

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PUBLISHED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE.

1867.

AUGUSTA:
STEVENS & SAYWARD, PRINTERS TO THE STATE.
1867.

FORTY-SIXTH LEGISLATURE.

HOUSE.

No. 12.

REPORT

OF THE

COMMITTEE ON ELECTIONS.

The Committee on Elections, to which was referred the remonstrance of George Brown against the right of Josiah F. Morrill to a seat in this Legislature from the town of Chelsea, ask leave to submit the following unanimous report :

The town of Chelsea, at the election in September, 1866, by virtue of the apportionment of 1860, cast the only votes given in the entire class district for Representative to the Legislature.

The record of the town meeting in Chelsea, so far as it relates to the election of a Representative to the Legislature, is in these words and numerals, viz :

“The whole number of ballots for Representative to the State Legislature was eighty-eight, 88
George Brown had forty-eight, 48
J. F. Morrill had forty, 40

There were also thrown into the box, fifteen votes for J. F. Morrill with the word Representative written on them, also one ballot with the words J. F. Morrill only written on it.”

A return of the above vote was duly made by the town clerk to the office of the Secretary of State, and, on the same being submitted to the Governor and Council, the customary certificate of election was given to Josiah F. Morrill, presented by him at the commencement of this session of the Legislature and referred to the Committee on Elections.

The remonstrant, George Brown, alleges that Josiah F. Morrill is not entitled to the seat, because, he contends that the only votes that should be counted are the 88 ballots that had written or printed upon them the words "for Representative to the Legislature," and invokes section 20, chapter 4 of the Revised Statutes, which provides that the elector shall "designate the intended office of each person voted for." He contends that the fifteen votes thrown for Mr. Morrill, upon which were written the words "for Representative" or "Representative," omitting the words "to the Legislature," contain no designation of the office intended to be voted for, and that they should be rejected from the count like the one ballot that had written upon it the name of Mr. Morrill alone. At the hearing before the Committee, the remonstrant based his case on this objection, with the additional one that the spelling of the word Representative on some of the fifteen ballots where the words "to the Legislature" were omitted, was incorrect. This point was not however insisted upon. No point was made that the votes for J. F. Morrill were not for Josiah F. Morrill, no other man bearing the same name living in the town.

The sitting member, Josiah F. Morrill, appeared before the Committee and claimed that, in addition to the forty votes thrown for him, upon which were written the words "for Representative to the Legislature," there should be counted the fifteen votes thrown for him with only the designation "for Representative" upon them, thus giving him fifty-five votes, seven more than the number received by his competitor Mr. Brown. It was not claimed by Mr. Morrill that the ballot, having his name alone written upon it, should be counted for him.

The town records show that the same number of votes, one hundred and two in all, were thrown for the opposing candidates for Governor and Representative to Congress, thus indicating that each candidate for Representative to Congress received his full vote without resorting to any of the fifteen votes which had only the word "Representative" written on them, and thereby raising the presumption that these last were intended to be thrown for a "Representative to the Legislature."

Upon this presumption the Governor and Council must have acted when they gave the certificate of election to Mr. Morrill; and to show conclusively the intention of the voters who cast the fifteen votes with the word "Representative" upon them, Mr.

Morrill offered to, and was permitted to introduce the statement of the voters in person, as follows :

Merrill Brann, George M. Perkins, Daniel P. Cornish, Elias Douglass, William W. Douglass, James G. Morang, Albert M. Douglass, S. W. Barker, George W. Morrill, and Thomas Douglass, came before the Committee and severally stated that they voted for J. F. Morrill, intending to vote for Josiah F. Morrill as a Representative to the present Legislature of 1867. Nine of these stated that they cast votes for J. F. Morrill "for Representative," with no other words designating the office voted for, thus identifying them as of the number who cast the fifteen votes returned as before stated to the Secretary of State, and Elias Douglass and George W. Morrill stated that they knew of more than two others, besides the ten men who made their statements before the Committee, that had thrown the same kind of ticket.

This would account for at least thirteen of the fifteen votes.

One of these nine witnessss, on cross-examination by the remonstrant's counsel, stated that he believed that his ballot had the full designating words "For Representative to the Legislature" written on it.

Two others stated that they voted for Mr. Morrill, sticking a ballot with his name, "J. F. Morrill for Representative," on to another ballot containing the remainder of the general ticket by moistening them both in the mouth and throwing both together into the box.

If the first of these be rejected from the count because on cross-examination he made statements showing that he was not one of the fifteen who cast the ballots with the words "Representative" alone upon them, and if the other two be rejected because of illegal voting, it still leaves Mr. Morrill fifty votes against forty-eight for Mr. Brown, a clear majority of two votes.

It came out in the hearing, also, that a large portion of Mr. Morrill's vote was cast by ballots where Mr. Brown's name had been erased and Mr. Morrill's substituted.

It appeared further, that when the meeting was opened the balloting was begun in two boxes, those for Representative to the Legislature being cast into a separate box, and the voting was thus continued until thirty-one votes had been thrown into this box, when the discovery was made that such voting was not in accordance with the law, and the whole thirty-one votes were re-

jected. Of these votes thus rejected, Mr. Morrill received twenty and Mr. Brown eleven.

These two facts throw light on the intention of the voters, and show a strong preponderance of sentiment in favor of Mr. Morrill. Under these circumstances the Committee do not feel in doubt as to the intention of a clear majority of the voters in Chelsea.

Forty-eight of them intended to vote for George Brown. He claims no more.

Fifty-six of them intended to vote for Josiah F. Morrill. Forty of these put upon their ballots the complete designation of office, "For Representative to the Legislature."

Fifteen of them, through ignorance, inattention or hurry did not complete the designation, leaving off the concluding words "to the Legislature."

But it is evident that they did not intend to vote for Mr. Morrill as Representative to Congress, for the return shows that Mr. Blaine received the same number of votes that were cast for Gov. Chamberlain. The democratic nominee for Congress was in the same condition. He ran even with his gubernatorial ticket.

And the statements of the men themselves settle the intention.

We are not left in doubt about it. The designation upon the ballots, though not full and complete, is sufficiently definitive to be satisfactory. If any doubt remained, the parol testimony has removed it, and where the intention of a majority of the voters is clearly shown, we are not prepared to override it. We cannot consent that the majority of Chelsea's voters shall be disfranchised.

This House has already admitted parol evidence to contradict written return of votes. In the case of *Chadwick vs. Hunnewell* in 1840, the House sustained the Committee in admitting such testimony, and thereby added three votes to the count of one of the candidates. And although the Revised Statutes, chapter 4, section 14, require that every warrant for the annual September election shall designate, among other officers to be voted for, that of Representative, yet this House in the case of *Davis and als., remonstrants, vs. Cleaves*, decided that the election of a Representative was not void, although the warrant omitted the entire designating words "to choose a Representative to the Legislature."

These precedents show that this House has always sought to find the real intention of the voters, and in accordance with their principles and our convictions, derived from a careful investigation, we

report that Josiah F. Morrill is entitled to the seat as a member of this House from the town of Chelsea, and that the remonstrant have leave to withdraw.

EUGENE HALE,
D. W. MERRILL,
S. G. WEBSTER,
M. THOMAS,
W. E. ATWOOD,
J. C. PURINTON,
A. D. MERROW.



STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 21, 1867. }

Read and accepted, and on motion of Mr. HUTCHINGS of
Brewer, the usual number of copies ordered to be printed for the
use of the House.

FRANKLIN M. DREW, *Clerk.*