DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

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TWENTY-SECOND LEGISLATURE.

NO. 3.] [HOUSE.

MINORITY REPORT

OF THE

COMMITTEE ON ELECTIONS.

[Wm. R. Smith & Co.....Printers to the State.]

REPORT.

THE undersigned, a minority of the Committee on Elections, have had under consideration the cases of John J. Perry, Noah Prince and Samuel Gibson, who severally presented certificates of election to the House of Representatives from the towns of Oxford, Buckfield and Denmark, for the year 1842, and ask leave to

REPORT:

That although they agree with the majority in the result to which they have arrived, they have been unable to agree with said majority in many of the positions assumed in their report, and in the reasoning by which they have attempted to defend them.

By the apportionment resolves passed April 2d, 1841, one Representative was given to Norway "for the years 1842, 1844, 1845, 1847, 1849, 1851; one to Oxford for the years 1843, 1846, 1848, 1850;—one to Hebron for the years 1842, 1845, 1847, 1851; one to Buckfield for the years 1843, 1844, 1846, 1848, 1849, 1850;—one to Brownfield for the years 1842, 1843, 1846, 1847, 1851; one to Denmark for

the years 1844, 1845, 1848, 1849, 1850." No one of said towns has a population large enough to entitle it to a Representative; and it is not denied that each town has its just and equal portion of representation, if under the circumstances, it was competent for the legislature to assign to it a separate representation.

It was admitted before the committee that the towns of Norway, Hebron and Brownfield determined against a classification, and made application to the Legislature for separate representation.

The constitution of this State, art. 4, part 1, sec. 3, provides, that "whenever any town or towns, plantation or plantations not entitled to elect a Representative shall determine against a classification with any other town or plantation, the Legislature may at each apportionment of Representatives, on application of such town or plantation, authorize it to elect a Representative for such portion of time and such periods, as shall be equal to its portion of representation."

The Legislature was authorized by the express language of the constitution, to assign to the towns of Norway, Hebron and Brownfield, separate representation for such periods as were equal to their portion of representation, these towns having complied with the constitutional requirements. Whether that authority was judiciously exercised, is not the question. It is only necessary for us to inquire, had the

Legislature the power? Was it exercised? That it was exercised is not denied—this is the matter of complaint. That its exercise was in violation of the constitution, we cannot admit. The positive, unambiguous language of the constitution admits of no interpretation that will authorize this conclusion. The Legislature "may authorize," &c., and having done what the constitution says it *may* do, it is difficult to discover how such action is to be regarded as unconstitutional. As we are advised, the majority of the committee do not deny that the resolves are constitutional so far as the towns of Norway, Hebron and Brownfield are concerned, and it is admitted that the gentlemen representing these towns are entitled to seats in this House. If so, it is because the Legislature had authority to assign them separate representation at the time when, and in the manner, and under the circumstances in which said assignment was made. For all that appears there may have been no remonstrance from the towns now complaining, against the petitions of those which determined against classification. In absence of all evidence on this subject, it surely cannot be presumed that any objection was made. If not, this silence may well be regarded as a virtual consent to the resolves. We deem it unnecessary to pursue this inquiry, for if it is granted, as it is in these cases, that separate representation was properly assigned to Norway, &c., it follows, in our judgment, that the

Legislature had authority to establish a separate representation in Oxford, &c., with or without the consent of the latter towns. The authority is as clear in one case as in the other, for it cannot be exercised in one case without its exercise in the other being necessarily involved. When such representation is granted to one town, the necessity for it in some other town is inexorable, and the right to assign it cannot depend upon the corporate action of such other town. If but one town applies for separate representation, and its prayer is granted, as it may be, it seems to result inevitably that to some other town, though not applying therefor, such representation must also be assigned. Separate representation having been assigned to Norway, the Legislature could not avoid an assignment to Oxford, or some other town in the county. If the constitutional exercise of this right depended upon the corporate action of Oxford, then with that town and not with the Legislature, nor with the people of the State, would reside the power of securing a uniform number of Representatives.

If separate representation can, in no case, be constitutionally assigned, where there are not towns in the same county with a population sufficient for a Representative, which apply therefor, it follows that the apportionment is void not only as to Oxford, Buckfield and Denmark, but to Norway, Hebron and Brownfield; and the members from the latter

towns have no right to the seats which they occupy in this House.

But this conclusion is denied by the majority, who have reported that those members were legally and constitutionally elected. Under the circumstances of the apportionment of 1841, they could not be elected by the towns which they represent, without the correlative towns being at the same time deprived of the right of choosing Representatives for the same year. And yet, while the former towns are duly represented under the constitution, the latter are disfranchised by a violation of it. Such is the conclusion that must follow from the premises of the majority.

As it is not the imperative duty of the Legislature to apportion separate representation to the town or towns applying for it, it is insisted that the framers of the constitution never intended to clothe the Legislature with the power to grant such representation in cases where, by the exercise of such power, towns not applying for such representation would be affected. This construction is not only opposed to the express language of the constitution, but would operate as a virtual repeal of the clause from which is derived the power to assign separate representation.

The variation of the phraseology from "shall" to "may," was a very proper correction, and it would have been strange indeed if the clause in question

had been left as originally drafted. As the section originally stood, it was the imperative duty of the Legislature to apportion separate representation, no matter what objections might be urged, or what inconveniences might be occasioned, and although small towns—so small as not to be entitled to representative one year in ten, and such towns there are —would be completely disfranchised. The power was therefore vested in the Legislature, to be exercised whenever, in its judgment, there should be occasion for its exercise. It was supposed that some things might be left to the discretion of the Legislature; and that sometimes it would be necessary to invoke its superintending and correcting power.

When the clause in question was incorporated into the constitution, one object with the framers of that instrument unquestionably was to preserve the rights of the small towns. It was known that one town in a class "might swallow up all the rest"—and that it might occur that sometimes the small towns would not be allowed their proportion of representation—that a town having one thousand inhabitants might be classed with another town containing twice that number, and the latter having the power to choose the Representative every year, would not yield to the former one year in the ten—that quarrels, jealousies and local prejudices would render a classification of towns in some instances inexpedient—that in such cases the large towns being able to control

the others, would not ask for a separate representation, and none could be granted in the cases where most needed, if the Legislature should be unable to act without the consent of all the towns that might be affected.

We do not readily perceive with what propriety it is said that a town is disfranchised, which has allowed to it, for the term during which an apportionment must remain, representation for as many years as its population entitles it to.

We have been unable to find any distinction between the *constitutional* powers of the Legislatures of 1831 and 1841. The apportionment of 1841 was a general apportionment.

The view which we have taken of the subject, is not only consistent with the plain language of the constitution, with the security of popular rights, the preservation of the electoral franchise, but it is strongly fortified by precedent and authority. It is known that the Legislature of 1831 apportioned the State upon the same principles as did that of 1841.

But were our views of the constitutionality of the apportionment resolves different from what they are, and did we agree with the majority in the proposition that every town in the State has a constitutional right to vote for Representatives every year, if it so chooses, we could not say, as the majority by their Resolve have said, substantially, that rights guaranteed to the elector by the constitution—rights abso-

lute and indestructible—may be qualified or destroyed by a legislative resolve. But if we adopt their premises, to this "complexion must we come," before we can decide that these claimants are not entitled to seats in this House. We must maintain that an unconstitutional resolve rides over the constitution itself.

Again, if the only valid objection to the right of these gentlemen to the seats which they claim, is, that by allowing them their seats the number of members of the House will be made to exceed two hundred, the largest number that the constitution permits, we know not by what rule, or by what authority, these individuals are to be singled out from all the members of the House for decimation; why they have not as good right to their seats as any three members of the House, or how we can take it upon ourselves to decide that they shall not be counted till we have arrived at the full number of two hundred.

We apprehend, however, that this is not the only objection—that the grand objection is, that by the resolves of 1841, no Representative was apportioned for the year 1842, to either of the towns from which those gentlemen have brought credentials; and that these resolves are not in derogation of the constitution.

I. WASHBURN, jr.
OLIVER DOW,
ASA B. BATES.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,
January 19, 1842.

ORDERED, That 300 copies of the foregoing Report be printed for the use of House.

[Extract from the Journal.]

WM. T. JOHNSON, *Clerk.*