

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE.

1860.

SIEVENS & SAYWARD, PRINTERS TO THE STATE.

1860.

THIRTY-NINTH LEGISLATURE.

HOUSE.

No. 2.

R E P O R T

OF THE

COMMITTEE ON ELECTIONS,

To which was referred the credentials of George L. Cleaves, of Bridgton, together with the Remonstrance of Alvin Davis and 13 others, against the right of said George L. Cleaves, to a seat in this House.

The Committee on Elections, to which was referred the certificate of the election of George L. Cleaves of Bridgton, together with the remonstrance of Alvin Davis and thirteen others, citizens of Bridgton aforesaid, against the right of George L. Cleaves to a seat in this House, from the representative district composed of Bridgton, in the county of Cumberland, have had the same under consideration, and report, that the certificate of George L. Cleaves is in due form of law, as follows :

STATE OF MAINE.

At a legal meeting of the inhabitants of the town of Bridgton, in the county of Cumberland, qualified by the constitution to vote for representatives, holden on the second Monday of September, being the twelfth day of said month, in the year of our Lord one thousand eight hundred and fifty-nine, the said inhabitants gave in their votes for a representative to represent them in the Legislature of the State ;

and the same were received, sorted, counted and declared in open town meeting, by the selectmen, who presided, and in presence of the town clerk, who formed a list of the whole number of ballots given in, and of the persons voted for, and made a record thereof, as follows, to wit :

The whole number of ballots given in was five hundred and ninety-five. The persons voted for, severally received the number of votes following, viz :

For George L. Cleaves, three hundred and forty-nine (349) votes;
Elisha Strout, two hundred and forty-six (246) votes.

LUTHER BILLINGS,	} <i>Selectmen.</i>
JACOB CHAPLIN,	
JOHN KILBORN,	

Attest—L. M. BURNHAM, *Town Clerk.*

The remonstrants allege “ that there was no article or specification in the warrant of the selectmen of the town of Bridgton, for the election of State officers, at which the said George L. Cleaves claims to have been elected, or the election of a representative to the State legislature, as the constitution and laws of the State require ; and the electors of the said town of Bridgton could not constitutionally and legally, under said warrant, proceed to vote for and elect a member of said House of Representatives, or give any person by reason of such election, any right to a seat in said House ; and they claim that there is a vacancy in said House of Representatives, by reason of no constitutional and legal election of any member of the House, from the district composed of Bridgton in the county of Cumberland.” They introduce the deposition of L. N. Burnham, clerk of the town of Bridgton, who testifies to a copy of the town warrant, in which the specification to choose a representative to the legislature does not appear. He further testifies that he was not aware of the omission in the warrant, at the time he signed the certificate of election, and did not discover it until he recorded the warrant and doings of the meeting.

It was in evidence before your committee, that the discovery was not made until two weeks after the meeting for choice of representative.

The Bridgton Reporter was offered in evidence, a weekly newspaper published in Bridgton, which has an extensive circulation in

the town, in which the warrant calling the annual meeting was published on the second day of September, A. D. 1859, in form and manner following :

TOWN WARRANT.

To JOHN KILBORN, Jr., constable of the town of Bridgton, in the county of Cumberland, *Greeting :*

In the name of the State of Maine, you are hereby required to notify and warn the inhabitants of said town of Bridgton qualified under the provision of the constitution and laws of the state, to vote for state officers and county officers, to meet and assemble at the town house in said town, on the second Monday of September next, it being the twelfth day of said month, at one o'clock, P. M., to give in their votes

For a governor of said state for the next political year ;

For four senators for the second senatorial district in the next legislature of the state ;

For a Representative in the next Legislature of the State ;

For a county attorney for Cumberland county ;

For county treasurer for Cumberland county ;

For a county commissioner for Cumberland county.

The selectmen will be in session at the town house, at ten o'clock, A. M., to hear and decide on the application of persons claiming the right to vote at such elections.

Dated at Bridgton, August 19th, A. D. 1859.

LUTHER BILLINGS, } *Selectmen of*
JOHN KILBORN, } *Bridgton.*

A true copy—Attest : JOHN KILBORN, *Constable of Bridgton.*

Bridgton, August 22, 1859.

It did not appear that the town had ever directed how its meetings should be warned, whether by publishing the warrant in the newspaper, or posting it, or otherwise ; but it did appear in evidence, that the town was thoroughly canvassed upon this very question of Representative to the Legislature, and that a full vote was polled ; and that no objection was made as to the legality of the election, until two weeks afterward, and that it has never been contended that any one was injured or deprived of his right of franchise upon the day of the election, by reason of any omission in the warrant.

Article 2, Section 4, of the Constitution of Maine, declares—That the election of Governor, Senators and Representatives, shall be on the second Monday of September annually forever.

Article 3, Section 5—The meeting for the choice of Representatives, shall be warned in due course of law, by the selectmen of the several towns, seven days at least, before the election, and the selectmen thereof shall preside impartially at such meeting, &c.

Chapter 4, Section 17, of the Revised Statutes, provides, that in case the Selectmen are absent, or refuse to act, others may be chosen in their stead, *pro tempore*, and perform all the duties and be subject to all the liabilities, &c.

All parts of the constitution or statutes are to be taken together, and so construed, as to make if possible, a uniform and consistent whole; and all point to the great principle asserted in the declaration of rights, that all power is inherent in the people, and all free governments are founded in their authority and instituted for their benefit.

Section 4, Article 2, of the Constitution, is a *positive declaration* that the election *shall be held* for the choice of certain officers, upon a certain day—a *Representative to the Legislature* is one of the officers that shall be chosen upon that day.

Section 5, Article 3, is a *direction* to the *officers*, whose duty it is to warn such meetings, and preside therein.

The framers of the Constitution, or those contemporary with them, who are supposed to have understood its meaning and true construction, understanding this 5th Section of Article 3, as merely directory, and perceiving the difficulties that might arise under it, by the neglect or design of the selectmen in the several towns, provided by statute, that in the absence of the selectmen, or their refusal to act, others might be chosen at that time, without any meeting called for the purpose, and perform all the duties and be subject to all the liabilities, &c.; and the same provision is incorporated in the Revised Statutes, Chapter 4, Section 17, as before referred to.

Your committee have therefore arrived at the conclusion, that as the people are required by the Constitution to assemble on the second Monday of September, annually, forever, and give in their votes for Representative to the Legislature, that an omission by the selectmen (by design or otherwise) to insert an article or specifica-

tion in the warrant (to choose a Representative to the Legislature) calling the meeting for the choice of State officers on the second Monday of September, cannot *invalidate* the election, and thereby disfranchise the legal voters in said town, especially when it is *not shown* that any one is injured by such omission; but on the contrary *it is shown* that all parties acted in good faith and conscience. Your committee came to the further conclusion, that George L. Cleaves is legally and constitutionally elected a Representative from the district composed of Bridgton, in the county of Cumberland, and is therefore entitled to a seat in this House, as the member from that district; and that the remonstrants have leave to withdraw.

All of which is respectfully submitted.

E. W. WOODBURY,
JOSEPH PORTER,
F. WEBBER,
TIMOTHY ROWELL,
LEWIS WYMAN,
B. B. THOMAS.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Jan. 24, 1860.

Laid on the table, on motion of Mr. Robie, and 350 copies ordered to be printed for the use of the Legislature.

CHARLES A. MILLER, *Clerk.*