

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1843.

AUGUSTA:

WM. R. SMITH & Co., PRINTERS TO THE STATE.



1843.

TWENTY-THIRD LEGISLATURE.

No. 8.]

[HOUSE.

REPORT

OF THE

COMMITTEE ON ELECTIONS.

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

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 16, 1843. }

The Committee on Elections, to whom was referred the remonstrance of John Mower, against the right of Isaac Fairfield, to a seat in this House, as the Representative of the town of Vassalboro', ask leave to

REPORT:

That the said Fairfield claims to have been elected at a seventh balloting, at the meeting in said town, held on the second Monday of Sept. last. At that time the votes stood as follows, viz:—

For Isaac Fairfield,	154
For John Mower,	94
For Wm. A. Hawes,	59

And amounting in the whole, to 307
Necessary for a choice, 154, which number the said Fairfield received, and was declared elected.

The remonstrant, however, objects to the validity of the election, and rests his objection upon two grounds, viz: 1st—Because the selectmen of Vassalboro', did not use a check list of the voters of the town, at the time of the said seventh balloting for a Representative, as by law prescribed; and 2d—Because the said selectmen received and counted for said Fairfield, at the said seventh balloting, the vote of one Martin Dow, who was not a legal voter in said town.

At the hearing of this case before your committee, two of the selectmen of Vassalboro' appeared and testified that no check list of voters was used, at the said seventh balloting for

Representative in that town, on the said second Monday of September last.

Martin Dow was then called, and testified that he was born and brought up in Vassalboro'—that in 1833 or 1834, he went to Bangor, where he went into business, staid about two years, voted there, and considered it his home. That while at Bangor, he formed a resolution to go south, on an adventure for business. That he returned to Vassalboro' in May or June, 1836, remained there with his friends about four months, and voted in that town, at the subsequent September meeting. That in the fall of the same year, and in pursuance of his intention, formed in Bangor, he went to the south, and resided in the State of Louisiana about two years. That in June, 1838, he returned from Louisiana to Vassalboro', and again voted there at the September elections, but that his vote was then challenged. That the first of the succeeding November, he again started for the south, went to Florida, and spent two years in St. Marks, and two years in Apalachicola, in the character of a clerk in mercantile business. From which last mentioned place he returned to, and reached, Vassalboro', on the 25th of July last.

That when he left Vassalboro' for the south, he did not go with an intention of spending his life there, nor had he fixed in his mind, any definite time, within which to return to the north—his residence there depending upon his success in business. That he left none of his clothes nor portable effects at Vassalboro', when he went south, nor when he went to Bangor—and had no property in Vassalboro', except an interest in common in some real estate, devised to him by the will of his father, who had deceased before he went to Bangor. That prior to his going to Bangor, he and the other joint owners, had given a life-lease of said real estate to his mother, who is now living in the family of one of his brothers, on the said real estate, and who has not kept house since some four years before he first went to the south. That in 1836, he mortgaged his interest in said real estate to one of his sisters, for the sum of \$200—and that the right of redeeming the same is worth nothing.

He also testified that, during his absence to the south, he voted once in Louisiana, and three successive years, viz: 1839, 1840, and 1841, in Florida, and also served as juror once in Apalachicola. But that when he left for the south, he intended to again return to Vassalboro', and make it his home until he should establish himself in business elsewhere—notwithstanding he had no idea of returning there to cultivate his real estate, and had no home there except among his friends.

He further testified that, when he came to Vassalboro', the past summer, he then purposed to return to the south in the fall, and did not give up the intention of so doing until about two months ago. He yet contemplates returning there. He left no property or effects in Florida, and had no debts due to him there, except a balance of an unsettled account, which was to have been liquidated and paid at New York, on his way to the north; but the gentleman, between whom and Dow the account was standing, did not meet him there according to agreement.

It was also in proof, that the requisite legal notice of the intention of the remonstrant to contest the seat of the said Fairfield, was duly given. And that the said Fairfield was one of the presiding selectmen of Vassalboro', at the meeting on the second Monday of September last, and that a vote given in by the said Dow, on that day, for Governor, was rejected by the selectmen.

Such are the facts as developed by the testimony. And your committee have had but little difficulty in arriving to a conclusion, satisfactory at least to their own minds.

As to the first objection, your committee are fully of the opinion, that the fact of non-user of the check list, by the selectmen, at that time, does not, ipso facto, render the election void. To be sure, the requirement of its use is a wise and salutary provision, as a safeguard to the purity and legitimate power of the ballot box, and should always be complied with. But while we fully appreciate its intended and practical utility in the prevention of fraudulent practices, as well as accidental mistakes, equally injurious, we cannot recognize the principle,

that the use of the check list is of that high importance as to constitute it an indispensable element in a valid election.

As to the second objection, it is provided by the constitution of this State, Art. 2, that a man, in order to entitle himself to the right to vote in any town in the State, on the second Monday of September, must have had an established residence therein for the last three months next preceding that day. Then had Dow had such a residence in Vassalboro', either actual or constructive, on the second Monday of September last? Had we nothing but his mere declarations, by which to determine his intentions, perhaps it would be somewhat difficult to arrive at a correct and just conclusion. But while testifying that, whenever he left Vassalboro', and while abroad, he always intended to return to Vassalboro', and considered his home to be there, he swears, at the same time, to facts, which, in legal contemplation, flatly contradict any such intention, and disprove the fact that he considered his home in Vassalboro'. For we cannot recognize the right in any man, under our constitution, to vote in two places, at one and the same time. And if Dow chose to claim the right to vote, and exercised it, in Louisiana and Florida, he must, to all legal intents and purposes, have considered himself a citizen of those States while there, and thereby abjured his citizenship in Maine. And with his citizenship, he lost his right to vote. For where the former does not exist, the latter cannot. Then had he resided in Vassalboro', three months next preceding the second Monday of September? This is not pretended. He had only resided there from and after the 25th of July. It necessarily follows, that he was not a legal voter, and that his vote ought to be rejected in the count. If this be done, then there was a tie vote, and no choice was effected; and Mr. Fairfield is not entitled to his seat.

Your committee herewith report a resolve.

WM. FRYE, *Chairman.*

STATE OF MAINE.

Resolved, That Isaac Fairfield, not having been constitutionally and legally elected as the Representative of the town of Vassalboro', is not entitled to a seat in this House.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 16, 1843. }

Laid on the table, and 300 copies ordered to be printed for the
use of the House.

WM. T. JOHNSON, *Clerk.*