FIFTIETH LEGISLATURE.

HOUSE. No. 70.

The undersigned members of the Committee on Legislative Apportionment, dissent from the conclusions of the Committee, and believe that the Resolutions reported should be essentially modified.

Our objections are chiefly to the proposed Senatorial apportionment.

We maintain that the plan reported fails to conform to the primary rule of the constitution requiring apportionment to be "according to the number of inhabitants," and that it violates justice.

The census of Maine exhibits 20,200 as the average of population entitled to a Senator.

The results of the report of your committee may be tabulated thus :

County.	Population.	No. of Senators.	Fractional Excess.	Deficit.	No. to each Senator.
Androscoggin	35,876	2	.....	4,524	17,938
Aroostook	29,579	1	9,379	.....	29,579
Cumberland	82,157	4	1,357	.....	20,539
Franklin	18,746	1	.....	1,454	18,746
Hancock	36,469	2	.....	3,931	18,234
Kennebec	53,225	2	12,825	.....	26,612
Knox	30,820	1	10,620	.....	30,820
Lincoln	25,834	1	5,634	.....	25,834
Oxford	33,466	2	.....	6,934	16,733
Penobscot	74,643	4	.....	6,157	18,660
Piscataquis	14,397	1	.....	5,803	14,397
Sagadahoc	18,807	1	.....	1,393	18,807
Somerset	34,049	2	.....	6,351	17,024
Waldo	34,640	2	.....	5,760	17,320
Washington	43,304	2	2,904	.....	21,652
York	60,183	3	.....	417	20,061
	626,195	31			

At a glance this table demonstrates the propositions which constrain our dissent. It is no apportionment "according to the number of inhabitants" to assign one Senator to 14,397 people and only one to more than twice that number. There is no justice in leaving out of account such ponderous fractions, including 29,079 in three contiguous counties where the formation of an additional Senatorial district would not nearly exhaust their numerical claim in the apportionment.

The curious results which the table exhibits originated in no purpose of the committee to do injustice to sections or populations, but in the invention and application of an inflexible rule.

The rule originated and applied was, to constitute each county a Senatorial district, giving to each as many Senators as 20,200 is contained in its enumeration, and distributing the Senators, not so apportioned, equally among the largest remainders resulting from that division.

Obviously the rule admits of but one application. It excludes discretion. To establish it is to make the apportionment. If it had been incorporated in the constitution the work of apportionment might properly have been confided to a clerk. If the rule shall be perpetuated it may sometime work the absurdity of Senatorial districts without Senators.

But the rule of the constitution, intended to govern the apportionment, is: "The districts shall conform as near as may be to county lines, and be apportioned according to the number of inhabitants." The words "as near as may be" modify the direction as to county lines. The words "be apportioned according to the number of inhabitants" are not modified, and can properly have no modification in application, except such as is imposed by the moral necessities of the case. The rule, therefore, ordained by the constitution, subordinates the use of county lines to the principle of numerical equality, while the rule constructed by the committee treats the principle of numerical equality as inferior to the convenience of county lines.

The rule of the constitution has twice received authoritative exposition.

The Convention which framed the constitution caused an Address to be published, with a view to intelligent action by the people. This authorized Address set forth, substantially, apportionment according to numbers as a primary principle. The only words

relating exclusively to the Senate are, "*The Senate is predicated upon population.*"

Upon questions submitted to the Supreme Judicial Court by the Senate in 1842, all the justices declared in substance that as between equality of popular representation and integrity of county lines, the last object should be subordinated to the first. Justices Whitman, Shepley and Tenney (composing the court at that time,) although differing on other points, agreed in this. The following extract from the opinion of Judge Shepley interprets the meaning of all three of the justices:

"The intention appears to have been to make it obligatory upon the legislature to arrange the districts in such a manner that their boundary lines should vary as little as might be practicable from the established lines of the counties, and not to restrain it so as to prevent an equal apportionment according to the number of inhabitants."

If our history as a State furnishes precedents which exhibit carelessness in contrivance and inconsistency with the rules maintained by the authorities referred to, it cannot be affirmed of any of those precedents that they accord with this report. The most exceptional embody errors fewer in number and less in magnitude than those of the plan under consideration.

The history of proceedings which resulted in the apportionment established by the Convention which framed the constitution is instructive. The Convention had no census to control its apportionment, and no data to facilitate departure from county lines. It was obliged to adhere to them. The first plan of apportionment reported to the Convention was based upon the estimated population of 1819, and involved two cases of considerable inequality according to the adopted estimation. The convention was a law unto itself, but the remonstrances urged against this first scheme caused a change to be made in the number of Senators selected for apportionment, and another plan to be adopted, more in conformity with justice. The rejected plan, although characterized, in the debates, by Judge Preble, as "monstrous," was less open to criticism than the one reported by your committee.

The undersigned are unable to conceive of any reason in justification of the Resolve apportioning Senators, stronger than that founded in consideration of convenience to the counties, or rather, to the political parties within the counties when they shall assemble in their annual conventions. This consideration is not within

the scope of the constitution, and so is no law to the legislature. If, however, reasons of convenience should ever be made to outweigh those of duty, it would be difficult to see the convenience resulting to the county of Aroostook, when she comes to vote in the Senate on questions of valuation and expenditure, from balancing her population of 29,579 by 17,938 in Androscoggin; or the convenience to Lincoln with 25,834 people, or Knox with 30,820, in offseting either with 16,733 in Oxford; or the convenience to Kennebec in matching 26,612 against 14,397 in Piscataquis.

It is not the object of this statement to urge a scheme for adoption as a substitute for the resolutions reported; but it may properly be suggested that they can with facility be amended so as to be deprived of their hugest irregularities—those which, if not dismissed, will operate during ten years upon two counties as the equivalent of disfranchisement of one-fourth of their population, and, for the same period, upon one county as treating a third of its inhabitants as of no account.

Twice within the last thirty years questions have been raised concerning the organism of the Senate, which protracted legislation, divided and angered the people, and impelled the interference of the court. This legislature can have no guaranty that its acts will not entail similar calamity, unless it shall respect the abiding claims of justice and obey the imperative direction of the fundamental law.

R. FOSTER,
S. T. HINKS, } *of the Senate.*

WM. T. JOHNSON,
DANIEL STICKNEY,
ISAAC T. HOBSON,
JAS. M. HAGAR,
D. K. HOBART, } *of the House.*

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES,
February 22, 1871.

By leave, laid on the table by Mr. JOHNSON, from the Committee on Apportionment, and ordered to be printed.

S. J. CHADBOURNE, *Clerk.*