

# MAINE STATE LEGISLATURE

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OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1841.

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**Augusta:**  
SEVERANCE AND DORR, PRINTERS TO THE STATE.

1841.

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**TWENTY-FIRST LEGISLATURE.**

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**NO. 4.**

**HOUSE.**

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**REPORT**

OF THE

**COMMITTEE ON ELECTIONS.**

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SEVERANCE & DORB,.....Printers to the State



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# REPORT.

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## STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
January 23, 1841. }

The Committee on Elections, to which was referred the remonstrance of Samuel G. Adams against the right of Stephen Barrows to a seat in this House, as Representative from Camden, in the County of Waldo, have had the same under consideration, and ask leave to

### REPORT,

That three meetings were held in said town, for the choice of a Representative, to wit, on the day of the annual election, September 14th, and by adjournment on the 21st and 28th of the same month. Samuel G. Adams claims to have been elected on the 14th, and also on the 21st. Stephen Barrows received his certificate of election on the 28th, at which time he received all the votes, 208 in number, except one.

For the purpose of simplifying the investigation, the parties, by agreement, waived the consideration of the meeting held on the 14th, and limited the attention of your Committee to that holden on the 21st. At this meeting, the following was the state of the votes, as declared by the Selectmen, viz:

For Samuel G. Adams, - - - - -	317
For Stephen Barrows, - - - - -	313
Scattering, - - - - -	4

Making no choice, Mr. Adams having precisely as many votes as all others.

It was shown, on the part of the remonstrant, and admitted by the attorney for said Barrows, that, at this meeting, one Benjamin Jones, a minor, under the age of twenty-one years, did vote for said Barrows, whose vote was counted, and included in the 313 which Barrows received. It was also proved and admitted that one Hiram W. Kaler appeared at the polls, at said meeting, and tendered a vote for said Adams, and that the Selectmen, supposing and believing said Kaler to be a minor under the age of 21 years, did refuse and reject his vote; but it was proved and admitted that said Kaler was 21 years of age and more, and his vote ought to have been received and counted for said Adams.

Adding the vote of Kaler to the number which the said Adams received, and deducting the vote of Jones from the number received by said Barrows, and the vote would stand as follows, viz:

For Samuel G. Adams, - - - - -	318
For Stephen Barrows, - - - - -	312
Scattering, - - - - -	4

Giving said Adams a majority of two votes over all others.

It was contended, on the other hand, that three individuals, Abiel Wheaton Lovejoy, George K. Hovey, and Benjamin Huzzey, who, it was admitted, voted for Samuel G. Adams, were not legal residents of the town of Camden, and that, consequently, their votes ought to be rejected, and not allowed for said Adams; and that deducting these three votes from the 318 allowed to him, would leave the matter where it stood before, no choice having been effected.

It was unanimously agreed by your Committee that said

Huzzey had the right of voting in said town of Camden. Thus far there was no diversity of opinion among the members of your Committee. But the remainder of this Report is to be understood as embodying the reasoning and conclusions of the majority of the committee only, whose names are subscribed hereunto.

The question depends entirely upon the decision to which the House shall come as to the rejection or admission of the votes of Lovejoy and Hovey. If either of them were legally received and counted for said Adams, he is entitled to the seat he claims. If both were illegal, said Barrows retains his seat. It was admitted that both Lovejoy and Hovey were citizens and qualified electors of this State ; but it was contended that Lovejoy was a resident of Thomaston, and Hovey of Warren, and consequently that neither of them had a right to vote in Camden.

To prove this averment, with regard to Lovejoy, the depositions of Alexander C. Rust and Eliza Rust were read to the Committee. The substance of these depositions is as follows:

That Lovejoy came to their house in Camden the last week in May last ; that when he came he had no particular employment ; that he was not hired for any specified time ; that he worked a part of the time on the farm, and went to school three days of the time ; that they did not think he intended to make their house his permanent place of residence, and that they did not so consider it ; that he had a father and brother in Thomaston ; that he received no compensation for his services, except his board ; that on Sunday, Sept. 20th, the day before the election, his father came after him to go to Thomaston ; and that he went, taking a part of his clothes with him, and leaving a part at their house ; that he went to Thomaston to teach a school.

In reply to these depositions, the remonstrant produced one from *Lovejoy himself*, who says, that he came to Camden be-

fore planting time, and planted corn on Mr. Rust's farm ; that he labored on Mr. Rust's farm until he left ; did not work all the time on account of his health ; was there all the time ; that he considers Camden his legal residence, and supposes he had a right to vote there ; that he has no other home but Camden ; that when he left Camden he had no intention of making a permanent residence in Thomaston, or elsewhere ; that he took no clothes with him, except what he had on, one pair pantaloons, one bosom, and a dickey ; is now keeping school in Thomaston ; has been sick since he left Rust's in September, and when sick went back to Mr. Rust's in Camden, and if he should be sick again, would return to Rust's ; that he has a trunk and some other things, still remaining there, and considers it his home more than any other place.

The only testimony offered to the Committee, relative to the residence of Hovey, is contained in the deposition of Patrick Simonton, introduced by the counsel of Mr. Barrows, who deposes that said Hovey commenced work for him as a ship carpenter, the first week in March last, and worked for him until the last of August or first of September, when he left and went as he supposes to Warren, where his father resides ; he left at deponent's house, his trunk of clothes and a chest containing his tools, which remained there till after the November election ; that he has worked for deponent four seasons last past ; has spent his winters at Warren ; has been taxed in Camden for four years ; deponent paid his road tax for this last year. Deponent expected Hovey would have returned and worked for him last fall, if he had built another vessel ; and that he did have talk before Hovey left, about setting up a schooner last fall, but nothing definite agreed upon. Said deponent supposes Hovey left his trunk and tools in consideration to retain his residence.

The undersigned are of opinion that both Lovejoy and Hovey voted legally in Camden, on said 21st of September,



and consequently that Samuel G. Adams was then elected a member of this House, as Representative for said town. To sustain this opinion they submit the following reasons :

First, the Selectmen of Camden, who are the proper tribunal to decide upon the qualifications of voters of that town, and are better qualified to decide as to their residence than any other tribunal, with a full knowledge of the facts as they existed, did consider both these individuals as legal residents of said town, and did place their names upon the list of electors and allowed them to vote. The Selectmen were not of the same political party as these individuals, and of course there can be no suspicion of collusion between them on this occasion.

To reverse the decision of the Selectmen of a town upon the subject of residence, whereby qualified electors of this State are to be disfranchised, is a stretch of power which the undersigned believe this House will never exercise, except in cases where that decision is manifestly and unequivocally wrong.

Secondly, the right of these individuals to vote in Camden, was not challenged by any of the electors of that town at the time of their voting. Had they been strangers, intruding their votes into the ballot box, there can be little doubt that they would have been detected by the vigilance of those opposed to them, in an ardent and nicely balanced political contest.

And thirdly, these individuals themselves, who after all, must be the best judges as to their own residence, did, as manifested by their declarations and overt acts, consider themselves to be citizens and legal voters in the town of Camden.

In accordance with these views, the undersigned, being a majority of the Committee, submit the following Resolve.

E. F. DEANE, *Chairman*,  
HARRISON BLAKE,  
EBEN'R TRASK,  
JESSE KIMBALL.

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**STATE OF MAINE.**

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HOUSE OF REPRESENTATIVES, }  
January 22, 1841. }

RESOLVED, That Samuel G. Adams was, on the 21st of September last, elected a Representative from the town of Camden, and is entitled to a seat in this House.

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## MINORITY REPORT.

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### STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
January 25, 1841. }

The undersigned, a minority of the Committee on Elections, to which was referred the remonstrance of Samuel G. Adams against the right of Stephen Barrows to a seat in this House as Representative from the town of Camden, having given the facts in the case their best attention, ask leave to submit the following

### R E P O R T .

At the meeting held on the 14th of September last, in said town of Camden, the votes, as counted and declared, stood thus:

Barrows, - - - - -	292
Adams, - - - - -	303
Scattering, - - - - -	11

At the meeting held on the 21st of September, the vote stood—

Barrows, - - - - -	313
Adams, - - - - -	317
Scattering, - - - - -	4

At the meeting held on the 28th of September, Mr. Barrows was elected without opposition.

The remonstrant claims that one Benjamin Jones, a minor, voted for Mr. Barrows on the 14th, and that this vote should

be deducted from those counted for said Barrows: also that said Jones and one Ray voted for said Barrows at the meeting held on the 21st, both being claimed by him as minors—and that these votes should be deducted in like manner; and that the vote of one Kaler, which was offered for Mr. Adams, and refused, should be received and added to those returned for him.

As to the votes of Jones and Kaler, we agree with the majority of the committee that the former should be deducted from the vote of Mr. Barrows, and the latter added to that of Mr. Adams; and we also agree with the majority of the Committee that the remonstrant has failed to furnish such evidence as to render it safe or in conformity with uniform usage in such cases to reject this vote. Thus far there is believed to be no difference of opinion with the Committee. Mr. Barrows contends that the votes of four individuals, of the names of Hovey, Lovejoy, Conant and Huzzey, were received and counted for Mr. Adams, neither of them being voters in said town.

It was admitted that all of them excepting Lovejoy voted for Mr. Adams on the 14th, and all of them excepting Conant voted for him on the 21st, and that their votes are included in those returned for the said Adams.

As to Conant and Huzzey, considerable testimony was introduced, tending to show that they had left Camden prior to the election, in contemplation of a residence in other places, but on the whole we incline to the opinion that a liberal construction of the law may include them as voters in said town, and therefore that it would be compatible with right that these votes should be received. But as to Lovejoy and Hovey, we cannot look upon them, in view of the facts, as having any just claim to be regarded as voters in Camden; one of them being a citizen of Thomaston, and the other of Warren, as we regard the proof; and we are satisfied it would be doing injustice to the legal voters in Camden, and in violation of what we have ever understood to be settled law in such cases, to allow either of them to vote in that town.

It appears from the testimony that Lovejoy belonged to Thomaston, in which town his father resides—that in the latter part of May he went to the house of Mr. Rust in Camden, being somewhat out of health, for the purpose, as he testifies, of being doctored : that he remained there studying some, working some, and going to school some ; and occasionally going home, until the 20th of September, when his father came for him, and he returned to Thomaston with his father, without any expectation on his own part, of returning to reside personally in Camden. On the 21st, however, he was prevailed upon by a relation to go to Camden and vote, which he did, and then returned to Thomaston, where he has since resided. In order that the House may be in possession of the evidence rather than the conclusions it has led to, it may be well to state the substance of certain depositions bearing on the question. Eliza Rust deposes that Lovejoy came to her father's house in the latter part of May—that he was not hired by her father or brother, or any of the family—had no particular employment, and no intention, to her knowledge, of making that place his permanent residence—nor does she believe he had any such intention. He came from Thomaston to this place—has a father and brother living in Thomaston, and has usually made it his home at his father's or brother's.

When he came in May it was her opinion that he came on on a visit. He was absent occasionally during the summer, visiting his friends in Thomaston. The day before the second meeting in September, being the 20th, he left here for Thomaston. At that time he took most of his things with him ; he would have taken the whole, if he could have carried them conveniently. He left a coat and vest because he could not conveniently carry them, and a few other things which he had taken out and left at her request, to be repaired and put in order. Went to Thomaston to keep a school—he had partially agreed to go the week before, but says “at our

request he staid because we expected to have company." His father came for him the day he went. *He always spoke of Thomaston* as his home. \* \* \* \* When he went on the 20th, he had no intention of coming back to reside, to her knowledge. On cross-examination, she says in answer to questions, that he went to school some, and studied some in the house, and worked some on the farm—that she does not think he had any intention of making her father's his place of residence the last summer—that he came about a week after the 20th of September, and took all his clothes that were in order, and has since taken the rest.

Alexander C. Rust, who carried on the farm for his father, deposes that Lovejoy had no particular employment—that he did not hire him for any specified time, then or at any time—he assisted some in planting and haying. I have no idea that he expected or intended to make our house a place of permanent residence—did not so consider it at any time during the summer, nor had I any reason to believe he had any such intention. He went frequently to Thomaston during the summer. He went away September 20th, taking part of his things. "I had no idea he intended to return to our house again to make any stay." He was under no obligation to me during the summer to remain with me from one day to another. On cross-examination he says, Lovejoy was not employed by any of the family to his knowledge—that no agreement was made as to wages—that he had no compensation but his board—charged him nothing for his board—he went to school three days.

The remonstrant introduced the deposition of Lovejoy, upon which it is supposed he relies. In this deposition it is stated, that he went to Mr. Rust's to be doctored, but concluded to go to work; that he left on the 20th of September, and when he left he concluded to return for his clothes; that he had no right to consider that house his home after that time, except from the treatment he received; that he had no expectation of

returning to reside there only occasionally ; that if he were sick to-morrow, he should return there and stay until he got well, unless they turned him out of doors. As to his occupation and manner of spending his time, &c. he does not materially vary from the testimony of the other deponents. But in the view we take of this case, it may not be necessary to dwell principally on these points, as it seems to us clear beyond a doubt, that after Lovejoy left Camden on the 20th of September, by no construction could he be regarded as having his home in Camden. The master of the house now claimed as his home, says that he did not consider that he had a home there, and that he had no idea that he intended to return to make any stay there. Another member of the family testifies to the same facts. Lovejoy barely says that he calculated to return for his clothes ; that he had no expectation of returning to reside there permanently ; and that he had no right to consider that house his home.

Kind treatment of friends where we visit, give no right to a person to claim the place as a home, and it would hardly be doing the Thomsonian fraternity justice to assume that when a patient goes to any infirmary or practitioner to be doctored, it is presumptive evidence of a permanent residence there. Lovejoy's speculations on this point, cannot have any effect to change his legal residence. While we cannot doubt that his legal residence continued in Thomaston, and that in any view of the case he was not a resident of Camden on the 21st, we think his vote should be rejected.

It appears from the deposition of Mr. Simonton, that Geo. K. Hovey came from Warren to work for him in the ship yard in the spring, with the understanding that he was to work as long as he had any work in the yard, and that he had no work for him after the last of August, at which time he left, going back to Warren, and taking a part of his clothes. There was no contract as to working any particular time. Hovey's

parents reside in Warren. He has worked for deponent for the four summers last past, returning to Warren to his parents when his work was done. He visited Warren once in six or seven weeks during the summer, and used to say, on leaving, "he was going home." When he returned to Warren, in August, he left a trunk at Mr. Simonton's house, and his tool chest in his shop, which he suffered to remain until after the November election, after which he came and took them away. He has been taxed a poll tax in Camden, during the summers he has worked there. The witness says he had no reason to believe that Hovey had any intention of returning to Camden when he left in August, unless he should find employment; and it appears that he has not returned there to reside. This would seem to be the case of a young man, having a home at his father's in Warren, who has worked out three or four years during the summer, and returned home in the winter—who had actually, in this case, made his return some weeks prior to the election, but for some reason left his trunk and some other things until after the election should be over, in the town where he had worked, but where whatever of engagement he had was up, it having expired at the time his employer had no more for him to do. Can any one doubt that Hovey had a legal residence in Warren all the while—his working out being regarded a temporary absence? We think not.

The cases of Conant and Huzzey both show an absence from Camden with quite as much of an intention of making their residence a permanent one as Hovey's absence from Warren; and yet, in this very case, the Committee agree that their absence from Camden shall not be so construed as to bar their right of suffrage. And with quite as strong reasons, we say Hovey's working out away from Warren shall not disfranchise him in that town, and he cannot have the right in both towns.

So that the minority of the Committee are of opinion that



these two votes should be deducted from those counted for Mr. Adams, which will leave the parties as they were ; and that the remonstrant have leave to withdraw.

EBENEZER OTIS,  
CHARLES ANDREWS,  
ISAAC TYLER.

STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
January 26, 1841. }

ORDERED, That this Report be laid on the table, and 300  
copies printed for the use of the House.

[Extract from the Journal.]

Attest : GEO. C. GETCHELL, *Clerk.*