

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

MAINE STATE LIBRARY

PRINTED BY ORDER OF

THE LEGISLATURE,
State - Library.
OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1841.

Augusta:
SEVERANCE AND DORR, PRINTERS TO THE STATE.

1841.

TWENTY-FIRST LEGISLATURE.

NO. 1.

SENATE.

R E P O R T

OF THE JOINT SELECT COMMITTEE ON THE GUBERNATORIAL VOTES.

The Joint Select Committee appointed to examine the list of votes given in the several cities, towns, and plantations in this State, for Governor, the current political year, have assiduously and carefully attended to the performance of that service, and ask leave to

R E P O R T

That the returns received from those cities, towns, and plantations were observed to be, in the main, more than usually correct. Some informalities were perceived in the modes of attestation within or direction without. But where, upon the whole, the requirements of the Constitution were substantially fulfilled, in respect to the return, a rigid exaction of uniformity was not deemed indispensable. It is not considered of consequence to particularize instances of inaccuracy, as carefulness is of importance, and inattention to these points may lead to inconvenience. It is desirable to avoid departure from the usual and prescribed forms.

There were still some marks of want of proper care, or common skill, in making the returns, in regard to matters which might be of importance. But where they occurred in respect to circumstances that were not considered as absolutely material, the Committee were disposed to overlook them, for the sake of giving entire effect to what they considered to be the clear intentions of the electors.

There were, for example, various mis-spellings of both the christian and sir names of the two principal candidates. But there were no such variations as to leave any real doubt for whom the votes were given; and the Committee in no instance failed to count them for the individual for whom they were satisfied they must have been intended. It can be of no consequence to enumerate the cases, or specify the varieties; it may be merely observed that the principal number of such votes was counted for John Fairfield; and a few, comparatively, for Edward Kent.

The returns from Otis, 2 for Edward Kent, 16 for John Fairfield; and from Hartland, 53 for Edward Kent, 135 for John Fairfield; were not signed by the Town Clerk inside, but were outside, and were received.

It may be mentioned that one vote returned as scattering was considered the same as a blank, and was not counted at all as a vote.

Again, in regard to the *number* of votes given, the printed forms mention what the law requires—that it must be in *words* instead of figures. In some instances these words were very imperfect, so as to be difficult to make them out. Besides some minor ones, which could hardly be determined by the most scrutinizing eye, there were returned from Harmony for John Fairfield *nnety seven vales*; from Mariaville, for the same *twen six*; and from Paris *thee* hundred and seventy-eight for the same. These were severally counted ninety-seven, twenty-six, and three hundred and seventy-eight, for John Fairfield. It is not safe, in matters of this kind, to be left to

supply significant letters and parts of words. When the numbers signified by words were also carried out in figures, these were sometimes looked at, not always with success, to assist in decyphering the words; but figures were not otherwise regarded, and are not to be relied upon.

The return from Belfast, did not state that the inhabitants who gave in their votes, were qualified to vote for Governor, but it did state that they were so for *Senators*; and although that was not the requisite qualification, except by inference, yet being the same, the return was regarded as sufficient.

It is to be observed that several of the returns contained particular statements in respect to the votes given in and circumstances attending the same; and these were regarded as special returns as to those particular facts occurring in the election, presumed to be contained in the record; and as forming properly parts of the return, not to be rejected as irrelevant or treated as mere gratuitous suggestions. And wherever any such facts appeared upon the face of the return, they were viewed as being intended to be verified by the signatures attached to it. Whenever any votes were thus returned as having been cast and received, but under circumstances rendering it doubtful in the minds of the Selectmen whether they ought to be counted, it was considered by the Committee that the Selectmen intended to refer the question of their admissibility to the judgment of the Legislature, as the competent constitutional tribunal.

In this manner it was certified that several votes were received after the poll was closed. In Whitefield it was stated that two votes were received for Edward Kent while declaring; none of these were rejected; and all votes actually received by the Selectmen, while the meeting was held, were counted.

One vote was cast for Edward Kent in Buxton after the poll was closed. Two votes for John Fairfield in Elliot.

But in no instance was any vote mentioned as having been presented, added by the Committee, unless it had actually been received. They did not consider themselves authorized to add

any thing to the returns ; nor take away any thing that truly appeared upon them.

Among the questions thus understood to be submitted, there was one vote returned from Freedom, for Edward Kent as cast "by Willard Maddocks who left the town about two months prior to the election, saying with the intention of never returning, but came back on the day of election, and claimed the privilege of voting." This was all that appeared, and the vote was rejected.

One vote was returned from Phipsburgh for John Fairfield, as it was stated "by the inhabitants of Seguin, the Selectmen doubting whether Seguin belongs to Phipsburgh." A fact of this kind was proper to be ascertained from extrinsic sources. Seguin lies on the east side of the ship channel, and Phipsburgh was once part of Georgetown, and Seguin was understood by the Committee to have been detached from Georgetown. This vote was rejected.

The return from Jonesport stated that "one vote counted for John Fairfield had a large distinguishing cross, showing on both sides." This was looked upon as a violation of the law for protecting the right of ballot, and securing the independence of the elector. It was therefore regarded as an illegal vote, and as such rejected.

The return from the city of Bangor presented a two-fold case of double voting. The return set forth that in the first ward the number of ballots deposited in the box was 176, while the number of voters checked on the list was 174 ; and that "in sorting and counting the votes, in two instances there were found two votes folded together in such manner as to make it apparent that they were thrown together by the same hand. In one instance there was a ballot for John Fairfield for Governor, &c. and within this vote was folded a smaller, but otherwise similar vote, bearing the same names for the same offices respectively. In the other instance a vote like the above described and bearing the same names for the same

offices respectively had folded within it a smaller vote bearing the name of Edward Kent for Governor," &c. The four votes above described were all included in the general return of the City votes.

This, again, was regarded as a violation of the law against double voting ; and that each outside vote was so vitiated by the one which it secreted, that neither could be saved without abetting a fraud perpetrated upon the law, and the only security to the object of the law consisted in rejecting them all. If there is any thing to be preserved it is the purity of the electoral suffrage. Every man is bound to see what vote he puts in, and to know that it is but one.

There were two different returns from the inhabitants of Township No. 1 in the 2d Range, West of Kennebec River, in this manner : There was one from the Selectmen of Kingfield, with which this plantation is classed in the choice of Representatives, that the inhabitants of that township voted in Kingfield, and their votes were received and counted. The other came from the Selectmen of Concord, stating that the inhabitants of that Township gave in their votes there, viz. : eighteen for John Fairfield, one for Edward Kent. This last return was rejected.

The most difficult question that existed, in the minds of the Committee, was in regard to the character and quality of some portion of the votes sent in from the inhabitants of unincorporated places ; such as are not classed in any representative district. These votes, by the provisions of the Constitution, operating in unabated force at the period of the election, could be allowed only when the inhabitants of such places should be assessed to the support of Government by the Assessors of an adjacent town—in which case they were to have the privilege of voting in that town ; and that they should be notified by the Selectmen of such town for that purpose accordingly.

Many of these places, which have been returned, did not adjoin the towns in which they gave their votes. Some of

them were many miles distant, and some indeed quite remote, and separated by intervening tracts, and even towns and plantations, so as to require a long journey by land or a circuitous cruise by water. The Committee are sensible that it required a broad and liberal construction of the term *adjacent* to embrace all these cases; and such a construction they did not refuse to give.

Again, numbers of the inhabitants of several of these places assembled together, in sundry instances, in the same town, where their votes were thrown in mass, without any discrimination as to which place any portion of them respectively belonged. In some instances it did not certainly appear where these votes were given in. In one case (No. 8, 8th Range) it was noted that they were given in by a written request to the Selectmen of Wilson.

There were differences in the forms of return from these places; some, and most of them, setting forth that their votes were given at a legal meeting of the Inhabitants of the town where they were allowed to vote; others at a legal meeting of their own, at which the Selectmen of such town presided.

In one case the return from a plantation (No. 1, North Division, Hancock) undertook to give in a further return from a supposed unincorporated place called Strip No. 1, Page's Mills Settlement. There being no provision authorizing plantations to receive such votes, these were rejected.

In another case it appeared that townships No. 1, in the 3d Range, No. 1 in the 4th Range, No. 1 in the 5th Range West of Kennebec River, and No. 4, in 1st Range, No. 4 in 2d Range, North of Bingham Purchase, classed with Lexington, voted in Moscow. This return did not state on what day the voting took place, or where the meeting was held. It came enclosed in that from Moscow, and therefore was supposed to have been held on the same day. The votes returned from these places were nine for Edward Kent and seventeen for John Fairfield, and were admitted.

The inhabitants of eight unincorporated places gave in their votes at Houlton ; these were, Belfast Academy Grant, Bridgewater Academy Grant, Township No. 13 in 3d Range, Williams College Grant, Letters D, F and G, and Monticello. These votes were ten for Edward Kent, sixty three for John Fairfield.

Remonstrances against the right of the inhabitants of these places, or a great many of them, including that against the returns from Raymond Cape, presented to the Legislature, were referred to the Committee, but not being accompanied by any thing entitled to the absolute character of evidence, they were not taken into consideration. The votes given in these places are contained and arranged in Schedules annexed.

The main difficulty, as before mentioned, existed in ascertaining whether these persons possessed the requisite constitutional qualification, without which they were not entitled to vote ; that is to say, in having been assessed to the support of government in such adjacent town. It was then our duty to see that this prerequisite was performed ; and it then became the duty of the Selectmen to notify them that they were entitled to vote. Without this condition they had no legal right to vote in such towns.

Now where the return in form stated that the inhabitants so voting were qualified and privileged to give their votes for Governor, this was considered by the Committee sufficient to show that the condition was complied with, and the votes should therefore be received, without requiring any further evidence that those inhabitants had in truth been taxed ; although from the remonstrances there might be some reason to fear that the requirements of the Constitution may have been lost sight of ; and that such was not strictly according to fact.

The Committee went further ; and where there was no return in form that the inhabitants were legally qualified, and nothing to show that they had in fact been assessed, but what was to be inferred from the Selectmen's receiving their votes

there, inasmuch as the said Selectmen could in no instance have correctly received those votes without the knowledge that they had performed their own duty in seeing they were duly assessed and notified, and they, the Selectmen, would otherwise have received them in open and palpable violation of their duty, wherever the returns were silent upon this point, it was thought proper to presume that the prerequisites had all been performed, and adopt the only favorable supposition on which they could be received.

But where, however, it did, on the contrary, appear distinctly upon the face of the return, that the condition of the Constitution had not been complied with, there the Committee felt compelled to comply with its provisions, and not to receive such illegal votes. Upon this ground, two votes returned from Brooksville as given for Edward Kent by men residing in unincorporated Islands in Penobscot Bay, who were not taxed in the town, were considered as properly excluded. So the Selectmen of Clinton returned that the inhabitants of Clinton Gore gave in their votes for Governor, &c. viz.: for John Fairfield eleven, subjoining that the inhabitants of said Gore did not give in a list of their polls and estates to the Selectmen or Assessors of said town to qualify them as voters, and that they were not taxed by the Assessors of said town, and that the list of voters in said Gore was not prepared by the Selectmen, but was furnished by some individual present.

And in the return from Smyrna, containing the votes given in by inhabitants of certain unincorporated places, amounting to nine for John Fairfield and eight for Edward Kent, it was stated that their valuations had not been given in. The votes contained in these returns were rejected.

It can hardly be complained, that the Committee were not sufficiently liberal in their allowance of votes from these unincorporated places. The only fear could be whether they had not gone too far. The Committee certainly would not have received these votes in the face of the Constitution, which is the

great organic law of the land, or of any clear and absolute prohibition. And although grave and serious doubts did exist, and perhaps still remain in the minds of some of the Committee whether any of these votes ought to be received without proper evidence of the inhabitants having been legally assessed, they concluded on the whole, after considerable deliberation, to allow them, and to leave the responsibility where it belonged, and to be inquired into, if necessary, to maintain the authority of the supreme law of the State, and enforce its observance by those sanctions it has established, in case there shall prove to have been any palpable violation of the provisions of the Constitution in this respect.

And it would be better that honest voters should not run the risk of being deprived of their rights than that the guilty violators of the law, in abusing the electoral privilege, should escape unpunished. If there should have been any error in this respect on the part of the Committee it only consists in enlarging the benefit of that invaluable privilege, the electoral franchise, which is the birthright of freemen, to these hardy pioneers of the wilderness, to whom the Constitution extended its provision upon the condition of contributing to the support of Government. And if there be any portion of the community to whom we should be willing to have this privilege extended, upon the most favorable condition, it should be those who have established themselves in this advance of the rest of our population, especially along the ample valley of the Aroostook, and there formed a human and hardy breastwork for the safety of the State, in which they do most eminently and emphatically contribute with all their might of their money to the support of its government.

Power was given to the Committee by an order of the two Houses to send for any persons or papers that they might deem necessary. But this would have been attended with so much inconvenience and delay in the organization of the Legislature, and detriment to the despatch of public business, that the Committee did not think proper to exercise it. If there were no

question as to the extent of the authority with which they were thus invested, it is one which they would be disposed to use sparingly. The remonstrances were from most respectable sources. It was suggested that the return from Springfield of twenty-eight votes for Hannibal Hamlin might be a mistake. But no wish was expressed by any member of the Committee to take any course or step that might delay the report, and the remonstrances, &c. are herewith returned to the House from which they were received.

The Report having stated these particulars, and especially the reasons for allowing a considerable class of votes, about which there was much question, the Committee now proceed to present the result.

It appears that the whole number of votes for Governor given by the several Cities, Towns, Plantations and unincorporated places in this State, as considered and counted by the Committee, is ninety-one thousand, one hundred and seventy-nine.

That there is therefore necessary to a choice forty-five thousand, five hundred and ninety.

That no person has that number.

That Edward Kent has forty-five thousand, five hundred and seventy-four votes.

That John Fairfield has forth-five thousand five hundred and seven votes.

And that there were for other persons ninety-eight votes.

Of these other votes, Hannibal Hamlin had twenty-eight, Francis O. J. Smith, fifteen.

Consequently, Edward Kent, John Fairfield, Hannibal Hamlin, and Francis O. J. Smith, are the persons having the four highest numbers of votes, from whom the Constitution prescribes that the House of Representatives shall by ballot elect two persons, whose names are to be returned to the Senate, of whom the Senate shall by ballot, elect one, who shall be declared Governor.

All which is respectfully submitted by order of the Committee.

CHARLES S. DAVEIS.

January 11, 1841.

SCHEDULE NO. 1.

UNORGANIZED PLACES where the certifying officers of the towns in which the votes were cast certify that the votes were received from legal voters.

PLACES.	Kent.	Fairfield.	Hannibal Hamlin.
No. 1, 3d Range, and No. 1, 4th Range, East of the Kennebec, classed with Moscow, and voted in Moscow,	32	6	
Places north of Lincoln, voted in Lincoln,	41	38	
West half of No. 6, voted in Springfield,	20		28
No. 1, 2d, No. 2, 2d, No. 3, 2d, and No. 4, 3d Range, voted in Kingfield,	24	14	
Hainesville, or Letter A, voted in Houlton,	5	14	
Monticello, voted in Houlton,	4	15	
Belfast Academy Grant, voted in Houlton,	2	11	
Bridgewater Academy Grant, voted in Houlton,	3	2	
Township No. 13, 3d Range, do. do.		2	
Williams College Grant, do. do.	2	9	
Letter D. do. do.	2	13	
Letters F and G, do. do.	1	11	
	186	135	28

SCHEDULE NO. 2.

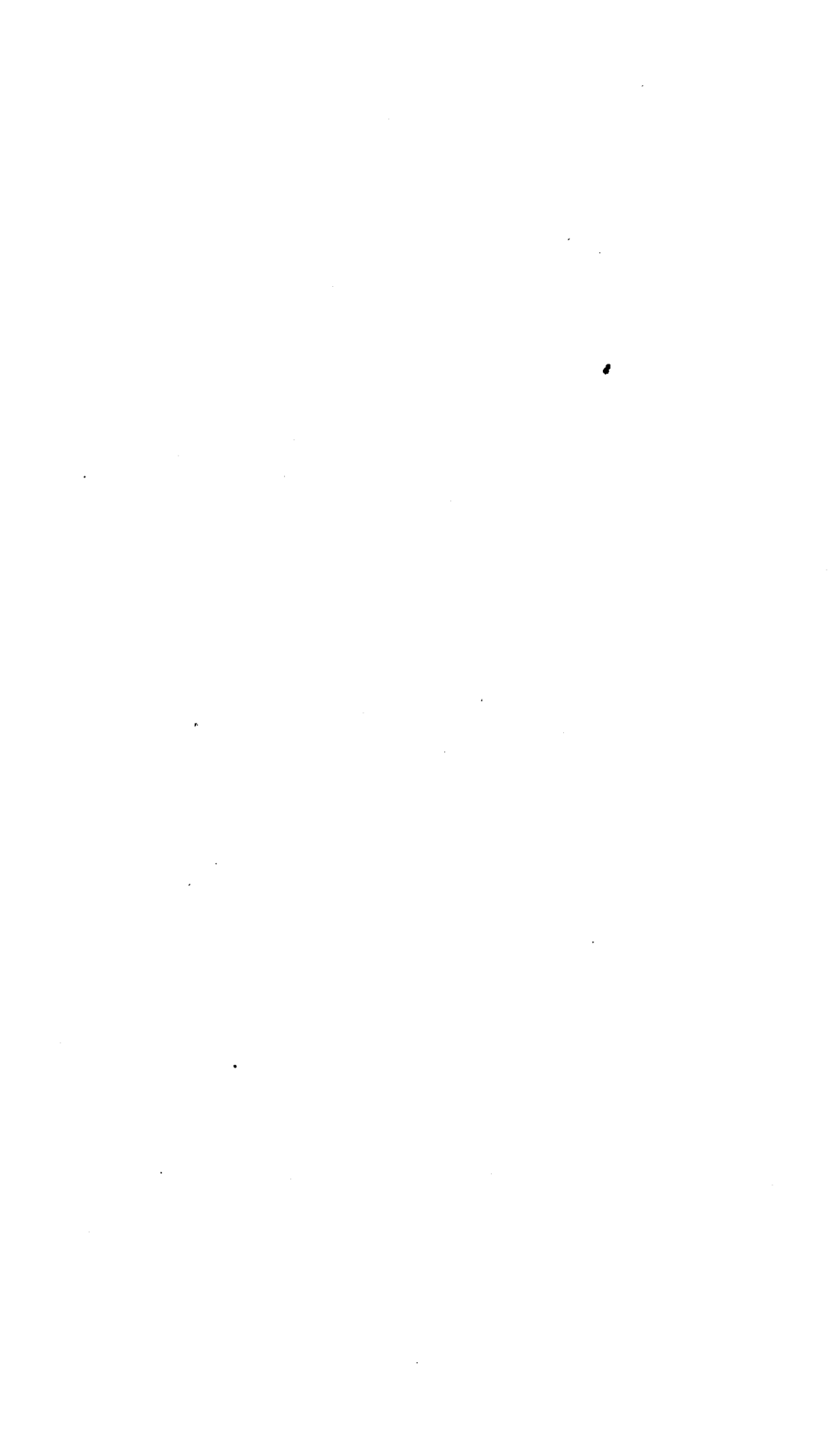
UNORGANIZED PLACES where the certifying officers of the towns in which the votes were cast certify that the voters were not taxed.

PLACES.	Kent.	Fairf.
Inhabitants of islands in Penobscot Bay, voted in Brooksville,	2	
Clinton Gore, voted in Clinton,		11
No. 4, 5th Range, voted in Smyrna,	5	8
No. 6, 5th Range, do. do.	3	1
No. 5, 6th Range, do. do.	1	
	11	20

SCHEDULE NO. 3.

UNORGANIZED PLACES where the certifying officers of the towns in which the votes were cast *do not* certify that the voters were legally qualified.

PLACES.	Kent.	Fairf.
Raymond Cape, voted in Raymond,	1	7
No. 18, voted in Mechisses,		1
Andover North Surplus, voted in Andover,		8
Letter A, No. 2, voted in Newry,		12
Letter A, No. 1, voted in Newry,	2	8
No. 1, 3d, No. 1, 4th, and No. 1, 5th Range west of Kennebec river; and No. 4, 1st, and No. 4, 2d Range north of Bingham Kennebec Purchase, classed with Lexington, but voted in Moscow,	9	17
No. 2, settlement, voted in Lexington,	2	8
Lower Dead River Settlement, voted in Lexington,		3
No. 3, 1st Range, voted in Lee,	1	2
East half No. 6, voted in Springfield,	11	4
No. 4, do. do.	1	2
No. 7, do. do.	4	2
Spruce Head, voted in Vinalhaven,	2	
Matinicus Island, do. do.		17
Eagle Island, do. do.		4
Township No. 8, 8th Range, voted in Wilson,		4
No. 11, voted in Masardis,	4	1
Belfast Academy Grant, voted in New Limerick,	8	
	45	100



STATE OF MAINE.

IN SENATE, January 11, 1841.

ORDERED, That this **REPORT** with the Schedule annexed, lie upon the table, and that the Secretary of the Senate be directed to procure the printing of five hundred copies of the same for the use of the Legislature.

[Extract from the Journal.]

ATTEST : **DANIEL SANBORN,** *Secretary.*