

MAINE STATE LEGISLATURE

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FIFTY-THIRD LEGISLATURE.

HOUSE.

No. 15.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
January 28, 1874. }

The Committee on Elections, to whom was referred the remonstrance of George W. Drisko against the right of Joseph W. Coffin to a seat in this House as Representative from Machias classed district, comprising the towns of Machias, Northfield, Columbia and Columbia Falls, having carefully examined the evidence presented, and considered the case, most respectfully submit the following

REPORT:

The remonstrance offered by Mr. Drisko sets forth in general terms that he received a majority of all the votes cast in all the towns composing said district, at meetings legally called and holden for the annual September election, A. D. 1873.

Upon examination, by your Committee, of the returns made to the Secretary of State, it was ascertained that these several towns cast their vote for Representative to the Legislature as follows:

	Drisko.	Coffin.
Machias,	68	182
Northfield,	16	11
Columbia,	54	19
Columbia Falls,	56	39
	<hr/> 194	<hr/> 251

By these returns the sitting member, Mr. Coffin, appears to be elected by a plurality of fifty-seven votes. At the hearing before your Committee, the remonstrant introduced testimony to prove,

and your Committee found, that the warrant for the September meeting in the town of Machias was posted on the second day of that month, and the meeting was holden on the eighth day of the same, thereby giving the inhabitants only six days' notice, instead of the time specified in the Constitution, Art. 4, Sec. 5, which requires that meetings in this State 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. There was no objection made to the regularity of the election proceedings in the other towns, namely, Northfield, Columbia and Columbia Falls. Nor is there any claim of fraud or corrupt voting in the town of Machias, and the only question to be settled by your Committee was this: Should the vote of the town of Machias be rejected for the insufficiency of the notice to the inhabitants? If the vote of Machias is rejected, the remonstrant, Mr. Drisko, would be elected by a plurality of fifty-seven, the same number which the returns show were given for Mr. Coffin. It nowhere appeared during the investigation, that the result would have been different, except possibly a little larger vote if the Warrant in this town had been posted seven days instead of six. It was not claimed by the remonstrant that he would or could have received, or have obtained a majority vote, in this district, provided all the initiatory steps relative to the calling of the several town meetings had been taken in strict accordance with the direction of the Statute and Constitution. Hence the whole matter in controversy resolved itself into this single proposition or inquiry: Can town officers by fraud, mistake or negligence in not complying with statutory directions in their official duties, disfranchise the citizens of a town, district, county or State, to whom the Constitution guarantees the right to vote? Is such the true meaning and intent of the Constitution and laws made in pursuance thereof? The Constitution, Art. 2, Sect. 4, is a positive, unqualified declaration, mandatory in its character, expressed in the strongest terms known to the language, requiring that "elections for Governor, Senators and Representatives shall be on the second Monday of September annually forever." This must be regarded as a general notice to each and every elector within the jurisdiction of our State annually forever, if at all, to assemble at the place and for the purpose therein expressed, except in cases where the seat is made "vacant by death, resignation or otherwise." It cannot signify anything less. Whereas Sect. 5, Art. 4, simply gives the manner of further spe-

cially notifying the inhabitants by making it the duty of town officers to post a warrant setting forth the objects as well as the time of said meeting. This last section, in the opinion of your Committee, is clearly directory in its legal significance, prescribing the duties of selectmen, neither calculated nor intended to checkmate the rights of electors, and cannot be construed so as to render ineffective the Fourth Section of Article Second, as indeed it would if the right to vote and the time for holding the election meetings depended upon such an uncertain basis as the correctness and efficiency of town officers, rather than the Constitutional requirement as to time. This view was clearly taken by the learned committee in the Senatorial election case in 1868, and by the House Committee in the same year in case of Elliot vs. Littlefield; and is fully supported by the weight of precedents since the adoption of our Constitution. If any other construction obtains, the results to our minds would be subversive of the fundamental principles of equal right and justice, in this, that it would annually disfranchise a large number of our fellow citizens, perchance giving small minorities the right to rule and legislate; completely disregarding the true expression of the popular will at the ballot box, the surest medium of safety and security to the State. And further, that if such technical matters were to be allowed to unseat members whom the people have honestly selected to represent them, the result could only be disastrous to the vital interests of the people and the State.

But in the judgment of your Committee, the sections of the Constitution to which they have referred, relating to election meetings, are followed by another which may be considered the key to a just interpretation to all that precedes it pertaining to the same subject, matter. Section 3, Art. 4, gives to each house the right to judge of the elections and qualifications of its own members, which to our minds signifies the intent clearly of the framers of this Constitution and the people who adopted it, that the voice of the majority should be heard, that the will of the people of which the Constitution is but creative, should be observed and maintained; and that the rights of every community, be it large or small, should be guarded and protected against every fraud, mistake or neglect in matters of election. We therefore, in view of the law as we understand it, and the facts as they have been presented to us, find that both law and justice require

that the vote of the town of Machias should be counted ; that the official returns, made to the proper State officers, upon which the certificate seating Mr. Joseph W. Coffin a member of this House, are correct, and upon the remonstrance presented report that the remonstrant have leave to withdraw.

JOHN P. SWASEY, <i>Chairman</i> ,	} <i>Committee</i> <i>on</i> <i>Elections.</i>
LEWELLYN POWERS,	
ADNA T. DENISON,	
SAMUEL F. SMALL,	

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
January 28, 1874. }

Reported from Committee on Elections, and ordered printed.

S. J. CHADBOURNE, *Clerk.*