

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

A. D. 1842.

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TWENTY-SECOND LEGISLATURE.

NO. 6.]

[HOUSE.

REPORT

OF THE

COMMITTEE ON ELECTIONS.

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

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 24, 1842. }

The Committee on Elections, to which was referred the remonstrance of John Hilferty, and the accompanying papers, against the right of Jonathan Burr, to hold a seat in this House, as a Representative, from the Representative class, composed of the towns of Brewer and Bradley, in the county of Penobscot, having had the same under consideration, ask leave to

REPORT:

That it did not appear, before your committee, that an election of a Representative, for this class, was effected on the second Monday of September last.

That at a second meeting, held on the fourth day of October last, for the purpose of choosing a Representative for said class, the votes stood as follows, viz :

	<i>Jonathan Burr.</i>	<i>John Hilferty.</i>	<i>Scattering.</i>
In Bradley,	30	59	0
In Brewer,	159	127	2
	—	—	—
	189	186	2
		189	
		2	
		—	

The whole number of votes being 377. Necessary for

a choice 189—and that Jonathan Burr had that number, as appears from the certificates returned from said towns.

That the allegations, in the said Hilferty's remonstrance, to which the attention of your committee has been more particularly directed, and which they consider the most material, are

1st. That the selectmen of Brewer *neglected* to receive the vote of one Thomas Gragg, and *refused* to receive the vote of one John Adley, they being legal voters in that town.

2d. That the selectmen of Brewer illegally received and counted, for said Burr, the votes of Charles Leighton, John P. Hoverman, George W. Stewart, and Henry D. Parker, who were not entitled to vote in said town.

3d. That the selectmen of Bradley, illegally received and counted, for said Burr, the vote of Charles W. Jordan, who was not a legal voter.

The testimony, relative to the first allegation, above alluded to, is contained in the depositions of John Adley, Thomas Gragg, Edward H. Burr, and Samuel B. Stone, one of the selectmen of Brewer.

In regard to the right of Adley to vote, &c., it appears by his deposition, that he had lived and voted in said Brewer for about four years, next preceding the taking of his deposition, and voted there at the last September meeting. Also, that at the October meeting, in Brewer, he demanded of the selectmen, the right to vote, and tendered, to them, a vote for John Hilferty, which they refused to receive.

By the deposition of Samuel B. Stone, one of the selectmen of Brewer, introduced by Jonathan Burr, the following facts appear, viz: that the said Adley did tender his vote, as by him stated—and that it was rejected—that at the time of

tendering his vote, he stated, to the said Stone, that he had lived or worked in Orrington, since the fifth or sixth day of July last—and had not been in Brewer since the next previous town meeting—that he also then and there stated that his home was at a Mr. Hodgdon's, in Brewer—that he kept some of his clothes there, and that he had been to work in Orrington by the month.

Now your committee apprehend, that the statute does not require an uninterrupted residence of three months, of a person, who has his home in any particular town. Occasional absences for business, health or pleasure, necessarily happen to many inhabitants in the course of three months. And it would be a hard case, indeed, if such absences should operate an estoppel to their right of suffrage.

It is sufficient if the voter, for the space of three months, has had his home in the town where he claims the right to vote.

Adley had voted in Brewer for the last four years, and particularly, at the last September meeting, and, for ought that appears, unquestioned and unchallenged. He kept some of his clothes in Brewer, and, on the day of the October meeting, still claimed to have his home there.

There is no evidence that Adley had left the town of Brewer, with an intention of considering it no longer his home ; nor that his absence was not temporary.

Under these circumstances, your committee are clearly of the opinion that the said Adley was a legal voter in the town of Brewer, on the 4th of October last, and that his vote ought to have been received and counted for John Hilferty.

In the case of Thomas Gragg, it appears, by his deposition, and the depositions of Edward H. Burr and Samuel B. Stone, that, at the said October meeting, in Brewer, Gragg

deposited a vote for John Hilferty, on the top of the ballot box—that it was afterwards thrown upon the floor, and not received nor counted, by the selectmen.

It further appears by the deposition of said Stone, that the said vote was so deposited before the selectmen were ready to receive the votes of the inhabitants, and at the time that the said Stone made public proclamation that votes could not be then received.

It is also in evidence that the said Gragg had subsequent notice, and before the polls were closed, that he had not voted.

The purity of elections requires that the strictest order and decorum shall be preserved at the polls. If the voter would avail himself of the right of suffrage, he must conform to the regulations established by law.

Gragg's conduct at the time of depositing his vote on the top of the ballot box, would seem to preclude the selectmen from complying with the provisions of the revised statutes, chap. 6, art. 2, sec. 21.

If he was deprived of the right of voting, it was his own fault.

Your committee, therefore, agree, that the said Gragg did not tender or offer his vote, to the selectmen of Brewer, in such a manner, that they could have legally received it, and that it ought not to be counted for the said Hilferty.

With regard to the case of Charles Leighton, it appears from the depositions of himself, Frederick Frye, Jason Phillips, Charles F. Kidder, Roswell Fitts, and Samuel Leighton, that the said Charles Leighton voted, at the October meeting in Brewer, for Jonathan Burr,—that he resided in Dedham, two or three years, and returned to his father's house in Brewer, about the middle of March last, taking his clothes

and effects with him—that about the middle of April he started for Machias, taking with him his chest and clothes, except a dress-coat, surtout, and some other clothes, which he left at his father's; and worked there until the 8th of July, when he started on his return; and that after the time of his return, he resided principally at his father's, in Brewer.

From all the testimony in the case, your committee, although entertaining some doubts, do not decide against the legal right of the said Charles Leighton to vote.

In the case of John P Hoverman, it appears by his deposition, that, at the October meeting in Brewer, he voted for Jonathan Burr—that he first came into Brewer on the twentieth day of April last—that he moved his wife into Brewer, on the seventh of July, and that, after she had staid there about four weeks, she went to Castine, where they had formerly lived, and brought up their furniture. No other evidence was introduced in this case.

Now if Hoverman had his home in Brewer, three months next preceding the fourth day of October, 1841, he was a voter in that town. It is plain that *home* means something more than the place, where one's person is. And generally, the residence of the wife, is deemed and taken to be the home of the husband. Hoverman's wife did not live in Brewer on the 4th day of July last. And his statement, that he "*moved*" her into Brewer, on the seventh day of July, necessarily implies that she had a home elsewhere. Besides, from his further statement, that after his wife had staid in Brewer, about four weeks, she went to Castine, where they had formerly lived, and brought up their furniture, it may be fairly inferred, that her home had been in Castine. Said Hoverman has no children.

If it be said that the question of domicil is sometimes de-

terminated by the *intention* of the party, it may be replied, that there is no proof that Hoverman intended to make Brewer his permanent place of abode, until his wife had been in Brewer about four weeks.

Your committee, therefore, are of opinion, that John P. Haverman, not having had such a residence in Brewer, for the three months next preceding the fourth day of October last, as is contemplated by law, was not a legal voter in that town.

In the case of George W. Stewart, it appears from the deposition of himself, and Susan Sargent, that he came into Brewer about the middle of March last, and resided there until the fourth day of October, when he attended the town meeting, and voted for Jonathan Burr,—that his father was born in Baltimore, and married in New Brunswick, where the said George was born—that he resided in New Brunswick about two years, when he removed into Harrington in this State, and lived in the United States until his decease. It further appears from the deposition of Susan Sargent, that Edward Webb, the father of the mother of said George W. Stewart, removed with his family from Steuben to St. John's in New Brunswick, during the last war, and enlisted into the British army, and that the father of said George. W. had a foreign accent, and was considered and reported to be a foreigner.

From the vague and uncertain character of the evidence in this case, your committee are not satisfied that the citizenship of said George W. is disproved; and are, therefore, of the opinion that his vote was legally received and counted.

In the case of Nathaniel Reed, it appears by his deposition that at the town meeting in Bradley, on the fourth day of October last, he voted for John Hilferty.

By the deposition of John S. Sayward, city clerk of Bangor, it appears that he published the intentions of marriage of one Nathaniel Reed, on the fourth day of October last. And that said Reed informed him that he had worked in Bangor for the season. It is also stated in said deposition, that the name of the said Nathaniel Reed is borne upon the list of voters of said Bangor for the year 1841. But it further appears, that the deponent did not know that the person published by the name of Nathaniel Reed, was the same person, whose name was in the said list of voters.

In this case, the question of identity not having been fully settled to the satisfaction of your committee, they know of no rule of evidence by which they have a right to infer, or presume, that the Nathaniel Reed, who was published in Bangor, on the fourth day of October last, was the same person that voted on the same day in Bradley.

And said Reed's vote having been received, your committee feel bound to consider, that the selectmen acted legally in receiving it, until the contrary is shown. Besides, for any thing that appears in said Sayward's deposition, said Reed might have had a *home* in Bradley.

Under these circumstances your committee are not satisfied, that the right of said Reed to vote in said Bradley, on said fourth day of October, is sufficiently disproved.

It appears from the deposition of Hiram Emery, the town clerk of Bradley, that the constable of Bradley neglected to date his return on the warrant for the October meeting; and this fact was urged as an objection to the legality and validity of the doings of said meeting. If this objection should be considered as insuperable, then the votes given in by the inhabitants of Bradley, at the October meeting, must all be rejected, and the legal voters of a whole town disfranchised by an inadvertent omission of duty by the constable.

Your committee, however, apprehend that it is not indispensably necessary that the return should be dated.

The presumption of law is, that the constable gave the requisite legal notice, until the contrary is shown.

In conclusion, your committee are of the opinion, that no choice of Representative was effected on the fourth day of October last, in the Representative class composed of the towns of Brewer and Bradley, in the county of Penobscot, and herewith submit the following Resolve.

All which is respectfully submitted.

J. G. DICKERSON,
WM. FRYE,
HIRAM CHAPMAN,
RANDALL SKILLIN.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 24, 1842. }

RESOLVED, That no choice of Representative
2 having been effected, on the fourth day of Octo-
3 ber last, in the Representative class composed
4 of the towns of Brewer and Bradley, in the
5 county of Penobscot, Jonathan Burr is not enti-
6 tled to a seat in this House.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 25, 1842. }

ORDERED, That the foregoing Report and Resolve be laid on
the table and 300 copies be printed,

[Extract from the Journal.]

WM. T. JOHNSON, *Clerk.*