing the fact in the face of all the other testimony, and when he himself could not swear he had done it.

In regard to the vote of Furguson, it was conceded after the exhibition of the evidence before the Committee, that the vote by him tendered should have been received and counted for Chadwick.

It was proved to our satisfaction also, that Thompson was a legal voter in said China, but it was contended in behalf of Mr. Hunnewell that he did not tender his vote, and each of the Selectmen testified that he had no knowledge or recollection of Thompson's offering to vote on that day, but they stated he had so done at the previous meeting, and

then they decided he was not a legal voter and refused his vote. In answer to this testimony, a Mr. Patten appeared before the Committee and testified positively to the fact, that he on the sixteenth went up to the polls with Mr. Thompson, and saw him tender his vote for Mr. Chadwick, and that Mr. Lincoln refused him, and said his *case* was decided at the previous meeting. Mr. Patten gave as a reason for being positive, that he (Patten) went alone to the first meeting, and that on the sixteenth he rode with Mr. Thompson, and that they went to the polls together. As his testimony is affirmative and direct, and that of the Selectmen of a negative character, amounting to no more than that they do not recollect the fact, we cannot hesitate to say, especially when we consider how easily such facts might escape town officers in the multiplicity of their cares in the progress of an heated election, that we are satisfied of the fact, that Thompson's vote was tendered and refused, and that it should be allowed and counted for Chadwick with that of Furguson.

In regard to the vote of Handy which was given for Hunnewell, your Committee are of the opinion, that it was legal and should so have been received and counted. The case of Casey presents a nicely balanced question in our view, but wishing to extend liberality rather than otherwise to the voter, that he may not be robbed of the elective franchise, your

Committee are induced to say that Casey's vote was also rightfully received and counted,

As to the vote of Ward, we are well satisfied he was a legal voter in the town of Albion having such residence in that town as to secure to him the right of franchise there, and consequently he was not a legal voter in China. His vote should therefore be deducted from the one hundred and forty for Hunnewell as he testified he voted for him.

Your Committee, or a majority of them, having set forth the more material facts for your consideration, would respectfully add, that they in conformity with their duty (when they consider the suspicious and strong circumstances of FRAUD on the part of the Town Clerk) can do no less than to say, that in their opinion, Corydon Chadwick is rightfully entitled to a seat in this House from the town of China. In accordance with these views, we report a Resolve, which is herewith submitted.

**CHA'S ANDREWS,**

*Chairman.*

**JACOB MAIN,**

**JOSEPH W. EATON,**

**EBENEZER OTIS.**

## STATE OF MAINE.

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*House of Representatives, }  
January 22, 1840. }*

**RESOLVED,** That Corydon Chadwick was duly elected a **R**epresentative from the town of China on the sixteenth day of **S**eptember last, and is entitled to a seat in this **H**ouse.



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REPORT

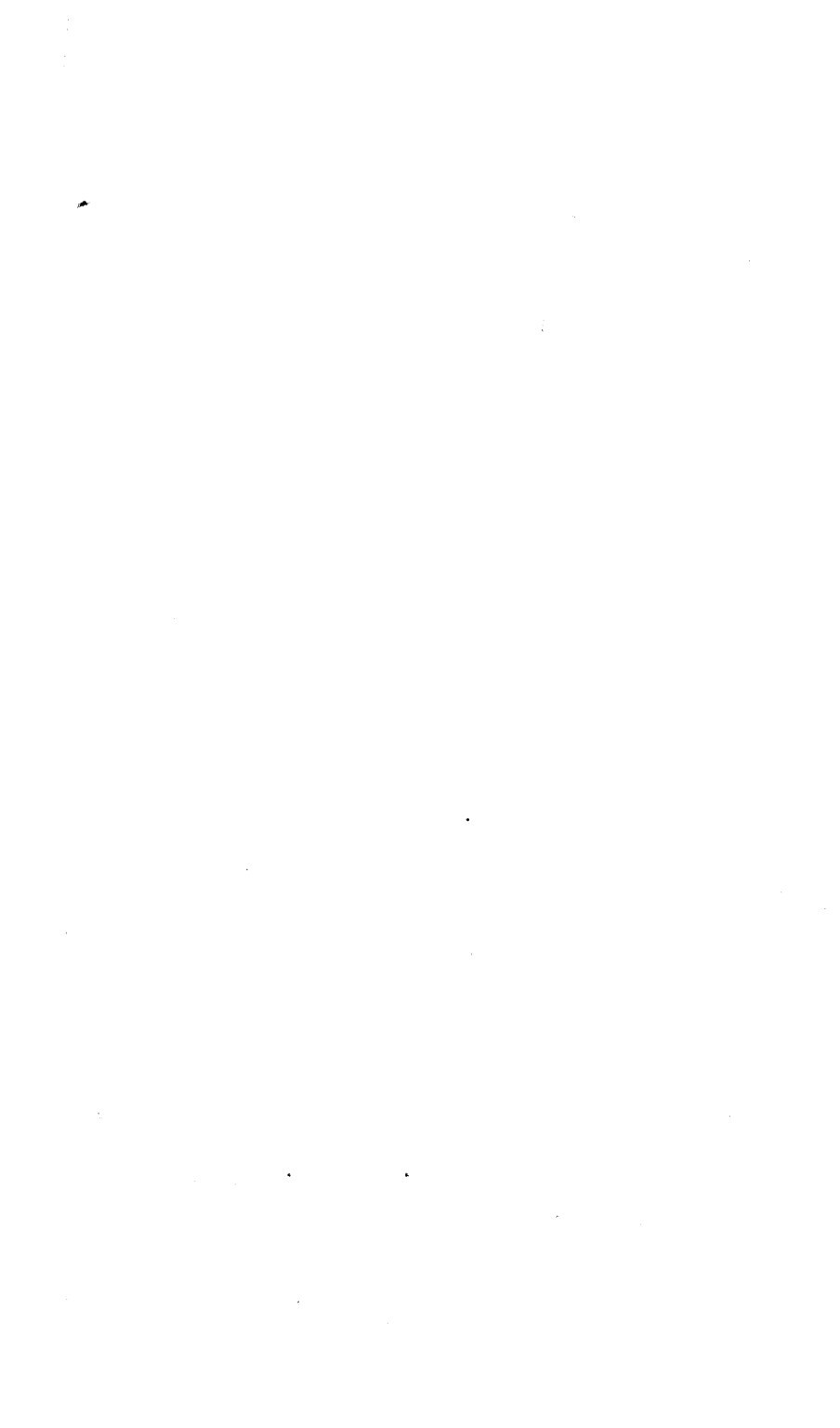
OF A

**MINORITY OF THE COMMITTEE**

OF

ELECTIONS.

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## REPORT.

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THE undersigned, a minority of the Committee on Elections, who have had under consideration the remonstrance of Corydon Chadwick against the right of William Hunnewell to a seat in this House, together with the testimony in support of, and against said remonstrance, ask leave to

### REPORT :

That they feel constrained to differ from the majority of the committee, with regard to the legal application of the testimony submitted to them, as well as in some important conclusions as to matters of fact, drawn from the same.

The undersigned do not propose to go much into detail of the voluminous testimony, which was heard during the long protracted investigation had upon this subject, but briefly to submit their views upon those points only, where they were so unfortunate as to differ from the majority.

It is agreed that the meeting holden in China on the 16th of September for the choice of a representative was a legal meeting for that purpose,—

That the votes as declared by the selectmen and recorded by the town clerk were for—

William Hunnewell	240
Corydon Chadwick	236
Sanford A. Kingsbury	1

That thereupon William Hunnewell was declared to be duly elected by a majority of all the votes, and received a certificate from the proper authorities entitling him to a seat in this House, as representative from China.

Against this Corydon Chadwick remonstrates, and alleges—that the certificate, and consequently the record of the town, is not true as to the *number of votes* thrown for him at this election—that a portion of these votes *were not counted by either of the selectmen*, but by the town clerk, and by him not counted correctly—and that two votes bearing his name were brushed from the table used on that occasion, not having been counted at all.

Upon this point it was conceded, that a part of the votes were not counted by either of the selectmen, but by the town clerk, whose count they adopted as their own.

The undersigned are of opinion, that the authority and duties of selectmen of towns being defined by the Constitution, and to be performed under the sanction of an oath, cannot be, by them delegated to others, and that as among these duties, is that of *counting* votes for State officers,—that count of any

other individuals is not to be received and accredited. If this view of the subject be correct, there has been no legal return from China, and a new election should be ordered to choose a representative for that town.

But on the other hand, if the certificate is to be received—if the selectmen, by adopting the count of the town clerk, made it their count, then it is to be taken as a whole—it cannot be received in part and rejected in part; and, the undersigned would contend, must be conclusive as to the *counting* of the votes. The consequences, which would result from allowing parole evidence to be introduced to prove the number of votes given at elections, must be obvious to every one—such a rule could only lead to endless controversy and doubt. It would admit an inferior order of testimony, to invalidate that of a higher grade. It would array testimony partaking of the frailty and uncertainty of the human memory, against that of certified papers and public records.

But waiving all legal objections, for the purpose of this investigation, let us examine the testimony with regard to the counting of the votes. They were assorted into three parcels in the presence of the *remonstrant and his friends, who were called upon by the selectmen*, that they might be present and witness the proceedings. One of these parcels, consisting of 108 votes for the remonstrant, was counted by the chairman of the selectmen, Capt.

Crowel, to the accuracy of whose count, no objection is made. Another parcel consisting of the 240 votes for Mr. Hunnewell was counted by Mr. Lincoln, another of the selectmen. His count was challenged by a Mr. Jones, one of the by-standers, who alleged that there were not so many by two, as he made them. Fortunately these votes remained upon the table and were counted a second time, and the accuracy of Mr. Lincoln's count confirmed. The remainder of the votes were in the parcel counted by Dr. Brainard, the town clerk, who reported 128 for the remonstrant. This count was challenged by Gen. Marshall, who alleged that there were three more, viz: 131. Unfortunately these votes were drawn from the table by Dr. Brainard, and when in the act of counting, and were consequently not in a situation to be re-counted. The testimony with regard to the number of these votes was directly contradictory and equally balanced as to the number of witnesses; Dr. Brainard, on the one hand, testifying that he counted them with great care and made 128—while Gen. Marshall is equally positive that he saw 131. Two other witnesses testified upon this subject, one confirming the testimony of Dr. Brainard, the other that of Gen. Marshall. It was also in evidence upon this subject that 477 names were checked upon the list as having voted, and by adding the 108 counted by Capt. Crowell, the 240 counted by Lincoln, the one vote for Mr.

Kingsbury, to the 128 counted by Dr. Brainard, accounts precisely for that number. The undersigned therefore came to the conclusion, that there must have been 128 votes in this last parcel and no more, and that those who testified that there were 131, must have been mistaken as to that number. The allegation that Mr. Lincoln *fraudulently* brushed off two votes for the remonstrant, has not the least testimony, in the opinion of the undersigned, to sustain it. He admitted that he did brush off the two votes in question; but not till after all the votes had been counted—they were in the direction of those counted by Brainard, and had undoubtedly been counted by him. The undersigned differ from the majority as to the right of G. Ward to vote in China. He testifies that he voted for Mr. Hunnewell,—that his home was in China—that he was taxed there—that he had worked one-half of the time for six months in Albion, but that he had not intended to take up his residence there. The undersigned are of opinion, that where there is any doubt as to the legal residence of an individual, the declared intentions of said individual are to be taken as evidence to solve that doubt.

There were some other particulars in which the undersigned differed from the majority of the committee, but as they are not material and do not affect the result, we forbear to enlarge upon them. Upon this view of the case, and conceding to the remon-

strant all the votes he claims, he still fails of an election by two votes.

The undersigned therefore Report that Corydon Chadwick have leave to withdraw his remonstrance.

**E. F. DEANE,  
JESSE KIMBALL,  
DAVID ALLEN.**





# STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
January 24, 1840. }

ORDERED, That the Reports of the Committee on Elections in the case of Corydon Chadwick and William Hunnewell, be laid on the table, and 300 copies of each be printed for the use of the House.

[Extract from the Journal.]

ELBRIDGE GERRY, *Clerk.*