# Fifty-Seventh Legislature.

SENATE. No. 36.

## MINORITY REPORT OF THE SELECT COMMITTEE ON SENATORIAL VOTES.

MADIGAN *v.* BURLEIGH.

The undersigned, minority of the Select Committee on Senatorial Votes, to which was referred the remonstrance of Edmund Madigan against the right of Parker P. Burleigh to a seat in the Senate, finding themselves compelled to dissent from the views of the majority, ask leave to present the following report:

The whole number of votes for Senator in the Sixteenth Senatorial District, composed of the county of Aroostook, was four thousand six hundred and twenty-eight, (4,628.)

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| Edmund Madigan had two thousand three hndred and fifty-one ... ..... ..... | 2,351 |
| Parker P. Burleigh had two thousand two hundred and seventy-seven..... | 2,277 |
| And Edmund Madigan has a *majority* of seventy-four votes for Senator from said District..... | 74 |

This was the vote of the entire Senatorial District, excepting Sheridan plantation, which was admitted to have cast a majority of eleven for Mr. Madigan, but as no official returns were before the Committee, it was agreed on all hands to exclude its vote from the count.

This plurality of seventy-four for Mr. Madigan appearing upon the face of the returns from the remaining places, objection was made by Mr. Burleigh's counsel to the counting of the votes of Van Buren, Connor and Eagle Lake, for the following reasons:— Van Buren, because the return of the list of voters required by sec. 75, chapter 4, revised statutes, was not attested on the inside by

the Assessors and Clerk; Connor, because it had not made the spring return required by sec. 52, chap. 3, revised statutes; Eagle Lake, because the Clerk had omitted to write his name on the inside of the return of votes for Senator. The return of the list of voters from Van Buren arrived at the office of the Secretary of State, on the 14th of September last, as shown by the Secretary's official stamp thereon, with the other returns from said plantation. It was enclosed in an envelope furnished by the Secretary of State numbered 6, as was the list itself. Upon that envelope was the printed blank certificate of the Secretary of State, properly filled out and signed by the three Assessors and the Clerk; which certificate fully describes the enclosed list. The same form of certificate has been used for years, and was formerly printed upon the back of the return itself, instead of upon an envelope furnished by the Secretary of State, and was then used to attest the enclosed return, and is so intended to-day. The law requires but one attestation; we have no manner of dobut but that this was a sufficient attestation; and if we had, the benefit of the doubt must still be given in favor of the elective franchise.

Moreover, it appeared to the Committee, that for years most of the returns of the lists of voters had not even been opened, and to-day there may be found heaps of those returns with their seals unbroken, in the vaults of this State House. Inasmuch as this statute has been practically disregarded for years,—been a dead letter upon our statute books, and election after election has been passed upon without reference to any such return, we are not prepared to invoke it at this late day to disfranchise an entire plantation, when its officers have evidently in good faith, and in our judgment *successfully*, attempted to obey it. No attempt has been made to impeach the facts stated in that return, and they stand to-day unquestioned and unquestionable.

The omission in the case of Eagle Lake was of a similar character, except that it was in the return for Senator; and the omission was only on the part of the clerk, the assessors having signed the return inside and outside, and the signature of the clerk appearing upon the outside.

Duly attested copies of the record were also put in under chapter 212 of the Public Laws of 1877, which counsel for the contestant claimed the right to do, if the originals should be held defective. The objection to the vote of Connor plantation cannot be

sustained upon any principle of law or of right, for several reasons: (1) because the statute under which it is claimed to reject its vote in *terms* is a direction to the Governor and Council acting ministerially, and not to the Senate or House acting judicially as the judge of the elections of their own members. And we do not understand that even were that statute intended to be binding upon the Senate or House, which it clearly was not, that it could have the effect of restricting either body in the exercise of their constitutional prerogatives as judges, having the right to give effect to the honest vote of every constitutionally qualified elector, cast in accordance with the constitution and the laws; (2) because such a return as is required by that statute, is included in the return of the organization of Connor plantation made in April, 1877, to the office of the Secretary of State. That return is to-day upon the records in the office of the Secretary, and its existence was recognized by furnishing Connor plantation with blanks upon which to make its returns. Its legally qualified voters met and voted, and their votes were returned upon official blanks, and are here. How they voted is not questioned, nor attempted to be questioned. We see no cause for rejecting their vote.

It is a matter of history, and forms a part of the official records of the present session, that Van Buren and Connor plantations have had their votes counted for Representative to the Legislature upon an unanimous report, unanimously adopted. The precedent is none less valuable because it is recent, and based upon not similar, but the same facts here in controversy. The decision of the House of Representatives we believe to have been a legal and a righteous one, and no reason is alleged why we should overthrow or disregard it; but on the other hand, it appears to be clearly sustained by the weight of authority and precedents. We can see no reason why the votes of Van Buren, Connor and Eagle Lake should not be counted. The counsel for the contestant in turn objected to the return of votes for Senator from Linneus, Blaine and Mars Hill, because the whole number of ballots was not stated in the returns as required by section 32, chapter 4 of of the revised statutes; from New Sweden because the number of votes for each candidate was not "written out in words against his name" as required by sections 75 and 79 revised statutes, an objection founded upon the same statute as the one made to Van Buren, differing from it in this, that it is true in point of fact, while

that to Van Buren is not. Objection was also made to the counting of the votes of Bancroft, Crystal, Mapleton, No. 11, R. 1, Perham, Silver Ridge and Woodland, because it does not "appear by the returns of the organization duly signed and made to the office of the Secretary of State within the time required by law," that these plantations have been duly organized, in which event they have not acquired the right to vote, and their vote cannot be counted under section 77, chapter 4, revised statutes.

Your Committee do in fact find that the returns of the organizations of the several plantations in Aroostook county, organized prior to 1870, which includes almost all of the above named, are sadly defective. In 1870, the plantations of Van Buren, Hamlin, Cyr, St. John, St. Francis, Wallagrass and Eagle Lake had their organizations made legal and valid. In 1873, an act was passed legalizing the doings of the County Commissioners of Aroostook county; but as this extends only to the issuing of warrants for the purposes of organization, we cannot perceive that such act can have any bearing or effect upon the returns of organizations required to be made by the municipal officers to the office of the Secretary of State. The plantations which have organized since 1870, made their returns upon printed blanks furnished by the County Commissioners, and are substantially correct; but those which were objected to appear to us informal and defective, and yet, we do not feel justified in deciding that their vote should not be counted. The votes of these places have heretofore been received, counted and allowed, as have been counted and allowed those of Van Buren, Eagle Lake and Connor. We cannot feel that it is necessary, in order to serve the purposes of any man, to disfranchise upon simply technical grounds, any number of our fellow-citizens. No man is wronged by the counting and allowing of the votes of these places, and we think that wrong would be done by disallowing them. The rejection of votes upon technical grounds, would result in the disfranchisement of nearly one-third of the votes of the county, and would not change the general result.

The contestant presented another objection for the consideration of the Committee, namely:—that even had Parker P. Burleigh received every vote in said Senatorial District, he was not *eligible* to said office of Senator, because he was not a resident of said District for three months next preceding the last September

election, and that he has not since continued to be a resident therein, as required by sec. 6, art. 4, part 2 of the Constitution of Maine. And in support of his objections, the contestant has proved the following facts, to wit:

That Parker P. Burleigh established his legal residence in Bangor in the summer of 1873, the time of his marriage to his present wife, by taking up his residence at No. 143 Ohio street in said city, where he has continuously lived with his wife up to the present time; and that with the exception of twenty-eight days passed by said Burleigh and wife in Aroostook county, in the year 1876, they have lived constantly in said city, inhabited the same dwelling, and lived in the same manner, since the establishment of such residence in 1873.

It was admitted that said Burleigh had been a legal resident of Bangor from 1873 to May 23, 1876, exercising the right of suffrage on different occasions during this time; and although it appeared that he had not voted there since March, 1876, it did not appear that he had ever claimed the right to vote in said city since that time, or that such a claim if made could have been properly denied him.

It was claimed by said Burleigh, that on the 23d day of May, 1876, he ceased to be a legal resident of Bangor, and that he had taken up and established a new residence on said 23d of May, at Linneus in Aroostook county.

But the testimony in this case as presented to the Committee, did not show that the said Burleigh had abandoned his residence in Bangor on the 23d day of May, 1876, but with the exception of slight interruptions, he and his wife had continued to live and reside in said Bangor since May, 1876, as prior to that time.

And further, it did not appear that said Burleigh had, in fact, established his residence in Linneus in May, 1876; but even if he had, he at once abandoned it, and returned with his wife to Bangor on the 12th day of June, 1876, and to the same house in which he had lived from the time of his marriage, and where he now lives, in the same manner as heretofore.

The law, as the undersigned believe, is plain; that to change a residence once admitted to be established, it is incumbent upon the party setting up a new residence to show by proof that the original residence had been actually abandoned; secondly, it is also necessary to show that a new residence has been actually acquired

and established, both by the intention to reside, and by the visible fact of residence.

From all the testimony in the case, fully considered, it did not appear that the said Burleigh had so abandoned his residence in the city of Bangor, neither did it appear that he had acquired and established a new residence in Linneus, in the County of Aroostook; but the whole testimony proved that his residence in every essential particular, and his mode of living, have continued the same since 1873.

It also appeared in evidence that the wife of said Burleigh had been the housekeeper at his place of abode in the year 1873, and that she has continued to the present time, at the head of said household, at 143 Ohio street.

In view of all the facts which have been presented before the Committee, many of which we do not deem it necessary to detail, we are of the opinion, and so report, that the said Parker P. Burleigh, for three months next preceding the September election of 1877, was not, and during the time since said election has not been a legal resident of the Sixteenth Senatorial District, comprising the the county of Aroostook, and that he is therefore *ineligible* to the office of Senator for said District, and therefore cannot be declared elected to said office.

The undersigned are therefore of the opinion, and so report, that Edmund Madigan was elected Senator for the Sixteenth Senatorial District at the last September election, by not only a plurality but an absolute majority of seventy four (74) of all the legal votes cast for Senator in said District, and that Parker P. Burleigh was not elected to said office by a plurality of the legal votes of said District, and that even had he received such plurality, he was *ineligible* to said office, and that Edmund Madigan would be the only constitutional candidate.

And in pursuance of these views, we beg leave to present the accompanying resolves, which are herewith submitted.

JOSEPH H. MARTIN.
J. L. H. COBB.
WM. ROGERS.

Resolves relating to the representation of the Sixteenth Senatorial District in the Senate.

*Resolved,* That Parker P. Burleigh is not entitled to a seat in the Senate.

*Resolved,* That Edmund Madigan is entitled to a seat in the Senate.

# STATE OF MAINE.

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IN SENATE, February 5, 1878.

Submitted by Mr. MARTIN of Knox, and on his motion ordered to lie on the table and be printed.

SAMUEL W. LANE, *Secretary.*