

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1846.



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1847.

TWENTY-SIXTH LEGISLATURE.

No. 3.

HOUSE.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, June 3, 1846.

A majority of the committee on elections ask leave to report, in the case of Messrs. Colburn and Hersey, each claiming a seat in the House of Representatives, from the town of Belfast, the following statement of facts, and the accompanying resolve.

Henry Colburn was duly elected representative of the town of Belfast, on the fifteenth day of September, 1845. On or about the first day of November, he went to New York to make arrangements to enter into business. On the twenty eighth day of November, he again left for New York, taking with him his wife and two children, leaving in Belfast one son in the employment of a Mr. Kimball. He also carried with him a large part of his furniture, leaving in Belfast furniture enough to fill one chamber in the house of Thomas Marshall, expressly declaring, that he should return in the spring, to reside there. After his arrival at New York, he kept house and formed a co-partnership with Judkins & Adams. He was again in Belfast, with his family on the fifth day of April, 1846. Never having (so far as it appeared from the evidence before us) altered or changed his determination to continue his residence in Belfast.

One witness for Mr. Hersey "inferred that Mr. Colburn would have remained in New York if business had proved good, but could not say that Mr. Colburn had ever so said or written." Mr. Colburn

also resigned the office of town clerk, before he went away in November, stating as a reason for so doing, "That it might involve the title to personal property mortgaged and recorded if the records should be kept by his son during his absence." A warrant was issued by the selectmen of Belfast, and a meeting was held in conformity thereto, on the sixth of April last, at which time Mr. S. S. Hersey received a majority of the votes thrown. Thomas Marshall and B. F. Blackstone were called, by Mr. Hersey, to prove these facts, and the reason for issuing their warrant. Mr. Marshall said "he was opposed to signing the warrant for the meeting of April sixth, and did not think there was a vacancy," but he signed it because there was an "implied solicitation for a meeting—there was a call from one of the papers." Mr. Blackstone said he signed the warrant "because Mr. Colburn was absent, but did not undertake to decide at that time that there was a vacancy, but thought the legislature could settle that matter right." The question to be decided is, whether, with this statement of facts, Mr. Colburn did lose his residence or not. That he had been five years a citizen of the United States; that he was twenty one years of age; that he had been a resident in the state one year, and in the town of Belfast for three months next preceding his election, has not been disputed or doubted. It was proved that he had resided in Belfast thirty years. It is also admitted and proved that he has been a resident of Belfast since the sixth day of April, 1846, up to this time. We have the testimony of three respectable and apparently intelligent witnesses that Mr. Colburn did, directly and unequivocally, say that he should return to Belfast in the spring. And they further show that these declarations were made at three several times; one on the day before he started, one on the very day on which he started, and the other in Boston, while on his way to New York. Here we have the intention to return and an actual return, and surely that settles the residence.

In the case of *Richmond vs. Vassalborough* it was held good law, that when a man went from one town to another with a conditional resolution *not to return*, but did return, his residence was in the town he came from and returned to. How much stronger

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the present case of expressed intention to return and actual return, makes Mr. Colburn's claims to a continued residence, your committee must leave you to determine.

RICHARD ROGERS, *Chairman.*

STATE OF MAINE.

RESOLVED, That Henry Colburn is duly elected and
2 entitled to a seat in this House as representative for
3 the town of Belfast.

MINORITY REPORT.

The minority of the committee on Elections, having had the case of Messrs. Colburn and Hersey, claimants of the seat of representative from the town of Belfast, under consideration, are unable to coincide with the majority of said committee, and ask leave to give their reasons for such disagreement in the following

REPORT.

Messrs. Colburn and Hersey both appeared before your committee, claiming to be representatives from Belfast. Each had credentials signed by the town officers in due form.

Now as the town of Belfast is entitled to but *one* representative; and as it was incumbent upon your committee to decide between them, an investigation was commenced.

The claimants stated to your committee, that there was certain evidence in the town of Belfast, which would be useful and necessary; and upon making a corresponding report to the house, an order was granted, authorizing your committee to send for persons and papers.

Accordingly the parties with their witnesses, appeared before your committee on the 29th ult.

It appeared in evidence, that Mr. Colburn was elected representative from Belfast, in September last—that in the early part of November following, he went to New York for the purpose of completing certain arrangements which he was making with a gentleman, preparatory to entering a partnership there, in the lumber business—that he soon returned; and the latter part of the same month (November), broke up housekeeping, resigned the office of town clerk, and delivered up the books and papers to the selectmen—dissolved all his business connections with the town of Belfast,

and taking with him all his family (except one son, a young man who *had been* for some time previous, and still continues to be, absent from his father, as an assistant in a store,) and also taking his furniture and other property (except such things as were not worth removal, which were left in the custody of his brother-in-law, Thomas Marshall,) he proceeded to the city of New York, became a member of the aforementioned firm, and *set up housekeeping*. He remained in this situation till the 5th of April last, when he returned to the town of Belfast.

A short time previous to his return, however, the same board of selectmen which called and presided at the town meeting at which Mr. Colburn was elected—Thomas Marshall, the particular friend and brother-in-law of said Colburn, being chairman—issued their warrant calling a town meeting the 6th of April, to elect a new representative; it being a very general opinion, that by his continued absence, Mr. Colburn had vacated his seat. At this town meeting, which was well attended by both political parties, Mr. Hersey was elected and received the usual certificate of such election.

It also appeared by the evidence of three or four individuals, who casually inquired of Mr. Colburn previous to his departure in the fall, what they should do for a representative, that he stated in reply, he should be back.

It further appeared, from the evidence of his most *intimate friend* and brother-in-law, the aforementioned Thomas Marshall, that he had a conversation with Mr. Colburn, relative to his removal, last fall; and that Mr. Colburn then told him that certain proposals had been made to induce him to go to New York, and embark as a lumber merchant there. That Colburn said that if he found the business equalled his expectations and hopes, he should remain there; if it did not, he should return. This same witness kept up an active correspondence with his brother-in-law, Mr. Colburn—receiving from him no less than a half a dozen letters, during the four or five months of his residence in New York—and who to use his own language, said, he “probably knew as much about his affairs, as Mr. Colburn did himself,”—stated that he *inferred* from

these letters, that his friend and correspondent would not return to Belfast if his business succeeded in New York; that he had *no doubt* from what *he knew*, that his continuance in that city depended upon a *contingency*, viz: the prosperity of his lumber business. This witness further stated, in reply to a cross-examination, that no letter previous to the 20th of March, mentioned any thing about Mr. Colburn's return to Belfast—that the letter of that date, *did* mention the subject of his return, and inquired if he, the witness, could procure him a house. It also stated as the reason of his return to Belfast, that his business operations had not succeeded to his mind.

The above, the minority of your committee consider to be a fair, unvarnished statement of the facts in the case, as it appeared in evidence before them.

Now it must be apparent to the mind of every one, that the main, indeed the only point at issue, is, whether Mr. Colburn, by a four or five months residence in New York, at the time and under the circumstances named, rendered himself, constitutionally, ineligible to a seat in this House?

The minority of your committee, according to what they deem the true construction and apparent meaning of the constitution, cannot decide otherwise, than that Mr. Colburn has by such breaking up his residence in Belfast, become ineligible.

Art. 4, part 1st, sec. 4, of the constitution of Maine, reads as follows:

“No person shall be a member of the house of representatives, unless he shall at the commencement of the period for which he is elected, have been five years a *citizen* of the United States—have arrived at the age of twenty-one years—have been a *resident* in this state one year, or from the adoption of this constitution; and for the three months next preceding the time of his election shall have been, and during the period for which he is elected, shall continue to be a *resident* in the town or district which he represents.”

We cannot but believe that the framers of the constitution intended that there should be a material difference between the words “citizen” and “resident,” as they are used in this short section.

Among the qualifications for a representative, above enumerated, are, that he must be a "citizen" of the United States, and a "resident" (one *actually residing*) of this State for the period of one year.

Now it is the confident opinion of the minority of your committee, that Mr. Colburn, by his removal and absence, till the fifth day of April, under the circumstances mentioned, had not been a "resident" in this State, "one year" according to the meaning and true intent of the constitution.

We believe, that that instrument requires that any man, to be eligible to a seat in this House, must, *at the commencement of the period* for which he is elected, not only have been a "citizen" of the United States for five years, but must also have been a "resident" of this State, one entire year without interruption, "at the commencement of the period for which he is elected." It is a well settled point in law, that a man's residence is established in the place or town where his family resides, except in cases where his family has abandoned him.

And further, that when a man leaves a town, with his *family* and *property*, for an indefinite period, and dissolves his business connections with that town, he loses his "residence," and begins to acquire a new one, in the town to which he may remove.

In the case of *Green vs. Windham*, reported in the thirteenth volume of the *Maine Reports*, the Supreme Court decided, that "whoever removes into a town for the purpose of remaining there an indefinite period, thereby establishes his domicile (or place of residence) in that town. It is not necessary that he should go with a fixed resolution to spend his days there. He might have in contemplation, many contingencies which would induce him to go elsewhere. Some persons are more restless in their character, and migratory in their habits, than others; but they may and do acquire a domicile wherever they establish themselves for the time being, with an intention to remain, until inducements may arise to remove."

With regard to the evidence before your committee, we are induced to lay much stress upon that of *Thomas Marshall*. He testified with evident reluctance; and such admissions as were at

all unfavorable to Mr. Colburn, were made only in answer to rigid questioning.

In every case where evidence is admitted, the minority of your committee believe that a just discrimination should be used in summing up that evidence; that there should be taken into the account, not only the witness's general standing and character for veracity, but that we should also include his known, openly avowed feelings, and relative position to the parties. In a case where a witness is known to be an intimate family connection—a *political* friend, as well as a *personal* one—it is but justice to allow that every admission of his, which militates against the interests of the party, in favor of which he is naturally prejudiced, possesses *double force* to what it would if his prejudices—his political and personal sympathies, were enlisted on the opposite side.

This Thomas Marshall was chairman of the board of selectmen, which issued the warrant for a new election; was in close correspondence with Mr. Colburn, the whole time he was in New York; was his intimate and very particular friend; knew all about his business and intentions; and with all these opportunities for knowing the actual state of affairs, and well knowing how injurious his movements would be to the claims of his friend, (if indeed, at *that time*, Mr. Colburn or his friends entertained any notion of claiming his seat, which we very much doubt,) he proceeded *voluntarily* to call a town meeting to choose a representative to fill the vacancy. Neither of the selectmen, nor indeed, did any other person, so far as we can learn, remonstrate against, or make any opposition to the meeting. Each party nominated a candidate and supported him with their votes. Mr. Marshall himself, voting for the candidate which his party supported, in opposition to Mr. Hersey.

Upon a careful, somewhat extended, and as we think, candid examination of the subject, your committee are irresistably compelled to conclude that the *acts* of Thomas Marshall, especially when connected with his verbal testimony, furnish evidence of the strongest and most conclusive character, against the claims of Mr. Colburn.

JABEZ D. HILL.

AMOS PITCHER.

HORATIO G. RUSS.

STATE OF MAINE.

RESOLVED, That Samuel S. Hersey, having been
2 duly elected, is entitled to a seat in this House as
3 representative from the town of Belfast.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, June 3, 1846.

Ordered, That two hundred and fifty copies of the foregoing reports and resolves be printed for the use of the House.

SAMUEL BELCHER, *Clerk.*