# Fifty-Seventh Legislature.

HOUSE. No. 29.

## MINORITY REPORT OF COMMITTEE ON ELECTIONS.

IN THE CASE N. B. TURNER, Remonstrant, vs. SULLIVAN LOTHROP.

The undersigned, members of the Committee on Elections, being unable to assent to the conclusions of the majority of the Committee, beg leave to submit this report.

The returns from the district show this vote, viz :

| | Lothrop. | Turner. | Webb. | Total. |
|---|---|---|---|---|
| In St. Albans, | 105 | 175 | 1 | 281 |
| Hartland, | 142 | 96 | – | 238 |
| Cambridge, | 65 | 44 | – | 109 |
| Ripley, | 54 | 47 | – | 101 |
| | 366 | 362 | 1 | 729 |

The return from Ripley also shows two votes to have been in the ballot box, each bearing the name of N. B. Turner, without the title of any office. The contestant desires to have these two pieces of paper counted as votes for Representative, and thereby reduce the plurality of Mr. Lothrop to two votes. Chas. Towne and Eben Nutter, in their depositions, claim to have thrown two such votes, intending to vote for Representative to the Legislature. It is absolutely certain from their depositions that they knew the law required their tickets should bear the title of office. Nutter testifying that when he deposited his vote in the ballot box he supposed it had the office on it, as well as the name. Towne testifies that he prepared a ticket before going to the polls, with Mr. Turner's name and office on it, lost it, and got another. He makes no attempt to identify either of these papers as his vote; states no fact by which it could be identified. Granted these votes to have

been thrown as claimed, the men are self disfranchised. No neglect or act of any third party, nor ignorance of law, or mistake of fact, appears in the case, and we cannot believe that an indispensable law should be overridden to ease the gross carelessness of these parties, and give them another opportunity to vote.

The Remonstrant next claims to disfranchise Sidney Ellis and Charles Hanson, who voted for Mr. Lothrop in Ripley. The evidence in the case of Ellis is contradictory, and we do not feel that it shows clearly his right to vote in Ripley. As to Hanson, the case is clearer. It is proved beyond cavil, that he was a resident of Ripley for several years prior to 1869; that he went to California in that year, not returning that year, and being a wanderer, as the majority report states, but coming back to Ripley in 1875, and making that his residence till the next winter, when he went on a visit to Hampden, and remained all winter there and in Bangor, returning in the spring of 1876 to Ripley; voting there in September, living there till winter, then visiting his brother in Portland, returning to Ripley in May, 1877; staying there till the middle of June. Then going to his son's in St. Albans, and working with him till after haying; leaving, as his son testifies, his overcoat and the heft of his clothes at his daughter's in Ripley, having only his working clothes in St. Albans. His son testifies that he offered him a home with him, but we find no evidence that he ever agreed to such a proposal; on the contrary, he took no steps to bring his effects there, and no word or act of his to our minds indicates any purpose of changing his residence, already fixed in Ripley. He went back to Ripley after haying, and remained there a week to ten days, then returned for a few days to St. Albans to prosecute a suit in which he was apparently successful. He returned to Ripley a few days before the election, remained there till the 18th Sept., having voted without question and without a doubt in his own mind of his right so to do. He remained in Ripley till the 18th, when his daughter carried him, with all his effects, to St. Albans, where he was married, and for the first time since 1876 he carried out an intention of changing his residence. To disfranchise this man under these circumstances we believe to be wrong.

The sitting member claims that four votes for N. B. Turner should be rejected, viz:

1st. That of one Batchelder, who lived, free of rent, by verbal permission of the Overseers of the Poor, on a farm in St. Albans

owned by the town. There was evidence of purchase by Batchelder of a barrel of flour in May, 1877, payment of which was guaranteed by the town and which was paid for in July by the town. We do not see in these circumstances, however, any certain intent of furnishing pauper supplies.

2d. The right of Walter Gifford to vote in St. Albans is challenged on the ground that he had about Sept. 1, 1877, removed to the town of New Portland.

Gifford sold his farm in St. Albans, Aug. 30th, to Henry O. Parkman, who testifies that he moved on the place Sept. 2, with his family and all his goods. Gifford the next day moved with his wife and children to West New Portland, to a place he had bought there, and there is no evidence that he retained any right to return to Parkman's house, or that he ever came there again to pass a single day or night. There was evidence tending to show that he had retained the ownership of some grain and potatoes, and that he had come back and carried off a load on Saturday before election. His intention to remove and actual removal coincide. It was proved that on election day Gifford was brought to the polls by T. R. Webber, who inquired as to his right to vote. That Mr. Stewart insisted upon his right, and he was permitted to vote. It is claimed by the remonstrant that it is not proved that Gifford voted for Turner. The conclusion that he did so, seems to us irresistible. Brought to the polls by Mr. Webber—his voting secured by Mr. Stewart—and no attempt on Mr. Stewart's part to obtain Gifford's testimony—can it be otherwise. The deposition of John L. Field states that Gifford has on two different occasions declared to him that he voted for Turner. It was admitted at the hearing before the Committee by the contestant that he had had notice of the intention of Mr. Lothrop to take Gifford's deposition. That deposition, received since the hearing, is here subject to the order of the House.

The other votes for Turner objected to, were those of two men, Wood and Foss. The ground of objection to these, is, that they were received after the polls had been closed and the votes counted and declared, and we deem these facts to be conclusively established. The Town Clerk testified, that when they began to count the votes, there was a dispute as to whether it was five o'clock or a quarter before five; but four voters, three republicans and one democrat, coming in while the votes were being counted, they

were allowed to vote. That the votes were then fully counted and the vote declared. That Mr. Stewart and a number of others were present round the table while the vote was being counted and that Mr. Stewart afterwards had gone home. That at about quarter before six, when he was engaged in making up his record, the figures having been made up but not entered on the return, Wood and Foss came and asked to vote. It is shown beyond question that the Selectmen refused their votes—objection being made to their right to vote at that time of day. That they went away and came back with Mr. D. D. Stewart, who argued their right to vote on the ground that the returns were not sealed up, and quoted what he had seen done in Boston; and said the Selectmen were liable to indictment for refusing their votes. It does not appear which of the arguments was the effectual one, but two of the Selectmen decided to receive the votes—one saying he thought it right, the other saying he was not fully convinced—and that in case of contest the Legislature could decide whether or not the votes were legal. Two witnesses testify that the time was then about quarter of six, and one swears that it was about six. The Clerk testified that there was no formal closing of the polls to his knowledge, nor is it needful. The law provides that in such towns as compose this district the polls SHALL be opened at 10 o'clock and closed at 5. What is the opening—nothing formal. The Moderator opens his box without a motion and receives votes—closing the polls is the withdrawal of the box and ceasing to receive votes. No other action is needful. The law fixes the time for both acts, and no discretion is vested in officer or citizens. It is a healthful and indispensable law, and when either House of the Legislature by its action gives notice that it may be disregarded, we believe the ballot-box will be thereafter found to be full of fraud and evil.

The doctrine that votes may be received until the returns are sealed up, is not one, we think, to commend itself to the sober second thought of any man who desires to preserve purity of elections. The votes of Wood and Foss were, in our opinion, wrongfully received and should be rejected, and the contestant have leave to withdraw.

THOMAS W. PORTER,
TIMOTHY BRACKETT,
LEWIS PIERCE.

# STATE OF MAINE.

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IN HOUSE OF REPRESENTATIVES,
January 24, 1878.

Reported from the Committee on Elections, by Mr. PIERCE of Portland, and pending acceptance, tabled; and on motion of same gentleman, ordered printed.

ORAMANDAL SMITH, *Clerk.*