
FORTY-SEVENTH LEGISLATURE.

HOUSE.

No. 44.

REPORT
OF
COMMITTEE ON ELECTIONS
ON THE
PETITION OF CHARLES ELLIOT.

The Committee on Elections, to which was referred the petition of Charles Elliot, praying that he may be declared representative elect from the classed towns of Knox, Belmont, Waldo, Morrill and Brooks, in place of Ebenezer Littlefield, have carefully examined the evidence presented, and make the following

REPORT :

The petition sets forth :

1st, That Hiram P. Sherman was not a legal voter of Knox, where he cast his vote for Ebenezer Littlefield.

2d, That Thomas Wentworth, a legal voter of Waldo, offered his vote for Charles Elliot, which vote was illegally refused.

3d, That the voters of the town of Brooks, which gave a plurality of 95 for Littlefield, were warned of the election by the Selectmen only six days before September 9, 1867.

The sitting member denies the first two allegations, admits the third, and alleges on his part that Daniel Herring and Dennis Ryan, who voted for the petitioner, were not legal voters.

I. Hiram P. Sherman, as by his deposition on file will appear, testified that he resided in Knox from 1814 till March, 1866. At that time his wife exchanged a farm which she owned in Knox for

a farm in Montville. From March to August of the same year Sherman lived with his wife in Montville. In August, 1866, he moved back to Knox, where, with the exception of three months spent in Portland, at work by the day, he has resided ever since. This testimony is fully corroborated by the evidence of H. H. Sherman.

On the other side, it was shown that Sherman's wife refused to go back to Knox, and that he had visited her in Montville and supplied her to some slight extent. There appears to have been some sort of a quarrel between the two.

As your committee are unable to come to the conclusion that a man's domicile depends upon the wishes of his wife, they have been obliged to decide that Hiram P. Sherman was a voter of the town of Knox.

II. Thomas Wentworth, in his deposition, states that in the town of Waldo, at a few minutes past five o'clock P. M., he offered his vote for George Elliot; that the vote was received into the ballot-box, but was not allowed or counted, because the Town Clerk said he would have to make out new returns. Zenas Stephenson corroborates this except as to the reception of Wentworth's vote, about which he says nothing.

Mr. Samuel Kingsbury, however, who was chairman of the Selectmen, testifies that Wentworth came in at quarter past five, but did not offer to vote. The polls were closed at five, as by law they ought to have been. Wentworth seems to have asked that his vote might be received as a favor and not as a right; and the Clerk gave as a reason for not granting the favor that the returns were made out and couldn't be changed. The deposition of Jeremiah Evans, Town Clerk, is to the same effect. The polls were closed at five, a quarter of an hour before Wentworth came in.

This last fact alone, against which none of the testimony militates, is sufficient to justify us in refusing to count his vote.

IV. The affidavits of Daniel and Cynthia Kenney, and of Lucy A. Douglass, together with the testimony of Dr. Billings, show that the wife of Daniel Herring had been for three months before election at Knox, on a visit to her daughter, to obtain the services of such a physician as she desired. Both Herring and his wife appear to have been residents of Deblois, and to have had no intention of changing that residence. Herring was, therefore, not a voter in Knox; and as he cast a vote for Charles Elliot, it must be deducted from the number of votes given for Elliot.

V. Dennis Ryan testifies that he moved from Knox' to Waldo on the 4th of June, 1867, and that Mr. Elliot "bid off his liabilities" for the two years previous, or in other words, he was let out as a pauper to Mr. Elliot for the years 1866 and 1867.

John P. Wentworth, Overseer of the Poor for the town of Knox, testifies that Dennis Ryan has been a town pauper for three years before the September election. There is no evidence that he received aid from the town directly while he lived in Waldo. He voted in Waldo.

VI. The inhabitants of the town of Brooks were notified of the day of meeting for the September election only *six* days before the time at which it was held; whereas the Constitution (article 3, section 5,) directs that they shall be warned *seven* days before. On this state of facts Mr. Elliot claims that the vote of Brooks should not be counted. If it is not counted Mr. Elliot is elected. But it is thought that there are good reasons why the vote should not be thrown out. The members of your Committee, at the commencement of their labors, unanimously agreed that the principle by which they ought to be governed in their conclusions was this: That in all cases free from fraud effect should be given to the choice of the people as manifested at the ballot-box, whatever it might be, regardless of all technicalities.

In this case it is not alleged that there was any fraud.

It is not alleged that any one was, by defective notice, defrauded of his vote.

It is not alleged that the result of the voting could have been different if longer notice had been given.

The plain question then is, can selectmen, by negligence or misconduct in not giving seven days notice, disfranchise for one year the voters of their town? If the provision in regard to seven days notice had been in the statute instead of in the Constitution, no one would have had any difficulty with it. But a law made in pursuance of the provisions of the Constitution has the same binding force as the Constitution itself, and is, like the Constitution, the supreme law of the land. If, then, we may regard provisions of the statute as merely directory, we have the same authority to regard in the same light provisions of the Constitution, which are of the same character. But further than all this, article 2, section 4, of the Constitution is a positive declaration that the election shall be held on the second Monday of September, and is notice thereof to all men, while article 3, section 5,

is only a direction to officers how to warn, (Cleaves v. Davis, H. No. 2, 1860; Bradbury v. Usher, H., 1864.) For us then to hold seven days' notice essential, would be to hold article 2, section 4, non-essential. If the amendment to the Constitution in relation to soldiers' votes had been construed with a similar strictness, it would have been of very little benefit to the soldier. We therefore regard the provisions of article 3, section 5, now under discussion, as directory.

Proceeding then according to the principles which have hitherto governed us, we count the vote of Brooks and find that

Ebenezer Littlefield received	373 votes,
Charles Elliot “	370 “

Majority for Littlefield,	3
or if the vote of Ryan be received,	2

and report that the petitioner should have leave to withdraw.

Per order,

THOMAS B. REED,
For the majority.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
February 3, 1868. }

Reported from the Committee on Elections, by Mr. REED of Portland, and on motion of Mr. HALE of Ellsworth, ordered to be printed.

S. J. CHADBOURNE, *Clerk.*