

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1849.



Augusta:

WM. T. JOHNSON;.....PRINTER TO THE STATE.

1850.

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# TWENTY-NINTH LEGISLATURE.

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No. 5.]

[HOUSE.

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## REPORT OF THE COMMITTEE ON ELECTIONS.

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HOUSE OF REPRESENTATIVES, }  
June 4, 1849. }

The committee on elections, to whom was referred the credentials of Henry Carter, and the remonstrance of Wendell P. Smith and others, against his right to a seat in this house, have had the same under consideration, and ask leave to

### REPORT.

The city of Portland is entitled to three representatives in this house, and at the annual election, on September 11, 1848, William Goodenow, Elisha Trowbridge, and Henry Carter, having received the highest number of votes, were duly returned elected.

At that election Carter received 1,198 votes; Byron Greenough, 944, James T. McCobb, 944, T. McCobb, 1, and several other persons smaller numbers.

Smith and others, citizens of Portland, remonstrate against the right of said Carter, to hold a seat here, and ask that James T. McCobb may be declared elected as one of the representatives of said city. They allege that said Carter, for three months next

preceding the election aforesaid, was not a resident of said city within the meaning of article four, part first, section four, of the constitution of Maine, and hence ineligible. That being ineligible, the votes thrown for him could not be counted; that the vote returned for T. McCobb was intended for James T. McCobb—and being so counted, James T. McCobb received 945, which was the highest number thrown for the third candidate at the election aforesaid, and therefore is entitled to his seat in this house.

April 10, 1849, a notice in due form was served on Carter, that his right to a seat would be contested.

Carter objected to the notice being sufficient to require him to answer, and cited revised statutes, chapter six, section fifty-one; but your committee regarded that act as directory and proceeded with the examination, and before deciding this case upon its other points, overruled the objection.

The evidence in regard to the residence of Carter in Portland, is contained in the depositions hereunto annexed. By these depositions it appears that in 1836, Carter commenced the practice of law in Bridgton, in the county of Cumberland. In 1842, he built a house into which he removed his family and there maintained and supported them until June 19, 1848. In November 1847, he made a contract with one Edwards, to aid him in the editorial department of the Portland Advertiser, for an indefinite period, removed his office furniture and library to Portland, advertised as a counselor at law, and on the 23d day of November, 1847, advertised his farm in Bridgton, for sale. And on the 27th of that month commenced his editorial labors in the Daily Advertiser.

Mr. Carter visited his family from time to time, during the winter of 1848, going up on Saturday and returning on Monday to Portland, until May of that year, when in consequence of the ill health of his children, he remained several days. He continued thus to visit them, until June 17, on which day he went to Bridgton, sold his cow, packed up his furniture and household utensils, and on the 19th of June, 1848, removed his wife, children and establishment, from that town to Portland, where he has since resided. Carter was

assessed a small sum for poll and personal taxes in Bridgton, in the spring of 1848, and in 1849, paid it without objection. The collector swears that he feels very positive Carter looked at the tax book when he paid it and took a receipt,—he did not deny his liability. It is also in evidence that on May, 1848, he was elected a delegate from Bridgton, to the Whig State Convention, held at Augusta; that he acted as such in that body.

It was also proved that Carter was not taxed in Portland, in the spring of 1848; that during that season his name for the first time was put on the list of voters in that city; that he was in the city at the election of September 11, 1849, but did not see fit to exercise his rights there as an elector. Whatever might have been the intentions of Mr. Carter in visiting Portland in the fall of 1847, his acts rather than declarations seem to be the proper source from which they are to be gathered. Perhaps they are warranted in coming to the conclusion that Carter went to Portland in November of that year, with the intention of remaining for an indefinite period, and at some distant and undetermined day, to remove his family and home to that city.

In the investigation of the question submitted, the first inquiry is, was Henry Carter a resident of Portland within the legal acceptance of the term, on the 11th day of June, 1848?

In pursuing that inquiry no act of Carter after that day is to be regarded, farther than it may reflect his intentions previously formed.

If he was not a resident of that city on the 11th day of June, he cannot hold a seat in this house.

Separated from all the extrinsic matters, that, in an exciting controversy, have been mingled with the facts on which this case turns, it finds that Henry Carter in November, 1847, took up his personal residence in Portland, with the intention of removing his family at some undetermined period; that he supported them in Bridgton, returning there when business permitted him to do so, or their circumstances demanded his presence; that he paid his personal tax assessed upon him in the spring of 1848; as a resident of Bridgton; and on one important public occasion, late in May,

acted for his political friends of that town in a capacity which custom has established as the peculiar province of a resident citizen.

The question of law involved in the facts above stated, seems to be—does the personal residence of a citizen in one town, while he supports and maintains his family and establishment in another, constitute him a resident of the former within the meaning of the constitutional provision adverted to?

That a man can have but one residence at one time, for one purpose, may be assumed as a postulate.

The provision of the constitution has been pointed out. The word resident, used in that instrument, has long since been made the matter of judicial examination, and has often received a legal construction.

Your committee are not aware that any difference exists between the construction hitherto applied to that term by the courts of law and by the house of representatives. But is not the word resident, when applied to a citizen assuming municipal and political rights, and to be clothed with the almost unlimited power of a representative, a more comprehensive term than when used by one corporation to fix upon another a liability to support a pauper?

It will be perceived that in most cases where the term has been the subject of judicial inquiry, it has been for the latter purpose, and the word domicil has been generally used when speaking of a settlement sought to be established by actual residence. For the purpose of fixing the settlement of a pauper, it is defined to be “the place where a man dwelleth and hath his home.”

When the relation of husband and wife exists *de facto*, and the wife and family have a home and dwelling-place fixed and established by the husband, that dwelling-place has been regarded as evidence in settling the fact of his domicil, and the courts seem to regard it as almost conclusive except in cases of abandonment.

“The residence of the wife is evidence of the domicil of the husband, but is not conclusive; *if he has abandoned her*, or she has abandoned him, he may establish it elsewhere.” (Green vs. Windham, Maine R. 13: 228.)

"If a man has his family fixed in one place and he does business in another, the former is considered the place of his residence." (Story conflict of laws, title domicile—opinion of justices of S. J. C. Greenleaf 7 : 501.)

"The question of domicile depends not upon proving particular facts, but whether all the facts and circumstances taken together tending to show that a man has his domicile in one place, over-balance all like proofs tending to establish it in another: such an inquiry therefore involves a comparison of proofs, and in making it there are some facts which the law deems decisive, unless controlled and contradicted by others still more stringent.

The place of a man's dwelling-house is first regarded as his domicile, in contradistinction to any place of business, trade or occupation." (Abington vs. North Bridgewater, Pick. R. 23: 178.)

"When a person leaves a town with the intention of going to another and purchase a lot of land and settle there, the latter does not become his domicile unless the intention is carried into effect by having his dwelling and home actually established there." (Gorham vs. Springfield, Me. R. 21 : 58.)

To treat this question, however, as a question of evidence only, is scarcely giving it the importance to which it seems entitled. Whether regarded in that or any other light, the state of facts found in this case would conduct the mind to the same conclusion. Should not the relation of a husband, father, and householder, be regarded as forcing upon the citizen a residence in the town where he has fixed that of his wife, children, and establishment, as a legal consequence of the condition he has voluntarily assumed—and when the fact of that relation has been established, and its continuance in law and fact admitted, can one be permitted to show by evidence, however conclusive, that the domicile of his family is in one place, and his own in another? To admit that he might do so, not only involves a legal antithesis, but might lead to the most pernicious consequences.

In an excited political canvass the operation of such a principle would leave small towns at the mercy of those more populous, and open an avenue by which the rights of the elector could be easily invaded and substantially subverted.

It is not to be supposed that the framers of the constitution overlooked the evil, whatever terms they may have employed to protect the people against it.

The practice, however, in this State, has been uniformly adverse to such a position, and your committee regard the former precedents of this house upon that point as entitled to great consideration.

About the 10th of May, 1842, John Kimball went from Skowhegan into Forks plantation, having taken a farm there. His family remained at the former place until June 27 of that year, when he removed them to the latter place. It was held by this house that he was not a voter in Forks plantation. (Contested election report, Nichols and Bolster, House doc. No. 10, 1843.)

The same principle was recognized in the case of Burr and Hilferty, in 1842, when the seat of Burr was declared vacant.

It will be difficult to distinguish between the case of Carter and that of Kimball.

Jurists have recognized the same principle:

“The intention to acquire a new domicil without the fact of removal, avails nothing.” (Story conflict of laws, p. 46.)

“Home may be relinquished and abandoned, while the domicil of the party upon which many civil rights and duties depend, may in legal contemplation remain.” (Me. R. 19: 300.)

The claimant to this seat, Mr. Carter, was understood by your committee as assuming the position, that if a man leaves his family in one town and takes up his personal residence in another with the intention of remaining, his residence commences in the latter when he arrives there. Such has been regarded to be the law in fixing the settlement of paupers in cases where the separation was final, as in case of a divorce; and had Mr. Carter, in November, 1847, abandoned his wife, forsaken his children, and deserted his home, with the determination of relinquishing them forever, perhaps he might have been in a situation to have established his residence in Portland, within the meaning of the court in the case before cited, of Green and Windham.

But this case finds that there was no sundering of the ties which



bound him in his domestic relations. He left Bridgton ; he did not quit it.

The position, however, is not tenable. It was differently decided in the case alluded to, of Kimball, in 1843.

If there was no necessity in law of establishing the domicil of his family in Portland on or before the 11th day of June, 1848, then it still might have remained in Bridgton, and on a declaration from his own mouth that his residence was in the former, he might now represent it.

An important consideration as connected with a residence, is the consciousness of the representative of ultimate responsibility to the people who elect him, to whom he must return, and with whom he must again mingle. He should not only be so connected with them that their interests should be his, but that when the brief period of his delegated authority had closed, he should feel that he was to answer to his fellow-citizens, "face to face as a man talketh with his friend," for the manner in which he had discharged the trusts reposed in him.

Suppose, to carry out the position, that a man whose family resides in Madawaska, should take up his personal residence in a town on the borders of New Hampshire, and declaring that his intention was to remove his family there, should obtain an election and be admitted a member of this house. Suppose he betrays that constituency, and sacrifices their interest to the people with whom he really resides ;—when he leaves this house he retires to his family in a distant corner of the State, defying the indignation of an injured people he will meet no more.

Is there not wanting here an important check upon his conduct ? To concede the position to be well taken, is to admit that the constitution has given this house no power to protect the people against such an abuse.

The case upon which he relied to sustain this position, is Burnham and Rangly, reported in Woodbury and Minot, 1 : 7,—and it deserves a careful consideration. The question at issue was the jurisdiction of the circuit court of the United States.

September 26, 1843, Burnham filed his bill on Rangly, the

respondent, and to give that court jurisdiction averred that he was a citizen of Maine. Rangly pleaded that he was not a citizen of Maine, but of Virginia.

This case finds that prior to 1842, Rangly had been a citizen of Maine, having a wife and two daughters there, and two sons in Virginia. In July, 1842, the respondent went to Virginia, purchased a tract of land and buildings near his sons, and returned to Maine to adjust his affairs and remove his family. In October of that year he sent to Virginia a part of his household furniture, took with him one of his daughters and removed to the plantation he had bought. He there purchased the usual accompaniments of similar establishments, fitted up his dwelling, improved his grounds, and in the spring of 1843 sent for his wife and daughter. They did not however then go.

He sold his house in Portland, in which his wife and daughter continued to live, and in September, 1843, returned to Maine to remove them. He then sold the balance of his furniture, and two days after the bill was brought against him, sailed with them for Virginia.

The fact is apparent that the respondent had two establishments, one in Virginia, where he owned a plantation, and one in Portland in Maine, occupying a house which he had sold some months before the bill was filed. In the one, was himself and one daughter; in the other, his wife and the other daughter—the family being equally divided. The court treated it as a case of divided domicile, and for the purposes of that suit the election was given to the respondent in which State he would elect to fix his residence. The marginal note is perhaps the fairest synopsis of the law settled in this case :

“If the respondent owned land in Virginia which he was cultivating and residing on with one daughter, and intending to have his family reside on and did not intend to return to Maine, except to remove his wife and another daughter, he may be regarded as having his domicile in Virginia.

It is not necessary to such a domicile that the party have obtained a right to vote or hold office.

If a party has two places of residence, he may elect which shall

be his domicil ; the residence of the wife is in subordination to that of the husband. A former domicil is presumed to continue till the party shows clearly a new one."

The court say that "leaving one's family behind and especially only a part of them, does not, under such circumstances, *however different it might be under others*, prevent the domicil from being changed. The court also intimate that where the residence of the wife is different from the husband, it may at times, have *an influence on his*, and refer to the opinion of the supreme judicial court of this state, above quoted, where our court have ruled that when a man's family is in one town and himself in another, he can vote only in that where his family reside." (Greenleaf R. 7 : 501. This opinion was not overruled in Burnham vs. Rangly.)

No comment is necessary upon the case. It was a question of jurisdiction of that court only, not of residence, as giving municipal and political rights.

It is obvious upon the face of it, that the court did not intend to establish any different principles than those contained in the well settled law in this state, by its supreme judicial court, and by the paramount authority of the house of representatives. (See Cooper vs. Galbraith, Wash. R. 3 : 554 ; Met. 5 : 590 ; Met. 1 : 250 ; Report of contested elections, 165 ; Mass. 13 : 501 ; Mass. 11 : Pick. 5 : 372 ; Greenleaf 5 : 143, and cases there cited.)

In examining the law settled in the case cited and as established by the precedents upon which, so far as your committee have been able to judge, this house has hitherto acted, they can but find, that when a man in this state having established his residence in one town and there supports and maintains his family, discharging the duties incident to the domestic relation, takes up his personal residence in another with the intention at some future day of removing them there, his legal residence continues in the former town until the day on which the family and establishment is broken up and removed.

They find further, that Henry Carter was, on the 11th day of June, 1848, and long before, a resident of Bridgton, in the county

of Cumberland, and remained a resident thereof until the 19th day of that month.

The record of the vote in relation to McCobb, is given in the former part of this report. The clerk of ward No. 5, in Portland, was seen, and testified that the one vote thrown for T. McCobb, was thrown in that ward. The ballot is hereunto annexed marked "A," on the record of said ward. The vote was originally printed thus :

Representatives.

Byron Greenough, | Harris C. Barnes,  
James T. McCobb.

It will be perceived that the word James was torn off, and in deciding this question it is important to consider what were the intentions of the elector in mutilating the ballot. It was proved there was no citizen of Portland of the patronymic McCobb having a baptismal name with the initial T., except James T. McCobb. Your committee entertained no doubt that the name James T. McCobb was once borne upon this ballot. Did therefore, the elector intend to destroy the name of McCobb when he tore off that of Greenough—or did he intend only to remove the latter, injuring the former as little as possible in doing so ?

It will be perceived that it would be somewhat difficult to remove the name of Greenough from the ballot by tearing it off, without destroying the James on the name below.

Of the intention of the elector, however, your committee do not intend to express any opinion, as all the facts are before the house on which it could be formed.

If the intention of the elector was to vote for James T. McCobb, this ballot may be so counted. (See report of committee on votes for governor, made January 19, 1830.)

Your committee therefore submit the following resolves :

JAMES WALKER,  
G. P. SEWALL,  
ELIAS HAM,  
ROBERT MARTIN.

The undersigned, in examining this subject, is of opinion that Mr. Carter had not sufficient notice to require him to answer to the remonstrance of W. P. Smith et als. ; but that if the remonstrance was legally before the house and committee upon, the facts proved, said Carter is not entitled to a seat in this house.

**CHS. M. MORSE.**

## STATE OF MAINE.



*Resolved*, That Henry Carter, not having resided in  
2 Portland for three months next before his election,  
3 was not eligible to the office of representative of said  
4 city, and is not entitled to a seat in this house.

*Resolved*, That having  
2 received the greatest number of votes for the third  
3 person to be chosen as a representative of the city of  
4 Portland, on the eleventh day of September, 1848,  
5 is entitled to a seat in this house.

# REMONSTRANCE

## OF WENDELL P. SMITH AND OTHERS, AGAINST RIGHT TO A SEAT OF HENRY CARTER.

*To the honorable the House of Representatives of Maine, next to  
be assembled at Augusta on the ninth day of May, A. D. 1849.*

Respectfully represent the undersigned, citizens and legal voters in Portland, in the county of Cumberland, that Henry Carter has been duly returned a member of said house; that the said Carter was not for the three months next preceding the time at which he claims to have been elected, a resident in said Portland.

The undersigned further respectfully represent, that James T. McCobb of said Portland, who has not been returned a member of said house, is one of the persons, not exceeding the number to be voted for at said election for said office, having the highest number of votes (the votes given for said Carter not being counted,) for said office at said election.

Wherefore, the undersigned respectfully remonstrate against the right of said Carter to a seat in your honorable body; and claim that said McCobb be declared elected, and entitled to a seat therein.

WENDELL P. SMITH, JOSEPH M. KELLOGG, TOBIAS WILSON, LORENZO DE M. SWEAT, JOHN YEATON, P. F. VARNUM, EDWARD HINDS,	} City Committee.
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[COPY.]

*To Henry Carter, Esq., of Portland, County of Cumberland.*

You will please take notice, that the undersigned, citizens of Portland aforesaid, and at the time of the last annual election of members of the house of representatives in this state, electors for representatives from this district in the state legislature, intend to contest before the house of representatives of this state next to be assembled, your right to a seat therein, you having been returned as a member thereof; and that our objections to the validity of such return are: that you had not been, for the three months next preceding the time of your election, a resident of the city of Portland; that being the district for which you have been returned.

You will please further to take notice, that the undersigned will claim before said house of representatives, that James T. McCobb, Esq., has a right to a seat therein; he being one of the number of persons voted for at said election, not exceeding the number of persons voted for at any one time, for said office, having the highest number of votes for the same.

EDWARD HINDS,	}	City Committee of the Democratic Party.
JOHN YEATON,		
WENDELL P. SMITH,		
LORENZO DE M. SWEAT,		
JOSEPH M. KELLOGG,		
P. F. VARNUM,		
TOBIAS WILSON,		

Portland, April 9, 1849.

CUMBERLAND, ss.—April 10th, A. D. 1849.

I this day gave the within named Henry Carter the original notice, of which the within is a true copy,

ROBERT A. BIRD, Dep. Sheriff.

CUMBERLAND, ss. Sworn to before me,  
JOHN M. ADAMS, Justice of the Peace.



## CERTIFICATE OF THE TREASURER AND COLLECTOR OF PORTLAND.

I, WILLIAM LORD, of Portland, Cumberland county, Maine, hereby certify, that I am, and for the last ten years have been treasurer and collector of taxes for the city of Portland—that I have carefully examined the books relating to the taxes of the city for the year 1848, '49, (beginning May 1, 1848,) that the name of Henry Carter does not appear upon those books; and that the said Henry Carter was not, the said year, taxed in the said city.

WM. LORD, Treasurer and Collector.

Portland, May 5th, 1849.

The above certificate of William Lord is agreed to be admitted, in the same manner and to the same effect as if the deposition of said Lord had been duly and legally taken, in the matter of *Wendell P. Smith and others*, remonstrants against the right of Henry Carter to a seat in the house of representatives of Maine to be held at Augusta on the 9th instant, not waiving any objection to the insufficiency of notice that my seat was to be contested.

HENRY CARTER.

Portland, May 5th, 1849.



## DEPOSITION OF RICHARD K. HUNT.

I, RICHARD K. HUNT, of Bridgton, in the county of Cumberland and state of Maine, of lawful age, depose and say, that I was collector of taxes for the town of Bridgton, for the municipal year 1848. In the tax bill for said year, the tax assessed on Henry Carter, Esq., was as follows, to wit:

One poll,	-	-	-	-	1,00
Real estate,	-	-	-	-	14,40
Personal estate,	-	-	-	-	22
					<hr/>
					\$15,62

I called on said Carter for said tax once prior to the time when he paid it. I think he paid it the latter part of the winter last past. Carter did not dispute his liability to pay said tax, or any part of it, at either time I called on him. Should think that at one or the other of the times I called on Carter, he looked at the tax book. Do not know that Carter asked any questions relative to said tax. I feel very positive Carter took a receipt when he paid the tax.

R. K. HUNT.

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DEPOSITION OF NATHANIEL S. LITTLEFIELD.

I, NATHANIEL S. LITTLEFIELD of Bridgton, in the county of Cumberland, of lawful age, testify, depose and say, that I have been acquainted with Henry Carter, Esq. since 1836, about which time he removed to Bridgton, and commenced the practice of the law. He was married when he first commenced the practice at Bridgton, and lived with his family in an hired house, owned by Rufus Gibbs, several years. In 1842, as near as I can recollect, he commenced building a house in Bridgton, and so far completed it as to move into it that fall, and the house was finished the next summer and fall. He continued to reside in that house until he removed to Portland. In the fall of 1847, or first of the winter, he took charge of the Portland Advertiser, since which time he has been mostly in Portland. His family continued to reside in his own house in Bridgton till the 19th day of June, 1848. From the time he took charge of the Advertiser till said 19th of June, 1848, he occasionally visited his family at Bridgton, generally coming home on Saturday and returning to Portland on Monday following—though not so often as every week. As near as I can judge, he was up once in from two to four weeks. In April and May, 1848, several of his children were very severely sick, and his visits to Bridgton, during that time, were more frequent and of longer duration. He came to Bridgton on the 17th day of June, 1848, and staid until the 19th, on which day he left Bridgton with

his family and goods, removing them on that day from his own house. Previous to his removal, I had hired of him his house for one year, and it was agreed that I should have possession of it as soon as he moved his family out. Rev. Zenas Thompson moved into the house on the same 19th day of June, the same day Mr. Carter moved out. I hired the house, as also the land, for Mr. Thompson, and he took possession as above stated, under my agreement with Mr. Carter. I went to Portland the same day that he moved his family and goods. I saw him and his family at Bridgton in the morning of that day, before I left home, and I saw him in Portland in the afternoon of the same day.

*Question by H. Carter.* Was or not the contract that you made with Carter for his house and land, in writing? If so, what was its date?

*Answer.* The contract is in writing; its date I am unable to state. After the writing was made, and at the time of its delivery, it was agreed that the year should commence from and after the time when you moved your family out of the house.

*Question by same.* Is or not the contract now exhibited to you, the one alluded to? If so, what is its date, and what the provision as to the time of possession?

*Answer.* The contract now exhibited to me by you, since the answer to the last question, is the one I gave you. It is dated May 1, 1848. It provides that I should have possession of the house on the first day of June, 1848, and the land for the agricultural season of 1848. After that contract was signed by me, and at the time of its delivery to you, some doubt was expressed by you whether you should be able to vacate the house as soon as the first day of June, and it was agreed, verbally, between you and myself, that if you did not vacate the house by the said first day of June, that the year that I hired the house for was to commence on the day you did vacate it.

*Question by same.* Was or not the doubt which I suggested, on account of the illness of my family?—the possibility that they might not be sufficiently recovered from sickness to be moved?

But did I not also express a confident expectation of moving the time specified in the contract, viz. the first of June, 1848?

*Answer.* One reason you gave for the uncertainty, was on account of the sickness of your family, and another was that there was uncertainty about your obtaining by that time a home in Portland. I think you expressed a strong hope that you should be able to move by the first of June.

*Question by same.* Did you or not know from me and otherwise, prior to May 1, 1848, of my determination to move my family in the spring of 1848? Did you or not, prior to this time, have conversation with me in relation to the sale of my property in Bridgton, and afterwards correspondence with me in relation to purchasing the same, based on my abandoning the same, as also the town of Bridgton, as a place of residence?

*Answer.* At the time you first took charge of the Advertiser, in the fall of 1847, it was understood by me that it was your intention to leave Bridgton the next spring, and to move your family at that time; but I cannot say that I ever had any conversation with you on the subject until some time in the spring of 1848. In the spring of 1848, I am quite confident it was at March Court, I conversed with you about the purchase of your property at Bridgton, and afterwards I received a letter from you, referring to our conversation at the court-house, and I replied to your letter. By my letter, which you produce, it appears that its date is April 3d, 1849.

*Question by same.* When you say that in the fall of 1847 "you understood that it was my intention to leave Bridgton the next spring, and to move my family at that time," do you mean to be understood as saying that you did not understand that I was to leave Bridgton and take up my own personal residence in Portland prior to moving my family? Did you understand from me or from any body, that I was to remain in Bridgton after my connection with the Advertiser?

*Answer.* It was my understanding, by what I heard, that you were to spend the time in Portland after you became connected

with the Advertiser, and that you were to move your family in the spring.

*Question by same.* While my children were sick or convalescent, were you at the house? Did you, at any time, notice that goods were packed, ready for moving? If so, at what time, as near as you can recollect?

*Answer.* I had occasion to be at your house at a time after the children were nearly well, and I think it was but a few days before your family moved; at this time, I remember that some of your goods appeared to be packed, preparatory to the removal. My impression is that the time above stated was within one week of the time when your family left Bridgton; but I do not speak positively as to the time.

*Question by same.* At the time my children were sick, were they or not dangerously so? How many of them? How long did I remain with them? Did I or not leave as soon as they were pronounced out of immediate danger?

*Answer.* Several children were sick; I cannot say how many. They were very sick; and two of them, at least, I considered to be dangerously so. I cannot say how long you remained at Bridgton at the time the children were sick. I think you came up to Bridgton more than once. I cannot say as to the last clause of the question. I do not know when they were pronounced out of danger.

*Question by same.* Was it or not at one of these times, while my children were sick, that you entered into the contract for my house with me?

*Answer.* I think so.

*Question by same.* Did I or not inform you that I had engaged a house in Portland, of which I was to have possession prior to June 1, 1848?

*Answer.* I understood you to say that you had engaged a house in Portland, and you feared that you might not get possession as soon as you desired, but I cannot remember that you stated to me the time when you were to have possession.

*Question by same.* Can you or not, upon reflection, remember that I told you that I had engaged a house, and was to have had possession of it prior to that time, but the occupant had not gone out according to agreement, and I therefore feared I might possibly not get it as soon as I wished—or to this effect?

*Answer.* I remember that you expressed a fear that you might not be able to obtain a house as soon as you might be ready to move, but the particulars I cannot remember.

*Question by same.* When I left Bridgton for Portland in the fall of 1847, did I or not sell off my horse? Was it or not a valuable family horse, and how long had I owned and used it as such?

*Answer.* While you lived at Bridgton you used several horses, which I supposed you owned. The last one I knew you to use was a white horse, a valuable family horse. I cannot tell at what time you sold him. My impression is that the horse named was not wintered at your stable in the winter of 1847–8, but I am not certain as to that.

*Question by same.* Do you or not know that this latter named horse had been used by me and my family for quite a number of years?

*Answer.* Yes.

*Question by same.* Had you any knowledge of the sale of two cows, heifer, sleigh, buffaloes, harnesses, &c. by me at the same time?

*Answer.* I have no knowledge about the sale of any of the property named in the question, but one cow. Rev. Zenas Thompson, as you informed me, had purchased one of your cows at \$25, and as you said Mr. Thompson desired me to pay you for her, which I did. This took place at the time you removed your family. I think I paid you for the cow on the day you left with your family, or the day before.

*Question by same.* Did you have occasion to notice my children as they were convalescing? Was or was not the youngest one still feeble at the time they went to Portland?

*Answer.* I do not remember that I saw any of the children at

the house who had been sick, except the time I have stated I was there, about a week before the family moved. I saw the one named in the question, at that time, who appeared yet quite feeble.

*Question by same.* Were you present at the annual spring town meeting in Bridgton, in 1848?

*Answer.* Yes.

*Question by same.* To the best of your knowledge, was Mr. Carter present?

*Answer.* He was not present.

*Question by same.* Have you been a very regular attendant on those meetings?—and since 1836, when Carter came to Bridgton, had you ever before known of his being absent?

*Answer.* I always attend all the town meetings when I am at home. I consider myself a “regular attendant.” I have generally found Mr. Carter there when I have attended myself, ever since he came to Bridgton.

NATH’L S. LITTLEFIELD.

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#### DEPOSITION OF ZENAS THOMPSON.

I, ZENAS THOMPSON, of Bridgton, in the county of Cumberland, and State of Maine, of lawful age, depose and say, as follows, to wit:—On the nineteenth day of June, A. D. one thousand eight hundred and forty-eight, I moved into Henry Carter’s house in said Bridgton. Mr. Carter’s family moved out of the house the same day I moved in. On the seventeenth of the same June, I saw Mr. Carter at the house with his family, at which time I purchased a cow of Mr. Carter. I took possession of Mr. Carter’s house and land under a contract that N. S. Littlefield had made with Mr. Carter.

*Question by H. Carter.* Do you or not know that the cow of which you speak had been engaged for you some time previous to you seeing Carter on the seventeenth of June?

*Answer.* Mr. Samson had the refusal of the cow for me, prior to the seventeenth of June, and I concluded the trade as above stated.

*Question by same.* Had you possession of the land prior to going into the house? If so, how long? and while making your garden near by the house, did you have occasion to see or learn any thing of the preparations by Carter's family to move? If so, about what time?

*Answer.* I should think I took possession of the land, and went to work on it about the twentieth of May, 1848, as near as I can recollect. While I was at work in the garden, should think somewhere between the twentieth and twenty-fifth of May, Mrs. Carter remarked to me at several times, that they were very busy in preparing to move. These remarks were made when I had occasion to be in the house, and as I understood, with reference to clearing the house, which I observed going on. The understanding I had was, that Mr. Carter's family would be out of the house by the first of June.

Z. THOMPSON.

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DEPOSITION OF JAMES MERRILL.

*Taken in behalf of the remonstrants in the matter of Henry Carter, claimant of a seat in the house of representatives.*

I, JAMES MERRILL, of Portland, of lawful age, do depose and say—I was warden of ward No. 2, in said Portland, and acted as such at the September election of 1848. I was present during the giving in of votes for representatives to the legislature, and during said election I was acting as warden during the whole of the election. I am acquainted with Henry Carter, the editor of the Advertiser. I have no recollection of receiving any vote from Mr. Carter at that election. Mr. Carter at that time resided at the corner of Franklin and Middle Street, in ward No. 2. He occupied a house there with his family. If Mr. Carter had voted on that occasion, I should have been likely to have recollected it.

*Question by H. Carter.* Are you well acquainted with Charles Holden, editor of the Argus? Did he at that time reside in ward No. 2? Can you testify positively whether he voted or not?



*Answer.* I am well acquainted with him. He resided in ward No. 2. I have no certain recollection that he voted. I have no doubt but that he did vote.

*Question by same.* Were you present with the ballot box all the time, from the opening to the close of the polls?

*Answer.* I was present all the time, unless I was absent from three to five minutes for necessary purposes.

*Question by same.* Was or not the name of said Carter borne upon the ward list of voters? If he had offered his vote would it not have been received?

*Answer.* It was borne on the list and would have been received.

*By remonstrants.* Were you present at said election during the whole time when votes were received?

*Answer.* I do not know that any was received while I was absent. I told the clerk not to receive any while I was absent.

*Question by H. Carter.* Has or not the clerk the right to preside and receive votes during the absence of the warden?

Objected to by the remonstrants, because it asks the opinion of deponent, as to a matter of law.

*Answer.* I do not know.

*Question by same.* Is it not customary for the clerk to preside in the absence of the warden?

*Answer.* I do not know.

JAMES MERRILL.

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JOHN C. TUKESBURY'S DEPOSITION,

*In the matter of Henry Carter, claimant of a seat in the House of Representatives of this State, the year 1849, taken in behalf of the remonstrants.*

I, JOHN C. TUKESBURY, of Portland, of lawful age, do depose and say, that I kept the check list in ward No. 2, during the election of September, 1848, during the absence of Harris C. Barnes, who was appointed by the said ward to keep the list.

I am acquainted with Henry Carter, editor of the Advertiser. According to the best of my recollection, I did not see him vote at that election, while I kept the check list.

On the day of election, or the day after, my attention was called to the question whether Mr. Carter voted at that election. I was talking with some one, and asked where he (Mr. Carter) was, and the person replied that Mr. Carter was not a voter, or something to that effect.

[H. Carter objects to all such conversation between deponent and some person unknown.]

The warden did not, to my knowledge, leave the box while I was keeping the list. Mr. Carter resides in Ward No. 2, and his name was on the check list,—*I think it was.*

JOHN C. TUKESBURY.

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#### DEPOSITION OF RICHARD DAVIS.

I, RICHARD DAVIS, of Bridgton, in the county of Cumberland and State of Maine, of lawful age, depose and say, as follows, to wit: I was a delegate from the town of Bridgton to the State Convention, called for the purpose of selecting delegates to the national convention at Philadelphia. I think that at the caucus at which I was chosen delegate, Henry Carter was also chosen a delegate. I carried Carter's credentials either to him or to the convention. He attended the convention at Augusta, and acted as delegate from the town of Bridgton, according to my best recollection.

RICHARD DAVIS.

## WARDEN'S RETURN TO THE CITY CLERK.

## STATE OF MAINE.

*County of Cumberland—City of Portland, ss.*

At a legal meeting of the inhabitants of ward No. 5, in the city of Portland, qualified by the constitution to vote for state, and county officers, and a representative in congress, holden on the second Monday of September, being the eleventh day of said month, in the year of our Lord one thousand eight hundred and forty-eight.

The said inhabitants gave in their votes for a governor; four senators for the second senatorial district; three representatives to represent them in the legislature of the state; a county treasurer for the county of Cumberland; one county commissioner; clerk of the courts, for said county of Cumberland; and for a representative in congress. And the same were received, sorted, counted, and declared in open ward meeting, by the warden who presided, and in the presence of the ward clerk, who formed a list of the whole number of ballots given in, and of the persons voted for, with the number of votes for each person against his name, and made a record thereof, in presence of the warden, and in open ward meeting, as follows, to wit:

*For Representatives in the Legislature.*

The whole number of ballots given in was three hundred and twenty-six.

The persons voted for severally received the number of votes following, to wit:

For William Goodenow, one hundred and forty-eight.

Henry Carter, one hundred and forty-six.

Elisha Trowbridge, one hundred and forty-five.

Byron Greenough, one hundred and fifty-three.

Harris C. Barnes, one hundred and fifty-three.

James T. McCobb, one hundred and fifty-five.

Daniel Gould, twenty-two.

Sargent Shaw, twenty-one.

Veranus C. Hanson, twenty-one.

Neal Dow, one.

Thos. Chadwick, one.

Simon Merrill, one.

T. McCobb, one.

Attest: SAM'L H. KING, *Warden pro tem.*

Attest: THOS. B. ROBINSON, *Ward Clerk.*

CITY OF PORTLAND—CLERK'S OFFICE, May 12, 1849.

The foregoing is a true copy of ward return, duly made to this office.

Attest: WM. BOYD, *City Clerk.*

—

*Vote thrown, as testified to by Robinson.*

"A."

REPRESENTATIVE TO CONGRESS

NATHANIEL S. LITTLEFIELD.

SENATORS

Leander Valentine,		Ephraim Sturdivant,
Charles Megquier,		John P. Davis.

*County Treasurer*—Henry C. Babb.

*Clerk of the Courts*—Charles C. Harmon.

*County Commis'r*—Stephen L. Waterhouse.

REPRESENTATIVES

7,		Harris C. Barnes,
		T. McCobb.

## DEPOSITION OF WILLIAM E. EDWARDS.

I, WILLIAM E. EDWARDS, of Portland, in the county of Cumberland and State of Maine, of lawful age, on oath depose and say, that in November, A. D. 1847, I entered into contract with Henry Carter, then of Bridgton, to aid me in the editorial department of the Portland Advertiser for an indefinite period. That at and about the time of entering into said contract, said Carter conversed with me freely in relation to his plans with reference to it, which were, to take up his own personal residence immediately in Portland, and to remove his family at his earliest convenience.

He also avowed to me his determination to make sale of his house and farm in Bridgton, or to exchange it, if he could find an opportunity, for a house in this city. In accordance with these plans, which he stated to me, he came to Portland, and soon after removed his library and office furniture into the office which he now occupies, and advertised as counselor and attorney at law in Portland. I engaged the office for him, at his request, and for an indefinite period. He also immediately advertised, in the Advertiser, his place in Bridgton, for sale or to be exchanged for a house in this city.

Mr. Carter has himself constantly resided in Portland since he first came here, in November, 1847, except occasionally short visits to his family in the course of the winter, and until he removed his family. To make these visits, he usually left Portland Saturday morning and returned Monday night. The only exception to this, which I remember, was in the spring, first part of May, when he remained in Bridgton several days, in consequence, as he informed me, of the severe indisposition of several members of his family, one or more of whom were dangerously ill. During that time, he wrote to me that he should return as soon as the children then dangerously sick, were considered out of danger, or if they died, as was daily expected, as soon as they were buried. In the spring of 1848, Mr. Carter conversed with me about finding a house for his family, and I directed his attention to the house he now occupies. This was some time before his family were removed here.

From the time Mr. Carter first came here, through the winter of 1847-8, I had occasional conversations with him, in which the matter of his residence in Portland was alluded to. He always expressed his intention of continuing to make Portland his permanent residence, and to move his family early in the spring, and never expressed to me any other intention.

The advertisement of his farm, &c. to which I have alluded, was dated November 23, 1847, and is as follows:

*"For sale.* A valuable and pleasant situation in Bridgton, (centre village,) consisting of a large and convenient house, recently built by the subscriber for himself, with eighteen acres of first rate tillage land, with convenient out buildings, &c. &c. The place is in one of the most flourishing villages in the county, and within a half day's ride, by stage and steamboat, of Portland. Being about to remove to Portland, the subscriber will sell, or exchange this stand for a good and pleasantly located house in this city. To any person wishing to retire from the city to a pleasant and convenient country residence, with a "little farm well tilled," a favorable opportunity is now presented.

*"Also—*A house, with a small piece of land attached, in Waterford, (lower village,) now occupied by Josiah Atherton.

*"HENRY CARTER."*

Mr. Carter commenced his editorial labors on Daily Advertiser of November 27, 1847.

WM. E. EDWARDS.

The remonstrants objected, before they were written, to the declarations and statement made by Mr. Carter, testified to by the deponent.

*Interrogatories propounded by remonstrants.*

*1st Interrogatory by remonstrants.* Was or not Mr. Carter's employment in the editorial department of the Advertiser an experiment, and was not his continuance in it understood, at the time he came to Portland, to be contingent upon his purchasing an interest in the proprietorship of that paper?

*Answer to 1st interrogatory.* It may have been an experiment, but not all contingent upon his purchasing an interest in the paper.

*2d interrogatory by same.* You were, in November, 1847, the time you speak of, one of the publishers of the Portland Advertiser, and have been so since? Why was he employed for an indefinite time?

*Answer.* There was no particular reason for it, as I am aware of, nor were there any expressed at the time. I was publisher of the Advertiser in November, 1847, and have been so since.

*3d interrogatory by same.* Do you know Mr. Carter was delegate from Bridgton to the State Convention held at Augusta the last of June, 1848?

*Answer.* His name was so published in a report of the proceedings of a Whig State Convention assembled at Augusta on Wednesday the 24th day of May, 1848. I have no personal knowledge of the fact.

*4th interrogatory by same.* Where did Mr. Carter's family reside before and until the time he removed them to Portland?

*Answer.* In Bridgton, in the county of Cumberland, State of Maine.

WM. E. EDWARDS.

#### DEPOSITION OF JOHN HENRY CARTER,

*Taken in behalf of Henry Carter.*

I, JOHN HENRY CARTER, aged twelve years, and residing in Portland, depose and say, I am the son and oldest child of Henry Carter. I remember that father left Bridgton to go to Portland, fall before last. He told mother that he was going to Portland to live, and that when the boat commenced running, he was going to move the family. I heard father tell this to mother, and then she told me. Father sold his horse to Mr. Howe; one cow to Augustus Perley, one cow to uncle Levi Carter; the heifer to Ariel Merrill. He sold his sleigh to John Augus. The harnesses, bridles and buffaloes, were carried to Mr. Wilder's shop, to be sold. This was all before father came down to Portland the first time. I and mother and the rest did not come down when father did, because

we were waiting for the boat. In the winter some books and some glass ware were packed up and boxed, ready to move. Some was done before I was sick, and some after. I was sick in the winter; I was sick afterwards in the spring; I was sick first with the measles in the winter; afterwards I was sick with the lung fever. This was at the time that two other of the children were sick; it was in the spring; I recollect of father's coming up in a chaise. After I recovered, there was more packing done; all the little things that we could pick up. Father came up Saturday night before we removed on Monday; all the packing was done, except packing some pictures. There was one cow left after those I have mentioned were sold. This one was sold before we moved to Mr. Thompson's and delivered to him when he moved into father's house. We kept this cow till the family left. We had a colt; we sent him off before the snow was off, to be kept through the rest of the winter and to be pastured in the spring. He has been sold this winter; the colt was four years old this spring. Father sold his wagon in the summer; he sold it before we moved; sold to Mr. Mead, of North Bridgton. I do not recollect how long before we moved that it was sold.

J. H. CARTER.

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DEPOSITION OF HARRIS C. BARNES.

*Taken in behalf of the remonstrants in the matter of Henry Carter, claimant of a seat in the house of representatives of Maine, for 1849.*

I, HARRIS C. BARNES, of Portland, of lawful age, do depose and say, that I was appointed by ward No. 2, at the September election in 1848, to keep the check list. I was present at that election during all the voting, except during twenty or thirty minutes. When I was absent, Mr. John C. Tukesbury took my place. I am acquainted with Henry Carter, Esq., editor of the Advertiser. I do not recollect that Mr. Carter voted at that election—could not



say whether he voted or not—have no recollection of it. I have the impression that I saw Mr. Carter there once. I have heard Mr. Carter say he was there. Mr. James Merrill presided as warden at that election. I think that Mr. Merrill left once; was gone but a very few moments. I cannot say that any one voted while the warden was gone. I have a strong impression that the box was closed while he was gone. I cannot say whether Mr. Carter voted or not while the warden was gone; could not say whether any one voted or not during that time. I think I have never known the clerk to receive votes while the warden was gone. I am not positive that it has not been done. I do not know that it ever has been done. I have no recollection of any instance when it has been done. I have been in the habit of attending the elections ever since Portland was a city, and have checked the list, I suppose, as much as any other one.

*Question by H. Carter.* Did you observe whether or not said Carter's name was borne on the list of voters?

*Answer.* I would not undertake to say whether I did see it on the list or not.

H. C. BARNES.

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#### DEPOSITION OF THOMAS CUMMINGS,

*Taken in behalf of Henry Carter, in relation to his right to a seat in the legislature, for the session of 1849.*

I, THOMAS CUMMINGS, of Portland, of lawful age, do depose and say, I am one of the owners of the house now occupied by Henry Carter. Some time last spring, I think in March, Mr. Carter called on me to hire the house, and agreed to take it, if Mr. Barnes did not have it. Mr. Barnes soon after this decided not to take it. I saw Mr. Carter afterwards several times, and it was agreed that he was to have the house. Mr. Edward P. Little then occupied the house. He had previously notified me that he should quit it at a certain time. Mr. Carter was to take possession from the time he moved. I then had no doubt that Mr. Little would move from the

house at a certain time, according to his notice to me. He notified us that he had purchased a house, and he thought he should move by the first of April.

*Interrogatories propounded by the remonstrants.*

*Interrogatory 1st.* Can you state at what time it was finally agreed Mr. Carter should have the house? At what time the bargain was finally concluded?

*Answer.* I suppose the bargain was final from the first.

*2d interrogatory by same.* Had Mr. Little a written lease, or did he hold under a verbal agreement?

*Answer.* Under a verbal agreement.

*3d interrogatory by same.* Did you consider yourself under an obligation to give Carter possession of the house till Mr. Little left it?

*Answer.* I did not.

*4th interrogatory by same.* Had Mr. Carter a written lease? When did his rent commence to be payable?

*Answer.* He had not a written lease. I cannot state the time when his rent commenced to be payable.

*5th interrogatory by same.* You are asked to answer a former interrogatory in a form a little different. Did you agree to give Mr. Carter possession of the house at the time Mr. Little thought he should move, or at the time he should move in fact?

*Answer.* He was to have the house as soon as Mr. Little left.

*Question by H. Carter.* At the time you engaged the house to Carter, had you any doubt that Little would move at the time he had notified you he would? Was there anything said between you and Carter at that time in reference to any contingency in case he did not move?

(The remonstrants object to this question, because it asserts that the witness had before testified that Little had notified him he would move at a particular time, which the remonstrants affirm the witness has not testified.)

*Answer.* I had no doubt at the time that he would, because it

was a free act of his own. There was nothing said in reference to any contingency.

*5th interrogatory by remonstrants.* Do you mean to say in the first part of your deposition, that Little notified you he should quit at a certain time, or that he *thought* he would quit at a certain time? Was the "certain time" you twice make use of in the first page of your deposition, the first of April?

*Answer.* The first time, he said he must move by the first of April; afterwards he told me he thought he should move by the first of April. He made use of both expressions, I think, at the same time. At the first time I talked with him, he said first, that he thought he should move by that time, and upon pressing him to know if he would move by the first of April, he said he must move by that time, and gave special reasons why.

THOMAS CUMMINGS.

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DEPOSITION OF RICHARD R. ROBINSON, TAKEN IN BEHALF OF  
HENRY CARTER.

I, RICHARD R. ROBINSON, of Portland, in the county of Cumberland and State of Maine, of lawful age, do depose and say, that in November, 1847, Henry Carter came to board in my family in Portland. At the time that Mr. Carter engaged to board with me and before he came to board, I knew from a conversation with him that he was coming to Portland to live, and that he intended to move his family in the spring. I received from Mr. Carter prior to his coming to board, or about the time, office furniture and books, which were placed in my store-house and kept for him till he came down. When he came down I delivered them to his order.

In the course of the conversation I had with Mr. Carter, he assigned as a reason for not moving his family till spring, that it was an inconvenient season to move in the fall. He also spoke of taking the winter to prepare.

Mr. Carter continued to board with me through the winter and spring, till his family arrived. His family came about a fortnight before the fourth of July, 1848. I think they came about the nineteenth of June. The family remained with me a week, while Mr. Carter was moving furniture into his house. During the time Mr. Carter boarded with me he used to leave about once a fortnight, on Saturday morning, to go to Bridgton, and returned the following Monday. He was absent once to Augusta, during the trial of Dr. Coolidge, as reporter of the Advertiser. Mr. Carter's wife is a sister of my wife. Once during the winter, Mrs. Carter, with one of the children, made a visit to Portland. I do not recollect that Mr. Carter was absent at any other times than those I have mentioned. At the time Mrs. Carter made her visit she remained about a week. While Mr. Carter boarded with me he alluded a good many times to his moving his family in the spring. I never heard him express any other intention. I frequently heard him express a wish to exchange his real estate in Bridgton for a house in Portland. I learned from him that the removal of his family was delayed by the sickness of several members of his family. This was several weeks before his family came that I learned this. I am sure it was some time in May. I learned from him five or six weeks before his family moved that he had engaged a house in Portland. About a month before his family moved he talked with me about boarding his family with me, and the reason he gave was, that Mr. Little, who occupied the house he had engaged, would not move out so soon as he had expected. About this time he went to Bridgton on account of the sickness of some of his family—remained about a week. When he returned, he gave as an additional reason for his not moving sooner, that several members of his family were very sick. I mean to say by my last answer, that I understood from Mr. Carter he was delayed in moving his family several weeks by the sickness of several members of his family, and that he should have moved into the house he had engaged if Mr. Little, who then occupied it, should remove in season; otherwise he should get his

family boarded here till the house was vacated by Mr. Little. At the time Mr. Carter moved his family, one of the children was feeble—not having recovered from its sickness.

[The remonstrants objected, before they were written down, to all declarations and statements of Mr. Carter testified to by the deponent.]

*Answers to interrogatories put by remonstrants.*

*1st interrogatory.* Did Mr. Carter state to you, in the conversations you have testified to, that he came to Portland with an expectation of having an interest in the proprietorship of the Advertiser? If so, did he ever take any interest in the same?

*Answer.* I think that in some of those conversations something was said in regard to some negotiation in regard to having an interest in the paper. I do not know whether he had any interest in the proprietorship of the Advertiser.

*2d interrogatory by remonstrants.* How many children had Mr. Carter at the time he came to Portland with his family? How old the youngest?

*Answer.* Six children. The youngest is about three years old.

*3d interrogatory by remonstrants.* Do you know at what time Mr. Carter was to have possession of the house he had engaged in Portland?

*Answer.* I do not know at what time he was to have possession. I got the impression from my conversation with Mr. Carter, when he told me he had engaged a house, that he was to take possession very soon.

*4th interrogatory by same.* Do you know from Mr. Carter or otherwise, of Mr. Carter attending a convention at Augusta, in June, 1848, as a delegate from Bridgton?

*Answer.* I know of his attending a convention at Augusta, in June, 1848. I do not know from Carter that he attended as delegate from Bridgton. I heard by rumor that he attended as delegate from Bridgton. I think I saw it so stated in some newspaper.

*5th interrogatory by same.* Referring to your last answer, did you see it so stated in the Portland Advertiser?

[Objected to by Mr. Carter.]

*Answer.* I have an impression that I did.

*6th interrogatory by same.* Where did Mr. Carter's family reside up to the time he removed them to Portland? Did or not they live in a house in Bridgton, belonging to Mr. C.?

*Answer.* I have heard Mr. Carter say so.

R. R. ROBINSON.

# REPORT OF THE MINORITY

## OF THE

### COMMITTEE ON ELECTIONS,

*On the Remonstrance of Wendell P. Smith et al., against the right of Henry Carter to a seat in this house.*

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The undersigned, differing with the majority of the committee on contested elections, in the matter of the remonstrance of Wendell P. Smith and others, against the right of Henry Carter to retain his seat as a representative from Portland, have thought proper to lay before the members of the house of representatives the reasons which have compelled them to dissent from the conclusions of the report of that committee.

Before proceeding to the investigation of the merits of the case, the sitting member objected that he had not received the requisite notice prescribed by law.

Chapter sixth, section fifty-one, of the revised statutes provides that,

“Whenever any person shall intend to contest, before the house of representatives of this State, the right of any person to his seat therein, who shall have been duly returned as a member thereof, he shall notify the person so returned of such intention, at least twenty days before the first Wednesday of January, by delivering to him in hand, or leaving at his last and usual place of abode, in writing, a specification of his objections to the validity of such return; provided, the meeting at which the person returned claims to have been elected, shall have been held at least thirty days

before the first Wednesday of January ; and depositions may be then taken, as provided in section twenty-four of chapter one hundred and thirty-three.”

The notice was not served on Mr. Carter until April 10, 1849. The committee unanimously decided, in accordance with what appeared to be the wish of the parties, after a hearing upon this point, to reserve its consideration until after a full hearing upon the merits of the case, with the understanding that the sitting member should then have the full benefit of this provision of law, in the same manner as if it had been definitely decided upon before entering upon the consideration of the merits of the case.

In view of the difference of opinion, on this point of the case, there was a manifest propriety in this course of the committee, prior to deciding upon the question of notice.

Although the provision of law, regulating notice, has long stood upon our statute book, plain, unequivocal and imperative in its terms, and has been long adhered to by successive legislatures, having received, years ago, after full discussion in the house of representatives, a most rigid and strict construction, we are aware that some contend, and the majority of the committee have come to the conclusion, that the law is not binding.

We admit that in one sense of the word the law is not binding. We admit that every house of representatives has the power and the right to judge of the election of its members. It has, indeed, the *power*, but we contend, in no true sense, the *right* to judge of those elections *not* in accordance with, but in defiance of the requisitions of salutary laws of long standing. It is true, that from the house there can be no appeal. There is no tribunal to revise and reverse its judgment, in cases of contested elections, even if it tramples down the plainest and most unequivocal provisions of law. If, therefore, the power to do a thing, in all cases, is equivalent to the right to do it, then may this law receive a rigid and strict construction by one house of representatives, and be utterly disregarded by another, just as circumstances and parties change, and as considerations of convenience or interest may dictate. The whole



matter may then become one of mere whim and caprice—a convenient shuttlecock affair, to be bandied backward and forward, in a popular assembly, to add to the excitement of political controversy, instead of being regulated, in all cases without distinction, by a fixed, impartial, wise and salutary rule of law. But we have no idea that the framers of the constitution, in giving to the house of representatives the power and right to judge of its own elections, contemplated any such exercise of power or claim of right. They contemplated, undoubtedly, that each house of Representatives would judge of its own elections, in accordance with the established provisions of law, relative to the same.

There is another view of this question of notice, worthy of consideration. There are some who will not admit that this law is, in all cases, strictly binding and obligatory; but will, we doubt not, admit that it is at least a *salutary rule*, which comes down to us, recommended by the solemn form of enactment and construction by former legislatures, which entitle it to respect, and call for its enforcement, under ordinary circumstances. That the rule is a salutary one, is too plain and obvious to require discussion. That extreme cases may be supposed, of gross violation of law, or fraud not discovered until after the prescribed time of notice had expired, in which justice and equity would seem to require that this law or general rule should be dispensed with, is not denied. But such supposed cases in which justice and equity would seem to require that this law should be dispensed with, are cases not at all likely to occur. The exceptions to its salutary operation must necessarily be few, very few indeed, and much less than usually attach to most general laws and rules. Adopting, then, this construction of the law, which we deem liberal in the extreme, we proceed to inquire whether, in this case, there has been any such fraud or corruption, any such flagrant violation of law and justice, or gross wrong and outrage upon the rights of the people, either proved or suggested, as calls upon the house of representatives to set aside this rule of law, in order to expel one who has been duly returned a member of this house.

The remonstrants urge against the right of Mr. Carter to retain his seat, that at the time of his election, he was not constitutionally eligible to the office.

The fourth section of the first part of article fourth of the constitution provides, that "no person shall be a member of the house of representatives, unless he shall, for the three months next preceding the time of his election, 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."

That Mr. Carter lived, and had his own personal residence in Portland, from November of 1847, to the time of the election, about ten months, is clearly proved, and not denied. But his family had not resided with him in Portland quite three months; although it lacked but a few days of that time. And the question next arises, whether the fact, that his family were not with him in Portland, during the whole time of three months preceding the election, prevented him, under all the circumstances of the case, from being himself a resident of Portland within the spirit and meaning of the constitution.

The facts, as they appear in evidence, are briefly these. In the fall of 1847, Mr. Carter resided in the town of Bridgton, where he had resided with his family since 1836. In November, 1847, he entered into an engagement to edit the Portland Advertiser, a paper printed at Portland, about forty miles from Bridgton. He made arrangements to take up his permanent residence in Portland, leaving his family to be removed in early spring, when it could be more conveniently done.

He sold off various articles of personal property, a horse, several cows, sleigh, harnesses, &c.; took his library and office furniture, and went to Portland. He there opened and advertised an office as counselor at law, and entered upon and continued in the discharge of his duties as an editor until the day of election. He boarded and lived in Portland all the time, except occasional, short, temporary absences. Several days before entering upon the duties of editor, he wrote an advertisement, which he caused to be pub-

lished, offering his real estate in Bridgton, for sale, or to be exchanged for a house in Portland; assigning, as a reason therefor, his removal from Bridgton to Portland. As early as March, the next spring, he engaged a house in Portland, and began to make preparations for the immediate removal of his family, when the severe illness of some of its members interfered to prevent it, and rendered it impossible to remove them, until the time, when it was finally accomplished. On the first of May, he entered into a written contract, leasing his house in Bridgton, to give possession on the first of June. It is in evidence, that his family held themselves in readiness to move in early spring, and that some articles were packed for that purpose, even during the winter.

These acts, together with the concurrent declarations of Mr. Carter, leave no doubt in our minds, that he left Bridgton in the fall of 1847, and took up his residence in Portland, with the full intention of making the latter his permanent place of residence, and with no intention of returning to the former town to reside; that his family were left behind, not because he designed to return himself to reside in Bridgton, but for other reasons to which we have alluded.

The remonstrants have attempted to rebut in some degree, the inferences, which must be drawn from the facts heretofore recited, by proving:

*First.* That Mr. Carter was taxed in Bridgton, in the spring of 1848, which tax he paid some time last winter.

*Second.* That he was not taxed in Portland in the spring of 1848.

*Third.* By evidence tending to prove, that he was chosen, by certain citizens of Bridgton, to represent them in a political convention in May, 1848, and did so represent them.

*Fourth.* By evidence tending to prove, that he did not vote in Portland, at the September election, although it appeared that his name was borne upon the ward voting list, and that he could have voted, if he had chosen to do so.

All these matters, even if clearly proved, do not show, that, from the time he left Bridgton, in the fall of 1847, to the day of his

election, he exercised or attempted to exercise, claimed or intended to claim any of the legal rights of a citizen of Bridgton. The fact, that one town taxes a man, and another town omits to do so, cannot affect his intentions or his rights, or change his legal residence; neither can we, under all the circumstances, draw any inference from the fact that he paid the tax, that he intended to claim the rights of a citizen of Bridgton, or that he even erroneously considered himself as legally a citizen of that place. This payment was made, long after the election, when, if he had supposed, that it would have had any influence upon the question, it would have been very easy for him to have refused to pay it. But it appears, that he owned a valuable real estate in Bridgton, for which he was liable to be taxed. The tax, which he actually paid, was almost wholly for that real estate. There was, in addition, only a poll tax, and a tax on personal property of twenty-two cents. It does not appear, that he made any inquiries as to the tax, nor is it positively sworn to, that he ever examined it. Under these circumstances, we can very easily conceive, that this tax may have been paid, without even exciting a single thought as to the question of residence.

Political conventions are not known to be regulated by law. There is no law or invariable usage, which requires, that a man shall reside in a town, in order to represent a portion of the inhabitants of that town, in a political convention. On the contrary, in political conventions, national, state and counties, a very different rule and practice have been frequently adopted. We have yet to learn the first case, in which a delegate to a political convention, fairly chosen by those entitled to be represented in that convention, has been rejected, because he did not reside in the same town as those who chose him; while it is notorious, that it is a common thing, for such delegates to act in such conventions.

Upon a full and careful consideration of all and several of these matters urged by the remonstrants, we see nothing in them to vary the conclusion, to which we are led inevitably, by the mass of other facts and circumstances in the case, viz:—That Mr. Carter left

Bridgton in the fall of 1847, and took up his own personal residence in Portland, with the intention of continuing to make it his permanent residence, and with no intention of returning to reside in Bridgton.

Upon the question, whether, under these circumstances, he was constitutionally eligible, many cases were cited before the committee, on both sides, to which the ordinary limits of a report will not permit us to refer. On the one hand, the remonstrants rely, very much, on the opinion of the supreme court of this state, in the seventh volume, Greenleaf's Reports, p. 501, in which the court say :

“ To the third question proposed, we answer, that a person, being a citizen of the United States, who supplies his family in one town, and resides, to *transact business*, in another town, during the three months next preceding the annual election, can vote for state officers in the town where his family resides, and in no other town. Under the *circumstances stated*, his domicile must be deemed to be where his family resides ; his residence in the other town is *only temporary*, and while there he cannot be considered at home.”

The remonstrants contend, in effect, that this case decides, that a man cannot, under any circumstances, maintain his family in one town, and himself reside and have a right to vote in another. We do not so understand it. The opinion is carefully worded, and is confined to the “ *circumstances stated*.” What are those circumstances ? Why, simply, that a man supporting his family in one town, goes into another to “ *transact business* ” three months before election. There is no pretense that he *intends* any removal or change of residence. On the contrary, the fact, that his family is left behind, being entirely *unexplained*, raises the presumption, that he intends to return to that town as his place of residence. And it is upon this that the case is made to turn, for the court say : under these circumstances his residence in the other town is *only temporary*. Indeed, there are very many decided cases, which might be cited, and some of very common occurrence, which must show conclusively, that such is not the correct construction of this opinion of the court in this case. Although it has been undoubtedly

so construed as to strengthen the popular but erroneous idea, that a man's residence is invariably where his family is, it cannot be properly so interpreted. Neither can any one fail to convince himself on reflection, that such an idea is an error—that, although ordinarily a man's residence is with that of his family, there may be, and are very many exceptions.

The remonstrants also rely upon a class of cases, which are to the point, that a man, in order to change his residence, must not only intend to change it, but he must actually change it;—that the act and intent must coincide. But this is begging the real question here at issue, which is, whether a man can change his own residence, without, at the same time, removing his family. Upon this question was cited, before the committee, the case of *Burnham et al. v. Rangeley*, more recently decided in the United States court, and reported in vol. 1st, Woodbury and Minot's Reports, page 8, in which the whole subject was discussed; and which we regard as decisive of this point. The following is an extract from the opinion of judge Woodbury :

“The whole question of domicile is usually dependent upon the intent of the party, though that is to be collected or inferred from acts as well as declarations. The acts are chiefly important as showing the intent.

It is manifest, then, from competent evidence, that the respondent, as early as October, had good reasons for changing his residence from the State of Maine to Virginia;—that he had come to the conclusion to change his abode bona fide and permanently, and that, under that determination, he then removed a portion of his family and furniture to the latter State; and has continued to reside there since on his plantation, making valuable improvements, showing *animum manendi* in various ways; and neither by acts nor words, evincing *animum revertendi*, or any intent to return to Maine to reside, except the *remaining of his wife and one daughter behind him in the State of Maine, occupying a house of his not sold till January, 1843, and using some of his furniture there.* This unexplained, would conflict with and impair the force of the other circumstances, but it is clearly shown that those persons were left behind only till further repairs were made to the house in Virginia—and these last being completed, they were to join him in the

ensuing spring; and that, being unwilling to go except in his company, they did not leave Maine till he came for them in September, 1843.

He then returned to this State, it is true, but not with a view of resuming his residence in Maine. It was directly the reverse. Nor did he return on account of his not having terminated that residence the previous year, but because he had terminated it, and wished to remove to his new domicile those, to whom it was not convenient or agreeable to join him earlier.

Leaving one's family behind, and especially only a part of them, did not, under such circumstances, however different it might have been under others, prevent the domicile from being changed. (Cambridge v. Charlestown, 13 Mass. 501.)

So a temporary return to one's family at a former place of residence, with views and for objects merely temporary, does not revive a former citizenship. (The Friendschaft, 3, Wheat. 14; S. C. 4 Cond. R. 109.)

It does not even if the party resides there during the winter and dies there. (Harvard College v. Gore 5, Pick. 370: 374.)

It is a general rule, likewise, that the wife follows the settlement and citizenship of the husband. (Story's Conflict of Laws, § 46.)

Her residence is also in subordination to his, though as before intimated, having an influence on his at times, if different, and if the cause of the difference is not explained consistently with his permanent removal elsewhere. (7 Greenl. 501, App.)

But here it is explained, and is not at all inconsistent with the position of his having changed his abode permanently.

It follows, then, that as for the purposes of jurisdiction in this court, a *permanent residence* generally constitutes citizenship, and controls our proceedings, and, as before the filing of the bill in this case, we are satisfied that the respondent has removed to Virginia with a view to make it his permanent abode, he was not at that time a citizen of Maine."

This case and those therein cited, in our judgment, fully warrant the conclusion to which we have arrived, that Mr. Carter was, for more than three months next preceeding his election, a resident of Portland.

Having thus traveled over the facts in this case, we return to the inquiry—what is there proved or even suggested in it, which calls upon us to set aside the provisions of the law requiring notice?

Has there been any wrong or fraud committed? Is there any pretense of illegal voting, or that the sitting member did not receive the suffrages of a decided majority of the votes, acting in perfect good faith and integrity? There is no such suggestion. It is a very common principle, that when the object of a law has been accomplished, and the reason for it ceases, its application also ceases. It is a very common profession, too, upon the *lips* of all political men, although their practice is sometimes widely different, that in all such cases, turning upon points of law, upon which men may well disagree, or doubt, the doubt should operate to give force and effect to the clearly expressed intentions of the constituents,—the majority of the people. Keeping in mind these principles, we can find no reason for setting aside a clear provision of law,—a salutary rule of long standing, in order to get at such a mere constructive quibble of law, as is relied on by the remonstrants in this case.

What was the object of this provision of the constitution? The supreme court of this state has once said, it was to provide that the voters might become acquainted with the candidate. It may be added also, that the candidate might be identified in interest and feeling with the interests and prosperity of the place, where he is voted for. Hence the importance of an intention to remain there, and consider it as his place of residence. Is there any object, then, of this provision of the constitution, which has not been accomplished? We can see none. This is one reason, then, why we would not set aside the law in regard to notice. Can any man read the case of *Burnham et al. v. Rangeley*, and say, if he is not satisfied that Mr. Carter was eligible, that he has *no doubt*, that he was not? That doubt, then, should operate to carry out the intentions of the people, and do substantial justice; and it furnishes an additional reason, why the house of representatives should not resolve itself into a judicial tribunal, and at one moment gravely undertake to pronounce unconstitutional a law which has received the sanction of many legislatures, and is still upon the statute book, as a guide and rule for all; and at the next moment grope for con-



stitutional quibble in opposition to a decision of the United States Court, which appears to us so plain as the one cited.

The remonstrants further claim, that James T. McCobb was elected, and is entitled to a seat in this house as a representative from Portland, instead of Mr. Carter. But the undersigned do not deem it of importance to extend this report, already longer than was intended, by any extended comments upon the facts, which will come before the house, on this point ; except to express our conviction, that no such claim can be supported upon any just principle of law and equity.

WM. S. COCHRAN,  
CHAS. A. SPOFFORD.

# STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, June 4, 1849.

ORDERED, That 500 copies of the foregoing Reports be printed for the use of the house.

E. W. FLAGG, *Clerk.*