

MAINE STATE LEGISLATURE

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Fifty-Seventh Legislature.

HOUSE.

No. 30.

STATE OF MAINE.

The Committee on Elections, to which was referred the petition and remonstrance of N. B. Turner, against the right of Sullivan Lothrop to a seat in this House, as Representative from the district comprising the towns of St. Albans, Cambridge, Ripley and Hartland, have had the same under consideration, and ask leave to report as follows :

The returns show the whole number of votes was 731, of which

Sullivan Lothrop had.	366
H. Webb had	1
N. B. Turner.....	362

and two votes for N. B. Turner without the name of the office.

The men who threw the two votes last named, testify that intending only to vote for Representative to the Legislature, they cut or tore from the general ticket what they supposed was the name of N. B. Turner and the office for which they intended to vote for him, but in so doing they accidentally left the name of the office on the general ticket. The evidence is positive and uncontradicted that these two men cast the identical votes named, and intended to vote for no other man for any office. We, therefore, conclude that these votes should be counted for Mr. Turner. This leaves Mr. Lothrop a plurality of two. Sidney Ellis' deposition states that he voted in Ripley for Lothrop; that in August last he abandoned a place he had bought in Ripley and went back to Wellington, where he had formerly lived, and agreed with his father-in-law (who was dying) to take his farm and pay certain debts and support his mother-in-law, and in pursuance of this bargain, he removed all his family, household goods and stock

from Ripley to Wellington, and went to housekeeping in the latter town fully intending to reside there. There is evidence of some alleged declarations of Ellis contradicting his deposition as to his intention, but not sufficient to leave any doubt in our minds that Ellis had not such residence in Ripley as entitled him to vote there, and therefore his vote was illegal and should not be counted.

Charles Hanson's deposition states that he also voted for Lothrop in Ripley. It further shows that he has for years been a warden having no fixed residence. From 1869, when he came from California, down to 1876, he lived during short periods in Portland, Bangor, Hampden, Ripley and St. Albans. In the fall of 1876 he left Ripley, where he had lived part of the time, and went to Portland, thinking he might go to California. He remained in Portland until May, 1877, when he went to Ripley, living a few days with each of two sons-in-law, and in June he went to his son's house in St. Albans, saying he was not wanted in Ripley, and his son then agreed that he might have a home with him; and from June he lived in St. Albans all the time, excepting a few days, making his home with his son until after the election, when he married and still lives in St. Albans. There was evidence tending to show that his real home was in Ripley, but his own testimony and that of his son and his son's wife is, to our minds, conclusive that his residence was in St. Albans, and not in Ripley, for over two months prior to the election, and therefore his vote should not be counted. Deducting these two votes, the election resulted in no choice.

Much stress has been laid upon the closeness of the vote and the hardship of requiring a new election, but the parties are here claiming legal rights, and we deemed it our duty to determine those rights according to the law and evidence, without regard to results, which should be attended to by those whose duty it is to elect.

On the part of Mr. Lothrop, it is contended, and many depositions were offered to prove, that one Gifford had no legal residence in St. Albans where he voted. There was also evidence that though he had sold his place he still retained possession of his residence, until he should be able to gather and remove his crops, and on this the selectmen allowed him to vote; but inasmuch as no evidence was given that he voted for Turner his residence is immaterial.

It was also claimed that one Bachelder, who voted for Turner, had received pauper supplies within three months before election. There was evidence by deposition tending to show that the town claimed to own the farm on which Bachelder lived, and that he paid no rent and was expected to support his family on that account, but there is nothing in the evidence to show that the use of the farm was given in the nature of pauper supplies, it appearing that Bachelder owned the farm and mortgaged it. It does not appear how the town claimed to own the farm, whether by assignment of the mortgage, or in what way, but the evidence that Bachelder was expected ultimately to pay for the farm would imply that the relations between him and the town was that of mortgagor and mortgagee. No title deeds or other evidence was offered to show the ownership. We regard the evidence as wholly too vague and uncertain to warrant any inference that he was receiving aid as a pauper by living on a farm which he may have the right to live on until the foreclosure of a mortgage or some other legal process. It might even be that the town allowed him to live on a farm he had owned and which was long his home, hoping that by their indulgence he might keep his family off the town, and perhaps ultimately pay for and redeem his farm, but such facts would not make him a pauper. There was also evidence that May 4th, 1877, Bachelder purchased a barrel of flour, the town agreeing to pay for it if he did not, and that the town paid for the flour July 19. There is no evidence of any refusal or neglect of Bachelder to pay, nor of any demand upon him before the town paid. If the town was under any legal obligation to pay for the flour, then we must regard the supplies as furnished by the town at the time they were actually received, which was May 21st, and so even if the transaction was such as to make Bachelder a pauper, still he would not be debarred from voting, as he received the flour more than three months before the election. If the transaction was such that the agreement of the town was simply to pay the debt of another, then, not being in writing, the town was not liable. The evidence admits of different constructions as to the contract, but in any view of the case it is not sufficient in law to make out a case of pauper supplies, for all the evidence shows the town might have become responsible for the flour because they held Bachelder's farm and were secured.

The legal rules applicable to this case have been frequently considered by our State courts, and especially in the 53d volume of reports are very clearly stated. The court say that to prove pauper supplies "it must first appear that the person supplied was in need of immediate relief." There is no evidence that Bachelder was in distress or want, or that the town became responsible for the flour or let him use the farm for such a reason. In the same case it is held that supplies "furnished by towns under the statute with an agreement on the part of the person receiving them to pay for them at some time, must be considered as furnished at the date when they are actually received, and the rights of all parties interested must be determined by the facts existing at the time of the actual reception of the supplies." It is in very few cases that towns pay for supplies when they buy them, and it would be absurd to contend that towns may effect the rights of paupers and of other towns by considering the supplies as not furnished until the town sees fit to pay for them. There is no evidence that the town furnished or Bachelder received anything at any time as pauper supplies, and even if the flour had been so furnished and received, still it was done more than three months before election and therefore he had a right to vote.

It was also contended that the votes were received after the polls were closed and the vote declared. No witness fixes the time when these two votes were received. One thinks it was a little before six o'clock, but does not know. There is no question but that these votes were cast by legal voters. The town clerk testified that there was a dispute as to whether it was five o'clock or a quarter before, and they finally agreed that the votes should be counted, and that if any voters came in before the polls were closed their votes should be received. Six voters of both parties came in after that, and the last two are the ones objected to. Objection was made to their voting at the time, but they were finally allowed to vote and the result was after that announced anew, having been previously announced but no returns made, and the polls were not closed. After these two votes were received and all the votes were counted, then the returns were made up, these two being counted in the 362 returned for Turner; the returns were then sealed up and the polls finally closed for the first time. There is no positive evidence as to the time when the polls were closed. We think these votes should stand as returned by

the selectmen and not be thrown out. It results from the foregoing statements, and we accordingly report that there was no choice of Representative at said election, and that the petitioner should have leave to withdraw ; and we recommend the passage of the following:

Resolved, That Sullivan Lothrop is not entitled to a seat in this House.

E. WOODBURY,
GEO. A. CURRAN,
M. C. WADSWORTH,
JOHN L. BROWN.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES, }
January 24, 1878. }

Taken from the table, on motion of Mr. PIERCE of Portland,
and ordered printed.

ORAMANDAL SMITH, *Clerk.*