DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSIONS

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TWENTY-SECOND LEGISLATURE.

NO. 7.] [HOUSE.

MINORITY REPORT

OF THE

COMMITTEE ON ELECTIONS.

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

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 22, 1842. }

THE underigned, a minority of the Committee on Elections, having had under consideration the remonstrance of John Hilferty against the right of Jonathan Burr to a seat in this House, as Representative from the district composed of the towns of Brewer and Bradley, in the county of Penobscot, ask leave to

REPORT:

That at the second meeting in said class, on the 4th day of October last, as appears from the certificates received from said towns, the votes were as follows—

	For Jonathan Burr.	*For John Hilferty.*
In Brewer,	159	127
In Bradley,	30	59

And there were two scattering votes in the town of Brewer.

The number of votes necessary for a choice was 189, and Jonathan Burr had that number.

The allegations of the remonstrant are sufficiently set forth in the report of the majority of the Committee.

The testimony in the case of Adley, whose vote it is alleged, was illegally refused, appears in the depositions of said Adley and Samuel B. Stone.

Adley states that at the second trial, he attended the town meeting in Brewer, and offered a vote for John Hilferty, which was refused—that he voted in Brewer at the annual meeting in September, and had voted there the last four years.

Mr. Stone, in his deposition, states that as one of the selectmen of Brewer, he received the votes at the meeting in October—that Adley presented a vote which the selectmen refused to receive—that at the time of offering his vote, Adley said he had not been in town on any occasion, or for any purpose, since the September meeting—that he had "lived or worked in Orrington, from the fifth or sixth of July last"—that if he had resided in Orrington long enough to make out three months, he should consider he had a right to vote in said Orrington—that he *thought* Adley said something about having his home at a Mr. Hodgdon's in Brewer, and kept "some clothes there," and that he worked by the month in Orrington, but would not be certain that he used this language. That he, the said Stone, lived within forty rods of Mr. Hodgdon's, and had never seen Adley there at any time—that he does not recollect that he heard the least objection made to the course of the selectmen.

The Committee having been unanimous in their conclusions in the case of Gragg, the minority will only add to the evidence reported by the majority, that it appeared from the testimony of Stone, that the selectmen did not know by whom the vote which they threw upon the floor, was cast.

In the case of Charles Leighton, who voted for Burr, the minority would give, in addition to the testimony reported by the majority, an extract from the testimony of Samuel Leighton, father of said Charles. "My son, Charles Leighton, came to my house about the middle of March last, and has made my house in Brewer his home ever since—he

worked out some during the time, about eighteen days in haying time, for Mr. Winchester, but has never taken away his clothes, and with Mr. Mann, where he now works—both Mr. Winchester and Mr. Mann, live in Brewer, and my son still has his work done and clothes kept at my house, where I still consider his home."

Roswell Fitts, states that Leighton left his house in Dedham, in March last—took away his clothes, effects, and has never since made his home at his, said Fitts's, house—that when Leighton left he said he was going to his father's in Brewer.

The decision of the Committee was in favor of said Leighton's right to vote in Brewer—and we do not see how it could have been different.

In the case of Hoverman, all the testimony is to be found in the deposition of said Hoverman—as it is brief, we transcribe it entire. "I was present at the second town meeting for choice of Representative in Brewer, in October last, and voted for Jonathan Burr.

Question by Attorney for J. Hilferty. At what time did you and your wife move into Brewer?

Answer: I moved my wife into Brewer, the seventh day of July last. I came there myself the 20th day of April last. My wife staid at Brewer about four weeks after she came, and then went down to Castine, where we had before lived, and brought up our furniture. We have no children."

It thus appears that both Hoverman and his wife had resided in Brewer three months, wanting three days only, on the fourth day of October, when the election was held. It does not appear in the case, that Mrs. Hoverman kept house after her husband left in April, nor does it appear when she left Castine for Brewer. In the absence of all evidence, we

do not feel ourselves at liberty to infer that Mrs. H. kept house alone, in the absence of her husband, who had left his former residence never to resume it, and who had gone to prepare a home in another town; nor can we presume that she remained in Castine, a single day after the 20th of April; nor, if she did, that she was there till the fourth of July. And unless these matters are to be regarded as proved, surely Hoverman's right to vote in Brewer, cannot be denied. If they broke up house keeping and the wife merely boarded in Castine, or some other town, while her husband was making arrangements for her removal to his new residence; or if she had actually started by the fourth of July to go to her husband, where for months he had been; in either case, he must be regarded as a voter in Brewer. The remonstrant must prove affirmatively that the vote was illegally received, before he can eject a member from his seat. On him is the burthen of proof. All of the deposition may be true, and still the witness may have been a legal voter. If so, we cannot reject his vote. We cannot *presume* facts, for the purpose of disfranchising a fellow citizen.

Were it proved that the wife of the witness kept house in Castine till the seventh of July, we think, his right to vote in Brewer, under the circumstances, would not be impeached. Brewer was his home, and not Castine. The residence of the wife is only evidence of the intention of the husband; and the presumption arising from the evidence of the wife, may be rebutted by countervailing proof. The residence of the wife, in this case, if proved, is evidence of the husband's residence, so far as it manifests his intention. The fact that the husband did live himself in Brewer from April, and in July brought his wife to the same place, and that both lived there till October, rebut the presumption of domicil in

Castine, and authorize the belief that he never intended to go back, but meant to establish a home in Brewer from the beginning, and that Castine could with no propriety be regarded as his place of residence within three months of the election in October.

Geo. W. Stewart voted for Burr. He says he has lived in Brewer since March last. It is objected that he is a foreigner not naturalized. He says his father told him that he was born in New Brunswick, and that he, the father, was a citizen of the United States, born in Baltimore, Maryland —that his father moved back from the province of N. B. when he was very young and before his remembrance. The deposition of Susan Sargeant contains no testimony that would affect the above statement, if admissible—but she knew nothing of her own knowledge, and we regard her testimony as clearly inadmissible. Of Stewart's right to vote there can be no doubt, the laws of the United States having established the citizenship of the children of Americans born in foreign countries.

Nathaniel Reed, it is not denied, voted in Bradley for John Hilferty. It is contended by Mr. Burr, that he was not a voter in that town; and to prove this, he read the deposition of John S. Sayward, city clerk of Bangor, who says that the intentions of marriage of Nathaniel Reed were published in Bangor, by him, the fourth day of last October—that said Reed was published as a resident of Bangor—that on the tenth day of November last a certificate of publishment was delivered him—that he, Sayward, married said Reed, in said Bangor, on said tenth day of September, and he then informed said Sayward, that he had worked in Bangor during the season. It further appeared that said Reed's name was on the list of voters for 1841, in Bangor. It was contended

before the Committee by Mr. Hilferty, that it did not sufficiently appear that the Nathaniel Reed who was married in Bangor, was the man who voted in Bradley. On the other hand, it was insisted by Mr. Burr, that this was a fact never disputed or denied, until the appearance before the Committee—that he should be regarded as the same man, unless the contrary was shown ;—the name being the same, a *prima facia* case was made out. He also stated that if there were doubts with the Committee, he would prove the indentity beyond question, for it could be done, as he alleged, by sending to Bangor, and if advised of such doubts, desired time to procure the testimony. No such time was given, as the majority were of opinion that if this vote should be deducted, said Burr would still want one vote of an election. Under the circumstances, we have no doubt that this vote should be thrown out, or time given Mr. Burr to establish the single fact of identity.

It was contended by said Burr that no fraud having been suggested or proved, the returns which he presented were conclusive evidence of his right to a seat, and he cited the opinion of the Justices of the supreme judicial court.

He also produced the deposition of Samuel Bullen, who stated that he was one of the selectmen of Bradley for the year 1841. In answer to the following question by Mr. Burr, to wit:—"Who are the other selectmen, and when were they elected and qualified?" he answered, "Mr. Moses Knapp, and Moses Jackson; Mr. Knapp was elected at the April meeting of said town, and was qualified; Mr. Jackson was elected at the last October meeting to choose a Representative to the State Legislature." He further stated, that Mr. Jackson did not preside at the October meeting, and was not chosen till after the election of representative. To

this testimony Mr. Hilferty objected that the facts appearing in the deposition should be proved by a certified copy of the record—this was not denied by Mr. Burr. After some conversation by the counsel for the parties, this objection was waived, as a majority of the committee understood. It never was ruled out at any meeting of the committee, and the minority supposed the facts would be stated in the Report of the majority, as four out of six of the committee who were present at the hearing, understood that the technical objection to the *manner*, in which the evidence came before them, was removed by consent of the parties. We think it would be extraordinary to deprive Mr. Burr of the benefit of this testimony upon a mere technical objection, when much of the testimony offered by Mr. Hilferty might have been excluded by the application of such legal objections as could have been interposed.

It was contended by Mr. Burr that the evidence proved that only two selectmen were chosen at the annual town meeting in April, and that the town by neglecting to perform its duty, in this respect, in the spring, had voluntarily deprived itself of the right of suffrage for the year 1841. That the number of selectmen should be three, five, or seven; and two only having been chosen in this case, it was the same as if none had been chosen; that two, if no more, were elected, who could act if they desired, would not constitute a board of selectmen that could legally act as such in any matters whatever. That at all events, even if three were chosen in the spring, but two were living in town in October;—and that in this case a selectmen *pro tempore* should have been chosen before proceeding to the election of a Representative; and to this point he cited the revised statutes.

We think the objections to the votes of Bradley, are not

without force—and that the position, that there should have been at least three persons qualified to act as selectmen in the town, who, on notice, might have attended and acted at the polls, a sound one and well supported by the authorities. As the meetings for election of state officers are fixed by law, the officers of towns must be presumed to have notice of them. In this case, there were two only who could act at the meeting in September or October. If the town is disfranchised for the time, it is no fault of the selectmen, but of the town. A town may deprive itself of the right to have its votes received and counted.

Mr. Burr presented a certificate, in due form, of the votes in Brewer at the election on the second Monday in September, and denying that there was a legal meeting in Bradley on that day, claimed to be elected by the vote of Brewer, of which he had a majority.

On the whole, the minority of the Committee on elections, are of opinion that Jonathan Burr, having been legally elected Representative from the class of Brewer, &c. is entitled to a seat as such, in this House; and in accordance with that opinion, report, that John Hilferty, have leave to withdraw his remonstrance.

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

STATE OF MAINE.

HOUSE OF REPRESENTATIVES,
January 25, 1842.

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

(Extract from the Journal.)

WM. T. JOHNSON, *Clerk.*