

# MAINE STATE LEGISLATURE

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*Charles F. Rice*  
DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1840.

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AUGUSTA:

WM. R. SMITH & CO., PRINTERS TO THE STATE.

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1840.

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**TWENTIETH LEGISLATURE.**

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**NO. 16.**

**HOUSE.**

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**REPORT**

**OF THE**

**COMMITTEE ON ELECTIONS.**

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[Wm. R. SMITH & Co.,.....Printers to the State.]



## REPORT.

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The Committee to which was referred the Remonstrance of Noah Dow against the claim of Charles Beale to a seat in this House as Representative from the district composed of the towns of Glenburn, &c., have had the same under consideration, and ask leave to

### REPORT.

That four trials for a choice of Representative were had in said district; that Dow claims to have been elected at the third, and Beale at the fourth, when it is admitted he received a majority of all the votes thrown. By certified copies of the records from the several towns composing the district, it appears that the whole number of ballots cast at the third trial, on the 21st of October, was 418, of which 207 were for Dow, 199 for Beale, and 12 for all others.

The remonstrant contended that of the 211 votes allowed and counted against him, 7 were illegal and should have been rejected, viz: three votes for Beale, one of which was cast by William Colkins, an alien, one by Thomas Cunningham, a pauper,

one by **Hartson Farris**, a minor—one vote for **Eliphallet Haskell**, on colored paper having distinguishing marks, and three votes for females, and therefore unconstitutional candidates.

By the deposition of **Colkins**, it was proved that he voted for **Beale**, but there was no evidence before your Committee that he was an alien.

**Thomas Cunningham** deposes in substance, that he can neither read nor write—that he suspects he voted for **Dow**—that he deposited the ballot given him by **Joel Mann**—that he resides in **Kirkland**, where he voted—that several of his children live with him, and that four of them are supported as paupers in **Bradford**—that his wife is in **Orono**—has not lived with him nor received assistance from him for seven years—that she had filed a libel for divorce, and he supposed had obtained a decree. **James Sawyer** deposes that he saw **Cunningham** take a vote from **Joel Mann**, and put it into the hat. **Daniel Mann** swears that he saw **Joel Mann** hand to **Cunningham** a ballot for **Noah Dow**, and that **Cunningham** carried it to the hat, though he could not be certain that he put in the same.

On the other hand, **William Lassell** swears that he saw **Cunningham** carry and deposit in the hat a printed ballot with the word “**Beale**” thereon, the christian name he did not read. **Ira Peirce** was equally positive that **Cunningham** carried a printed ticket, and that he voted for **Beale**. **Henry Hewins**

swears that Cunningham told him he carried a printed ticket—that he, Hewins, was town clerk of Kirkland—that he assisted in counting the votes—that there were no printed tickets for Dow, and no scattering votes.

The deposition of Mr. True, one of the overseers of the poor in Bradford, was also introduced. He swears that four of the minor children of Cunningham now are, and for several years past have been supported by Bradford.

It was contended by the remonstrant, that it was proved that Cunningham voted for Beale, and that he was a pauper within the intent of the constitution. Beale maintained that in view of all the evidence it was extremely doubtful for whom he did vote, but at all events he had an undoubted right to vote. And he cited and relied on the opinion of the Supreme Court—7 Gr. page 447, and 3 Gr. 141, Green vs. Buckfield.

Hartson Farris deposes that he voted for Beale. The evidence that he was a minor, is contained in the depositions of his father, Meltiah, and his brother, William, who both testify that to the best of their knowledge he was not 21 till January last. The said Dow maintains that the proof is satisfactory and sufficient, while the said Beale contends that the burden of proof is on the remonstrant, and that he fails entirely to sustain his allegation.

With regard to the vote for Eliphalet Haskell on

colored paper bearing distinguishing marks, the proof is substantially as follows :

On the part of the remonstrant, **Jonathan B. Hobbs** was called and examined before the Committee. He testified that he was present at the meeting in Milo, and saw the votes as they were sorted and counted by the Selectmen. He saw a vote for **Eliphalet Haskell** on paper of the color of a robbin's egg, with two lines on the back thereof extending the whole length of the ballot, apparently made with blue ink or a pencil, and so distinct they could be seen at a distance—that **Dow**, who was one of the Selectmen as well as town Clerk, took up the ballot, and observing to his colleague that it was not a legal vote, inquired what should be done with it. On cross-examination, he said that this was near sun-set, but whether before or after, he could not swear—that he lived within half a mile of **Dow**—had just brought him over in a sleigh—that they were two days and a half coming, and that they had slept together, but not a single word had ever passed between them relative to the disputed ballot. **Jonathan R. Bellington** deposes that he too was present at the sorting of the votes—that he saw the ballot for **Haskell**—that the paper was not exactly blue, but of a bluish cast, and had two lines on the back extending the length of it. The remonstrant produced a paper purporting to be a list of votes cast in Milo on the 21st October, signed

by Noah Dow and P. Tolman, Selectmen, and certified by Noah Dow, town Clerk. Among the votes so returned, was one for Eliphalet Haskell, and there was also over the signatures of the aforesaid officers, a memorandum in the words following, viz: "The vote for Eliphalet Haskell was on colored paper with distinguishing marks." Beale, on his part, introduced the deposition of P. P. Furber, who swears that he had occasion to examine the records of the town of Milo in the latter part of November, and that there was then no record of the proceedings at any meeting since last April. Tolman, who was one of the Selectmen, and who presided with Dow on the 21st of October, deposes that he did not understand Dow as objecting to the vote of Haskell, but did recollect of his speaking about the vote and inquiring what should be done with it. He further says, that Dow, within a month past, called on him with a copy of the record containing a memorandum similar to the one above referred to, and asked if he recollected about the Haskell vote being on blue paper with two marks on the back of it—that he replied he did not—that Dow further observed he had recorded it as it was, and asked if he, Tolman, consented to it, as he had signed it. There were also introduced the depositions of several Selectmen from different towns in the district, who met after the third trial to compare the lists of votes, who testify that Dow was also

present, and that he made no objection to any vote on colored paper bearing distinguishing marks. The deposition of Wyman, who swears he voted for Haskell, and who has annexed a specimen of the paper upon which he thinks the name of Haskell was written, which specimen is of the color of bluish paper in common use.

The remonstrant contended that this vote should be rejected, as being on colored paper bearing distinguishing marks, within the meaning of sec. 3, ch. 518 of the statutes; while Beale, on the contrary, contended that the ballot was not proved to have been on colored paper within the intent of said statute.

The certified copies of the records show that two votes were cast in Bradford for Mary Keniston, and one in Glenburn for Sally Smith, and no other proof was offered as to the three votes alleged to have been cast for females.

Beale, on his part, contended that one vote for Dow, thrown by Amos E. Gammon in Glenburn, should be rejected. He proved that Gammon voted for Dow—that he purchased a piece of land in Kilmarnock in 1838—that he worked there a part of the spring and summer of that year and of the last—that about the time he made the purchase, he observed that he got it cheaper, because he had agreed with his uncle, of whom he bought, that he would take up his residence there—that he had five

or six acres of land there under cultivation—that he was there as late as **July** the last summer, and while there had a sister with him, who did his cooking—that he paid poll and property tax in **Kilmarnock** in the spring, and voted in that town at the annual election in **September** last. The deposition of his father and brother were read by **Dow**, who swears that during the last summer he had some personal property, besides a part of his wearing apparel, in **Glenburn**—that he had ever made his father's house his home, being a young man without a family.

The deposition of **Amos E. Gammon** was also read, who testified that he purchased the farm in **Kilmarnock** for speculation, not intending to take up his permanent residence there, but that he had ever considered his father's house in **Glenburn** his home.

Upon this evidence, **Beale** maintained that **Gammon** had a right to vote in **Kilmarnock**, and if the place of his residence were at all doubtful, as he had voted in **Kilmarnock** and there helped to choose a **Representative**, he should not be allowed to elect another place of residence when it suited his convenience, and there help to choose another **Representative**—that to permit him to do this would be to encourage fraud. The remonstrant contended that the evidence conclusively proved **Glenburn** to be his legal place of residence.

Beale also introduced the deposition of one John Baldwin, who swears in substance, that he is an Englishman by birth—has been for some years in the naval service of the United States, on board a public ship—that he was never naturalized except by a Post Captain—that he does not know for whom he voted—can neither read nor write, but supposes he voted for Dow, and that he at the time intended to vote for him.

Your Committee, having thus endeavored to make a brief exhibit of the more important facts in this case, with the points raised and views presented by the respective parties, ask leave to submit the following Resolve, leaving the blank to be filled as the House in their wisdom shall see fit.

E. F. DEANE, Per Order.

## STATE OF MAINE.

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*Resolved, That* having  
2 been duly and legally elected a Representative  
3 from the district composed of the towns of Glen-  
4 burn, &c., is entitled to a seat in this House.

# STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
*February 13, 1840.* }

**ORDERED,** That this Report be laid upon the table, and three hundred copies printed for the use of the House.

[Extract from the Journal.]

**ELBRIDGE GERRY,** *Clerk.*