

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

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FORTY-FIFTH LEGISLATURE.

HOUSE.

No. 35.

The Committee on Elections of the House, to which was referred the petition of Timothy H. Hubbard of North Berwick, in the county of York, praying that as "at the last annual election, he the said Hubbard was duly elected a Representative to this Legislature from the classed towns of North Berwick and Berwick, in said county of York, and hence is entitled to a seat in this House, and prays that after due consideration had he may be admitted thereto," have had the same under consideration, heard the evidence, which is herewith submitted, in the annexed depositions, said depositions being the only evidence before said Committee, and ask leave to report, that the petitioner have leave to withdraw.

Per order.

JAMES F. MILLER.

The undersigned not concurring in the report of the majority of the Committee on Elections, to whom was referred the remonstrance of Timothy H. Hubbard against the claim of John H. Hammond to a seat in this House as representative of the classed towns of Berwick and North Berwick, respectfully submits the following

MINORITY REPORT.

By the summary of votes returned to the Governor and Council by the Selectmen of the said towns of Berwick and North Berwick, the vote for representative appeared to stand thus :

For John H. Hammond, - - -	359
For Timothy H. Hubbard, - - -	358
For Timothy Hubbard, - - -	1

Whereby John H. Hammond appeared to be elected by a plurality of one vote.

This remonstrant Hubbard, claims the seat by two majority for the following reasons, viz :

First, Because the vote of John Stack of North Berwick for John H. Hammond was illegal, and improperly received and counted, said Stack being an unnaturalized foreigner, which being proved, ties the vote between Hubbard and Hammond.

Second, Because a vote was thrown in the town of Berwick for Timothy Hubbard, which vote was cast and intended for this remonstrant Timothy H. Hubbard, but was not counted for him. This being proved, gives to Hubbard, the remonstrant, a majority of one vote.

Third, Because a vote cast in the town of North Berwick by one Isaiah Buffum, for this contestant Timothy H. Hubbard, was not counted for him as it should have been. This being proved gives to Hubbard a majority of two votes.

The claimant Hammond assails as illegal, the votes of Sidney Nelson, John H. Lougee and Charles A. Brown in the town of Berwick, and John F. Hayes and John D. Bumford in the town of North Berwick, all whose votes he alleges were cast for Hubbard.

It may not be amiss, before entering upon an examination of the testimony bearing upon each of the questioned votes, to state the long-settled, well-known principle of law, that, "Every vote cast is presumed to be a legal vote, and this presumption can only be rebutted by the most direct and unequivocal testimony."

The reasons on which this presumption is based are so obvious and so generally known, that it is hardly necessary to state them to those versed in law or legislative proceedings, except for the purpose of refreshing the memory.

The casting an illegal vote involves the commission of a grave misdemeanor or crime by the person casting it, and also by the selectmen if they are cognizant of the fact at the time, as well as by those bystanders who may chance to have knowledge of the fact. At best, it leaves the conduct of the selectmen and of the bystanders open to suspicion,—of misconduct at least. Every man is presumed to be innocent until proved guilty, and every act is presumed to be a legal one until the contrary is proved beyond any reasonable doubt.

We now pass to a synopsis of the evidence touching each of the votes in controversy, together with references to the law bearing upon and deciding each of those upon which any question of law has been or can be raised.

First, That John Stack was an unnaturalized foreigner, appears from his own testimony ; that he voted for John H. Hammond appears from the testimony of John M. Came. Hammond produces no testimony in rebuttal or contradiction, hence Stack's vote must be rejected and deducted from the sum of the votes for Hammond, which makes the votes for Hubbard and Hammond equal.

Second, The vote in the town of Berwick cast for Timothy Hubbard was not counted for this contestant by the town officers, though the testimony plainly and conclusively shows that it should have been thus counted. Elijah Horn testifies that he threw the ballot ; that he cut from a Cony or Republican ballot the name of John H. Hammond for Representative, and asked Sylvanus P. Brackett to write the name of Timothy Hubbard under the printed letters "For Representative" ; that Mr. Brackett did write the name as requested ; that he (Horn) did not know that this contestant Hubbard had any middle name ; that he intended to vote for this contestant Timothy H. Hubbard, and supposed when he cast his ballot he was voting for him. The Timothy Hubbard ballot is then produced and the deponent identifies it.

Sylvanus P. Brackett corroborates Mr. Horn in every particular and says when he wrote the name Timothy Hubbard, he intended to and supposed he was writing the name of this contestant Hubbard, and did not know that he had any middle name.

John Hurd, Chairman of the Selectmen of Berwick says in his deposition, that after election he had a conversation with Mr. Brackett, and he was then satisfied that the Timothy Hubbard vote was intended for this contestant Timothy H. Hubbard. Hammond does not contradict or rebut.

The intention in such case must govern. [Strong, petitioner, 20 Pick. 493 Public Documents of Maine, Senate No. 6, 1864 ; Smith v. Stetson.]

The admission of Hammond that there is no other Timothy Hubbard than this contestant in the Representative District composed of the classed towns of Berwick and North Berwick, places the written vote beyond all doubt or question. This then elects Hubbard by one majority.

Third, The "trimmed vote" cast in North Berwick, from which the lower portion of the letters comprising the name of Timothy H. Hubbard was cut, Hubbard claims was intended and should have been counted for him, and introduces the depositions of Ben-

ajah Hall, one of the Selectmen, John Johnson, Town Clerk, Isaiah Buffum who cast such a vote, and Thomas L. Hoitt who was present at the assorting and counting of the votes at the closing of the polls on election day, and saw the ballot.

Mr. Gilman Ham, Chairman of the Selectmen, whose deposition was presented by Hubbard, testifies that he has no recollection of seeing the vote and could have had no voice in authorizing it to be thrown among the mutilated votes. From all the testimony, it appears that Mr. Butler, the other Selectman, was absent during the whole or greater portion of the day, and did not see the trimmed ballot.

Mr. Benajah Hall desposes and says, that he was present officiating in his capacity of Selectman at the polls in North Berwick on the day of the annual State election in September last; that at the assorting and counting of the votes, one was discovered with the lower portion of the letters composing the name of Timothy H. Hubbard, in print, for Representative, cut off; that about one-third part of each letter was cut off; that every letter was legible and the name could be clearly and distinctly read; that much the larger portion of every letter composing the name Timothy H. Hubbard, was left on the ballot; that it was a Cony or Republican ballot with Hubbard's name printed on for Representative; that it was thrown among the mutilated votes at the assorting and counting, and was not counted for Hubbard; that no vote with Hubbard's name cut, scratched, torn or otherwise mutilated was counted for him; that this was the only vote that he saw with Hubbard's name cut in this way; that when he saw the vote in the assorting and counting, he thought the person who cast it intended to cut the name of Timothy H. Hubbard off. The ballot being shown to Mr. Hall, he identifies it.

On cross-examination he says, if the ballot shown is not the one in question, it is just like it.

In the description of the ballot Mr. Hall is fully corroborated by Buffum, Hoitt and Johnson. Buffum and Hoitt identify the ballot. It was not shown to Mr. Johnson, whose deposition was taken some time prior to the taking of Hall's, Hoitt's and Buffum's. Hoitt says on cross-examination, if the ballot produced is not the one he saw on election day among the mutilated votes, it is just like it. Buffum says on cross-examination, if that is not the vote I cast, it is as like it as two peas in a pod. They all testify that

the name of Hubbard was printed, the large letters only in capitals and that two-thirds of each of all the letters comprising Hubbard's name were left on the ballot.

Buffum further testifies that he cast the ballot; that the Cony or Republican votes with Hubbard's name for Representative were "awkward things," larger than the full Republican ballot, and *he trimmed this one to cast*; that he laid it down on a board or seat, and trimmed it with his knife; that *in trimming it the knife followed the grain of the wood, and cut into the letters, as before described*; that he had no other ballot of the same kind, and being somewhat in a hurry cast that; that he *intended it to be counted for Hubbard*; that the *cutting into the letters was accidental and not intentional*.

Mr. Hall is corroborated in his assertion that this cut ballot was thrown among the mutilated votes, and not counted for Hubbard by the Town Clerk, Mr. Johnson, who threw it among the mutilated votes, and Mr. Hoitt. Mr. Johnson also deposes that no ballot with any portion of the letters comprising Hubbard's name cut off was counted for him, showing that Buffum's ballot was not counted.

Mr. William B. F. Davis testifies in regard to a Democratic vote with Hubbard's name cut, which cannot be the same ballot as the one testified of by Messrs. Hall, Buffum, Johnson and Hoitt, because Mr. Davis says of the ballot he refers to: 1st. It was a regular *Democratic* ballot. 2d. The *whole* name of Timothy H. Hubbard was *printed in capitals*. 3d. Some of the letters, viz., I, M, O and Y, in the christian name, were entirely cut off, rendering it certain that Mr. Davis does not contradict Messrs. Hall, Johnson, Buffum and Hoitt, but *refers to another ballot*, about which Mr. Hubbard makes no question, and which is not in the case. Mr. Davis says the ballot which he refers to was among the mutilated votes, which so far corroborates Mr. Hall in the declaration that no cut ballots were counted for Hubbard. Hubbard makes no claim to the vote testified of by Davis. Hall, Johnson, Buffum and Hoitt then stand uncontradicted.

From all the testimony it is clear, beyond a reasonable doubt, that the ballot presented was the one cast by Buffum; that it was intended for and should have been counted for this contestant, Hubbard; that it was not counted for him, but was thrown among the mutilated ballots.

If any doubt of the identity of the ballot exists, and we give the benefit of that doubt to Hammond, it in no wise alters the case, because the testimony then stands the same upon all other points, viz: first, that a ballot cut in the manner described was cast and intended to be counted for Hubbard by the voter casting it; and second, that just such a ballot was found in the box, and was not counted for Hubbard, but was thrown among the mutilated votes.

It is clear that Hubbard is entitled to the benefit of that ballot upon the familiar principle that in case of a doubt the intention governs, especially where there is no act inconsistent with the intention, or where the act apparently inconsistent with the intention is susceptible of explanation. The seemingly inconsistent act of cutting is fully explained by Mr. Buffum.

That the ballot fulfilled all the requirements of the law is too clear to be questioned. It was "clearly and legibly printed," and had no distinguishing marks beyond the names voted for and the offices to be filled: and even had this not been the case, when once it was received into the ballot-box, it could not have been rejected. (Rev. Statutes, 1857, chap. 4, sect. 22.) This ballot then being counted for Hubbard, he is elected by two majority.

On the other hand, Hammond claims to diminish the vote for Hubbard by five, by disfranchising Sidney Nelson, John H. Lougee, Charles A. Brown, John F. Hayes, and John D. Bumford, all of whom, as before stated, he claims voted illegally and for Hubbard.

First, Sidney Nelson. Jesse R. Horn deposes that Sidney Nelson worked for him from May, 1865, until after the State election in September last; that on the day of election Nelson told him he had been to the polls; that he knows he (Nelson) lived in Berwick after the 13th of June last; that some days prior to this Nelson asked him for money, saying he wanted to pay his board in Somersworth, N. H., and move into Berwick; that he did not pay him the money until June 13th; that he knows nothing of Nelson voting except from what Nelson told him; that he made an entry on his book at the time he paid Nelson the money. He was requested by Hubbard to produce his book, and expressed his willingness to do so, but it appears did not produce it.

Mrs. Melissa Tibbetts testifies that Nelson commenced boarding with her, in Berwick, on the fourteenth day of June last.

Mrs. Clarissa Whitehouse testifies that Nelson boarded with her in Somersworth down to Tuesday, the thirteenth day of June ; that his work was up on Saturday, the tenth day of June ; that when he left he paid her in full ; that the amount he paid her was ten dollars and a half ; that he paid three and a half dollars per week ; that he had boarded with her three weeks the Saturday before she alleges he left.

John Hurd, Chairman of the Selectmen of Berwick, testifies that Nelson voted, but how or for whom he does not know. He saw Republican votes with Hubbard's name on for Representative, and and Democratic votes with Hammond's name for Representative.

William Stanley testifies that he saw Nelson in the Town House with a vote in his hand ; the vote which he saw had Timothy H. Hubbard's name for Representative on it ; cannot say that he had not another vote in his hand ; saw him pass through where voters passed to vote, and heard his name called ; did not see him vote ; the passage way was public for anybody ; don't know that all those whose names were called, or that passed through the passage way, voted ; am sixty-seven years old ; use spectacles ; can read without them if the writing or printing is some distance off, but cannot if it is near ; was within two feet of Nelson when I saw the vote in his hand ; *can't say whether Hubbard's name was printed or written on the vote which I saw in Nelson's hand.* Other people passed through the passage way at the same time with Nelson, both in front and rear of him ; don't recollect who any of them were ; know most of the voters in town.

This is all the testimony touching Nelson's vote and his right to vote. The only fact positively proved is that he voted. It is not proved beyond a reasonable doubt that he was not a voter, or that he voted for Hubbard. Mrs. Whitehouse's testimony is contradictory in itself. She says Nelson paid her in full when he left ; paid her ten and one half dollars at three and one half dollars per week, and that he had boarded with her three weeks the Saturday prior to his leaving on Tuesday ; that she made no discount or reduction on his bill. She is clearly mistaken either in regard to the time he left or the amount he paid her. If he paid her but ten dollars and a half in full, then he paid her down to Saturday, June 10th. The most rational supposition seems to be that he left on Saturday, the 10th, but did not pay her until Tuesday following, and she has mistaken the day of payment for the day of leaving. This suppo-

sition is fortified by the declaration of Mr. Horn, that Nelson came to him for money to pay his board and move into Berwick some few days before he let him have it ; that he let him have the money on Tuesday, June 13th, the day that Mrs. Whitehouse says he paid her. There is no evidence that he went directly from Mrs. Whitehouse's to Mrs. Tibbetts' ; in fact, the testimony is to the contrary, for Mrs. Whitehouse says he left there on the 13th, and Mrs. Tibbetts says he did not commence boarding with her until the 14th, so that in any event there was an interim between his leaving one place and going to the other. If he did not pass that interim in Berwick, it is incumbent upon Hammond to prove the fact, the burden of proof being on him, and the presumption being in favor of Nelson, the voter, who is entitled to the benefit of every doubt. If he did go to Berwick on the tenth of June, then on election day, which was the eleventh of September, he was a voter.

From all the testimony bearing upon the point, it is not settled beyond a reasonable doubt that Nelson was not a voter. But even if it was proved conclusively that Nelson was not a voter, there is no evidence that he voted for Hubbard, or that he voted for either of these contestants or for anybody for Representative. Stanley's testimony proves nothing. But if his testimony is received without any question, it simply proves that Nelson had a vote in his hand with Hubbard's name on it. It may well be supposed that this testimony would apply to a majority of the Republican voters in Berwick who went to the polls on election day, and no doubt a majority of the Democrats that went to the polls on the same day had votes in their hands with Hammond's name for Representative on them. Stanley says that Nelson might have had other votes in his hand at the time. Granting all this, the evidence utterly fails to prove that he cast a vote for Hubbard. But the correctness of Stanley's testimony may well be reasonably doubted, and if reasonably doubted, there is no proof beyond doubt that he even had a vote with Hubbard's name on it in his hand on that day. If Stanley saw the vote so clearly as to be able to swear with positiveness that he saw the name of Timothy H. Hubbard on it, (a name not very dissimilar in appearance from that of John H. Hammond,) is it not reasonable to suppose that he had to scrutinize it with sufficient closeness to know whether it was printed or written? And when he swears that he doesn't know whether the name was printed or written, can it be said that it is proved be-

yond a reasonable doubt that he saw the name? Unquestionably not. Again, it does not appear that Mr. Stanley took any particular interest in Nelson, or had any special reason for remembering that Nelson passed the ballot-box at a certain time, and yet although Nelson was preceded and followed by others, he cannot remember any person before or behind him, but only remembers Nelson. From all the testimony it seems clear that to detract a vote from Hubbard upon it would be working a gross injustice, and bring censure and the charge of prejudice and unfairness upon those assuming so grave a responsibility.

Second, The next vote assailed by Hammond is that of John H. Lougee. That he voted in Berwick for Timothy H. Hubbard for Representative is proved by his own testimony. Was he a voter? Hammond says not, and introduces the deposition of Mark E. Marshall to sustain his assertion. Marshall deposes, that on the day of election he had a conversation with Lougee; that he asked Lougee where his family was, and Lougee answered that they were in Barnstead; that Lougee remained in Berwick to his knowledge, two or three weeks subsequent to election. On cross-examination, Marshall says that he doesn't know and never heard Lougee say that he had any family other than a wife; that at the said conversation on election day Lougee told him that his wife had *run away and left him*. This is all the testimony introduced by Hammond to support the charge of illegality against Lougee's vote.

Hubbard, in rebuttal, introduces John H. Lougee himself, who testifies that before going to Berwick to live he lived in Dover; that he left Dover without any intention of ever returning; that he went to Berwick to live in April last; that when he went there he made a contract for hire for the term of one year; that that was his home; that he had no intention of going elsewhere until some time after election; that he now lives in South Berwick to which place he moved from Berwick; that he, in company with another man, bought out a stock of merchandise in South Berwick, and procured a release from the man in Berwick to whom he was under contract; that he had no thought of leaving Berwick until two days before he bought out the stock of goods in South Berwick; that until that time his intention was to make Berwick his home permanently; that during the summer his wife ran away and left him, and she has not lived with him since; that he does not support her and will not unless and until she returns to him.

Lougee is in no respect contradicted. It is not questioned that he had been in Berwick long enough to become a voter, nor is it questioned that he himself lived there at the time of election and afterwards; nor is his intention to make Berwick his permanent home, questioned. The only fact against him is that his wife ran away and left him, and for this reason we are asked to disfranchise him and declare that he has committed an offence against the law by voting illegally, a proposition absurd in law and monstrous in fact. Even had she gone away with his knowledge and consent and established herself elsewhere, he would have lost no legal rights, for the domicile of the husband is the domicile of the wife, and not her domicile his. [Story's Conflict of Laws, Section 46; 7 Greenleaf, 501 Appendix; *Greene v. Greene*, 11 Pick., 415.] That Lougee acquired a domicile in Berwick more than three months prior to election is fully proved, as well as the fact that he retained it until, according to the testimony upon the part of both Hubbard and Hammond, several weeks after election. Lougee's vote then stands untouched.

Third. Hammond assails the vote of Charles A. Brown, who, it appears from the evidence, voted in Berwick for Hubbard. The grounds upon which he assails Brown's vote are, first, because he voted in a New Hampshire regiment in the March 1865 Congressional election, and second, because he claims that Brown's domicile was in New Hampshire.

The first proposition is proved beyond a reasonable doubt. In regard to the second proposition, he introduces John Jones, who testifies that Brown and his wife boarded with him (Jones) four weeks in the summer of 1865, in Somersworth, N. H. This is all the testimony introduced by Hammond touching Brown, except such as relates to his voting, which being taken as proved, the evidence need not be recapitulated.

Hubbard introduces Charles A. Brown himself, who testifies thus: My home and the only home I have is in Berwick; I was born in Berwick, and always lived in Berwick, and never had any home elsewhere; I served in the army of the United States four years; I enlisted in a New Hampshire regiment upon the quota of New Hampshire; I was described in my enlistment and discharge papers as of Berwick, and always described myself as of Berwick; when I went to war I left my wife at my home in Berwick, and when I was discharged from service in May last, I returned to my

home in Berwick. On cross-examination he says : During a portion of the time of my enlistment my wife drew State aid from New Hampshire ; while I was absent in the army my wife left my home in Berwick without my knowledge or consent, and went into New Hampshire for a time to board ; I voted in the army last March for member of Congress as a New Hampshire soldier ; I boarded in New Hampshire three or four weeks last summer for a temporary and specific purpose, namely, to be near my business for the time being ; I had no intention of remaining in New Hampshire or changing my domicil from Berwick ; I am twenty-two years old.

Reputedly he was asked if he had not had conversations with various town officers of Somersworth, N. H., wherein he had stated that his home or domicil was in Somersworth, N. H. His inevitable reply was that he had had conversations with said town officers in regard to bounty, but he had no recollection of ever telling any of them that his home was anywhere but in Berwick. The question was then put to him, "If you did make such a statement to the town officers or any of them, was it true or false ?" His answer is, "I have no recollection of so stating, but if I did I fell from truth in making the statement, and if I so stated I only did it to get my bounty. I never had any domicil in New Hampshire except such as a soldier may acquire ?"

In all his testimony Brown stands uncontradicted, not one of the town officers of Somersworth having been called to testify to any conversation with Brown, or to show that he had ever stated that his home or domicil was in New Hampshire, although Hammond took the deposition of Albert F. Smith, the Town Clerk of Somersworth, N. H., one of the town officers to whom this insinuated statement is by implication charged to have been made. Smith testifies to no such statement, nor is he inquired of in regard to any such statement. This attempt therefore to force Brown into the desired acknowledgment must be considered as an ineffectual ruse and unsuccessful strategy of counsel. There is no evidence that any such statement was made by Brown. Reverting then to the proved facts in the case, we find them to show,

First, That Brown voted in March, 1865, in a New Hampshire regiment. Whether that vote was legal or illegal is not a subject of inquiry now. Whether legal or illegal it has no bearing upon the legality of his vote in Berwick in September, 1865, because if

it was legal it is proved that in May, 1865, four months before the September election, he was discharged from the army and returned to or made his domicil in Berwick. That he had his domicil in Berwick in May is uncontradicted and undenied. Did he change it prior to the election in September at which he voted? He swears not, and at the same time admits that he boarded three or four weeks in the summer in Somersworth, N. H., with Mr. John Jones, and returned to Berwick. He further swears that this stay in Somersworth was for a temporary period and specific purpose, and tells what that purpose was. To clearly know the precise bearing of the facts upon the right of Brown to vote in Berwick in September last, it becomes necessary to answer two legal questions :

First, *What constitutes domicil?* and,

Second, *What constitutes a change of domicil?*

What constitutes domicil? Birth and connections constitute the primary and most permanent domicil. [5 Vesey, 787, *Somerville v. Somerville*; 4 Barbour, 519, *Crawford v. Wilson*; 2 Kent's Commentaries, 431 note; Wallace, jr., 217, *White v. Brown*; 4 Cowen, 516, *Andrews v. Herriot*.] Residence coupled with an intention of remaining constitute domicil. [*Putnam v. Johnson*, 10 Mass., 504, and see authorities above cited.] When the domicil of origin is ascertained it attaches to a person until a new domicil is acquired *facto et animo*. [7 Florida, 81.]

What constitutes a change of domicil? Actual removal and intent not to return will constitute a change of domicil, but the *act* and the *intent* must combine. [1 Bosw., 673; 2 Kent's Commentaries, 431 note; *Frost v. Brisbin*, 19 Wend., 11; *Crawford v. Wilson*, 4 Barbour, 519.] The fact of removal without an intent to remain will not effect a change of domicil. [*Lincoln v. Hapgood*, 11 Mass., 350; 1 Bouvier, 490; *State v. Judge*, 13 Ala., 805; *Jennison v. Hapgood*, 10 Pick., 98.] "The acquisition of a new domicil does not depend simply upon the residence of the person, or the *time* of his residence, but such residence must be accompanied by an *intention* of *permanently residing* in the new domicil and of *abandoning* the former. [*Plummer v. Branden*, 5 Indells, Eq., R., 190.] "The residence required to entitle a person to vote at an election means his fixed domicil or permanent home and is not changed or altered by his occasional absence *with* or *without his family*, if he has the intention to return"; so say

the Court in 3 Zabriskie's R. 525; also, "the citizen of another State who comes with his family into this State and lives for a few weeks with an intention of returning, does not change his domicil." [Same.] The same principle was laid down in the case of Cadwallader v. Huell and Moore, 3 Harrison, 139.

"An intention to change the domicil coupled with a removal without the actual intention of remaining, does not cause a loss of domicil; act and intention must combine." [State v. Hallett, 8 Ala., 159.] One domicil remains until another is acquired, (1 Metcalf, 245,) and the burden of proof that a domicil is changed is on the party alleging the change. [Kilburn v. Bennett, 3 Met., 201; Burnham *et al.* v. Rangeley, 1 W. and M. 11.] "A domicil once fixed is deemed to continue until another is proved to have been actually acquired. Absences for longer or shorter periods for temporary purposes do not change the domicil. *Enlistments in the army for five years does not show a change of domicil.*" [Brewer v. Linneus, 36 Maine, 428.]

The declaration of a voter as to where he has lived is not legal evidence when the question arises in a contract with a third party, but the voter's declaration just before or on leaving home for a journey as admissable as a part of the *res gestal*, whenever the act itself is material. [Griffin v. Wall, 32 Ala., 149.] A minor cannot change his domicil by his own act. [Hiestand v. Kuns, 8 Blackf., 345.] Without multiplying authorities (of which the foregoing in point of numbers are insignificant,) let us apply what we have to the case in question.

Brown's domicil of origin was in Berwick. Is that proved to have been changed? No.

First, Because when he enlisted he was a minor and could not have changed it had he intended to.

Second, Because by a decision of the Supreme Court of this State, a five years enlistment in the army does not work a change of domicil.

Third, Because he never intended to change it.

Fourth, Because all his absences have been for temporary and specific purposes, and,

Fifth, Because no other domicil has been proved.

The inevitable and only conclusion to be arrived at, both upon the law and evidence, is that Brown's domicil is and always has been in Berwick, and that was the place and the only place at which he had or could have a right to vote in September last.

Fourth. The next vote questioned by Hammond is that of John F. Hayes.

Anna M. Randall, called by Hammond, deposes, that Hayes and his family boarded with her from the spring of 1865 on his return from the army; that while he was in the army he brought his family there to live, and furnished their room; that his family lived there continuously until the latter part of August, when their child was sick, and they took it to Kennebunk to place it under the medical treatment of Dr. Swett; that Hayes did not bring his family back to North Berwick to stop after they went to Kennebunk, but in October last they went to Alfred to live, and live there now; that Hayes had no other home than her house during the time his family was there.

Hayes, called by Hubbard, deposed, that he had no other home from the time of his discharge from the army last spring down to October last, than North Berwick; that he had no intention of changing his domicile from North Berwick until October, when he moved to Alfred; that he went to Kennebunk for the sole purpose of putting his sick child under the medical treatment of Dr. Swett; that when he went to Kennebunk he intended to return to North Berwick; that he left his furniture and other property at North Berwick; that he moved from North Berwick to Alfred, where he now resides. This is the substance of all the testimony bearing upon Hayes' right to vote, and proves,

First, that Hayes had his domicile in North Berwick from the spring of 1865 to October last.

Second, that he had no other domicile during that time.

Third, that he was absent for a brief period, commencing with the last of August, for the temporary and specific purpose of placing his child under medical treatment, without any intention of remaining away from North Berwick, but with the full intention of returning.

Applying the principles of law and decisions cited in Brown's case to Hayes', and no doubt can exist that Hayes was a legal voter in North Berwick at the time of the State election in September last.

Fifth. The last vote challenged by Hammond is that of John D. Bumford, who testifies that his home in September last was in North Berwick, that his home is now in North Berwick, and he has had no other home for the last two years; that he was not very well last summer and went to visit his friends; that his

clothes and all his things he left at home in North Berwick ; that he took nothing with him but what he wore on his back ; that he had no intention of staying ; that he went to Somersworth to visit his friends there ; that he was acquainted with an overseer in one of the factories ; that a boy that "tended the doubler" in this overseer's room left, and at the request of the overseer he took the boy's place until another boy could be procured ; that he stayed there seventeen days and left as soon as another boy could be hired ; that his brother was just engaging in the shoe business and wanted him to assist him until he "got broke in" ; that he did assist his brother a few days and as soon as he (the brother,) got started, he (Bumford,) left ; that during the time he was in Somersworth he boarded with his mother nine days only, paying her therefor five dollars ; that he visited his sister and uncle in Middleton ; that as soon as his visits were made he returned to his home in North Berwick ; that his father died some twelve years ago and he has not made his home with his mother since.

Mrs. Dorcas Woodbridge testifies that she lives in Somersworth, N. H. ; that John D. Bumford is her son ; that his home is with her ; that where her home is there is her children's ; that he was with her during a portion of last summer.

William Hall testifies that shortly after election in September last he heard that Bumford's vote was questioned by Hammond ; that he went to Somersworth to see Mrs. Woodbridge, the last deponent ; that she said Bumford's home was not with her and had not been during the past twelve years ; that his home was in North Berwick and had been for the past two years. This last statement is corroborated by Bumford himself and by a reiteration of it by Mrs. Woodbridge to Mr. Hoitt subsequent to her giving her deposition in this case. Mr. Daniel Hanson and Mr. Thomas L. Hoitt further testify to a conversation had with Mrs. Woodbridge subsequent to her giving her deposition in this case, in which she said in explanation of her statement in said deposition in regard to Bumford's home being with her, that John H. Hammond called upon her and told her that Hubbard had threatened to make trouble on account of Bumford's voting, but that he (Hammond,) would stand between him (Bumford,) and all harm, in the sum of one thousand dollars, if she would swear that Bumford's home was with her. Upon this promise she did so swear. She said she was willing to make this statement to any one.

Other persons were present at this conversation ; among them, to a portion of it, was the law partner of the then acting counsel for Hammond, and yet the statement stands uncontradicted.

We thus have the testimony of Bumford contradicted only by Mrs. Woodbridge, who in the presence of three uncontradicted and unimpeached witnesses confesses to perjury and charges subornation of perjury upon this claimant, Hammond. Bumford is corroborated by the facts and circumstances of his home now being in North Berwick, of his having been from there only temporarily and of his return there from the visit to his friends. He swears that his intention was to return to North Berwick ; that he never had an intention of making Somersworth his home, and Hammond fails to show that he ever had or expressed any different intention, though had he done so it could doubtless have been easily shown by the testimony of his friends among whom he visited and to whom he would have been most likely to have expressed such intention had he entertained it.

From all the testimony relating to Bumford's vote it clearly appears that he was a legal voter in North Berwick ; that there was his home ; that he had no domicil elsewhere and no intention of changing his domicil ; that he was absent from there only temporarily and for a specific purpose and when this purpose was accomplished returned there and now has his domicil there.

It may be proper to state, in concluding this report, that Hubbard at the opening of his case took the position that the burden of making a *prima facie* case only was incumbent upon him, and having established a *prima facie* case he would rest until the case of Hammond was put in. This position was conceded as tenable by the committee, and Hubbard offered no evidence touching any votes other than the " trimmed," " Timothy Hubbard " and " foreign " ones. A ruling was then made by the committee in regard to the putting in of testimony by Hubbard in answer to what Hammond might offer. That ruling was understood by the undersigned and by the counsel for Hubbard to be, that any testimony in relation to the three votes above mentioned must be confined strictly to rebutting the evidence which might be introduced by Hammond touching those three votes. This was the extent of the ruling.

Hammond having closed his case, Hubbard offered the depositions of Barry H. Lougee, Stephen A. Henderson, French An-

drews Henderson, and Simeon Estes, to prove that the said Lougee voted illegally for Hammond in the town of Berwick and that the said Henderson and Estes voted illegally for Hammond in the town of North Berwick.

These depositions the committee by a majority vote ruled out, Hubbard's counsel claiming their admission to be proper and that they were not excluded by the ruling of the committee before referred to and were not affected by said ruling; and that under the rules of law governing the introduction of evidence they were admissible.

Believing that it was the duty of the committee to preserve the purity of the ballot box and ascertain the wish of a majority of the electors in a given district as to whom they had designated to represent them in this house, rather than to settle any differences or conflicting interests between individuals, the undersigned was desirous of admitting any and all legal testimony offered, tending to throw any light upon the election in controversy. In the opinion of the undersigned the depositions should have been received upon grounds of public policy and because as a personal matter their rejection was in prejudice of the rights of one of the contestants.

Finally, upon the law and the whole evidence in the case, the vote stands thus :

For Timothy H. Hubbard,	.	.	.	360
For John H. Hammond,	.	.	.	358

and Timothy H. Hubbard is elected to represent the classed towns of Berwick and North Berwick in this Legislature by two majority, wherefore the following resolve is respectfully submitted.

HENRY K. BRADBURY.

STATE OF MAINE.

RESOLVE declaring the election of Timothy H. Hubbard.

Resolved, That Timothy H. Hubbard, having been
2 duly elected as the representative of the classed towns
3 of Berwick and North Berwick, is entitled to a seat in
4 this house.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
February 8, 1866. }

On motion of Mr. BRADBURY of Hollis, laid on the table and ordered to be printed, and Tuesday of next week assigned.

F. M. DREW, *Clerk.*