

MAINE STATE LEGISLATURE

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Seventy-first Legislature.

HOUSE.

No. 34

STATE OF MAINE.

RESOLVE in relation to Representatives from the city of
Lewiston.

Resolved, It is the judgment of this House: That Michael
2 A. Coyne, now occupying a seat, is not one of the four can-
3 didates for representative to this legislature receiving the
4 largest number of legal votes cast in the city of Lewiston at
5 the election held on September 8, 1902, and was not elected
6 a member of this House.

That Stephen J. Kelley is one of the four such candidates
8 receiving the largest number of legal votes at said election,
9 is elected and that he be seated in the seat now occupied by
10 said Coyne.

That Alonzo M. Garcelon and Frank A. Morey are two of
12 the four such candidates receiving the largest number of legal

13 votes at said election are elected and that they retain the seats
14 now occupied by them.

That the remaining contestants be given leave to withdraw.

ARTHUR S. LITTLEFIELD,

DAVID H. BUXTON,

JOSEPH H. CARLETON,

OAKLEY C. CURTIS,

Of the Committee on Elections.

MAJORITY REPORT.

The Committee on Elections to which was referred the remonstrance of Jacob R. Little, George B. Haskell and Stephen J. Kelley contesting the right of Alonzo M. Garcelon, Frank A. Morey and Michael A. Coyne to the seats occupied by them in this House having heard and considered the same ask leave to make the following report and submit the accompanying resolve viz. :

Jacob R. Little, George B. Haskell and Stephen J. Kelley, contest the right of Frank A. Morey, Alonzo M. Garcelon and Michael A. Coyne to seats occupied by them in the House of Representatives of the State of Maine, as representatives from the city of Lewiston, in the seventy-first legislature of said State.

Upon the official returns of the city of Lewiston of the election held on September 8th, 1902, said Morey, Garcelon and Coyne, nominees of the Democratic party, appeared to have been elected, and certificates of election were accordingly issued to them, and they now occupy three seats as representatives from said city.

At said election the Democratic seated members received, according to said returns the following vote: Alonzo M. Garcelon, 1,652 votes; Frank A. Morey, 1,645 votes and Michael A. Coyne, 1,624 votes. And the Republican contestants received: Stephen J. Kelley, 1,613 votes; George B. Haskell, 1,598 votes and Jacob R. Little, 1,594 votes.

In ward 6 the same candidates received, according to the returns, votes as follows: Alonzo M. Garcelon, 333; Frank A. Morey, 327; Michael A. Coyne, 325; Stephen J. Kelley, 128; George B. Haskell, 110; Jacob R. Little, 116.

The majority therefore, of the seated members receiving the smallest number of votes over the contestant receiving the largest number of votes, of Coyne over Kelley, is eleven (11); the second smallest seated member over the second largest contestant, Morey over Haskell, is forty-seven (47); the remaining seated member and contestant, Garcelon over Little, is fifty-eight (58). Whether when we get in the comparison beyond Coyne and Kelley this method is correct, is immaterial, as any other method of comparison can make no difference in the result, and the above may be used as the correct majorities, as shown by the returns,

for the purposes of this report. Without the vote of ward six all the Democratic candidates would have failed of election, and all the Republican candidates would have been elected by majorities ranging from 150 to 200.

The ballot law provides that "all the ballots shall, in open meeting, be sealed in a package, which said package, together with the check lists, sealed in the same manner as the ballots, shall forthwith be returned to the city, town or plantation clerk, to be preserved by him as a public record, for six months." The ballots used and unused at the election in question, were returned to the Democratic city clerk of said Lewiston, not however, so sealed but that they might be opened and re-sealed, and an inspection of the package not disclose that fact.

The separate packages containing the ballots cast in the several wards of Lewiston being opened in January, 1903, it was found that what purported to be the straight votes for the Republicans and Democrats, lay each in easily separated piles, and on the back of the last vote in each such pile was marked in figures the number of votes therein with abbreviations indicating straight Republican or straight Democratic, as the case may be. In each pile was the correct number of votes as indicated by such figures, but upon examination of these piles there appeared among what purported to be Republican straight votes, varying numbers of votes in the different wards, from which one or more of the names of the contestants were crossed out by pencil lines; and in the Democratic piles were votes on which the names of the seated members had met a similar fate. These marks, however, largely preponderated against the Republican contestants. On examination it was found that the impression of the pencil which had made these marks was plainly visible in the votes lying in the pile directly under the marked vote, gradually fading out in the succeeding votes thereunder, but being traceable in cases in three votes beneath the one marked. On two votes in different wards was found the name of Stephen J. Kelley similarly marked out and the name of Michael A. Coyne written thereunder in an apparently disguised hand, this name appearing sufficiently plain to be read from the impression in the ballot next underneath the one on which it was written, and the impression of some of the letters being visible in the second lower ballot. There was no way to determine how extensive changes in the ballots of a simi-

lar kind, and made after the election, may have been, but the particular changes examined appear necessarily to have been made after the polls were closed and with fraudulent intent.

If preserved as required by law, so they could have been examined by your committee in the precise condition in which they were when deposited in the ballot box, these ballots were the best evidence, in the absence of fraud in the poll, of the votes cast for the several candidates. Your committee are necessarily compelled to the conclusion that the value of the ballots cast at said election, as showing the vote for the several candidates, is destroyed; as an index of the vote cast they do not speak the truth, and therefore cannot be received for that purpose.

The remaining evidence of the true vote is the official return, which in the first instance is sufficient proof thereof.

The contestants however, attack the correctness of these returns and say, and prove, that George Fred Williams voted in ward two when he was not a legal voter in the city of Lewiston, and that he voted the Democratic ticket. Such a vote was an illegal vote and should be deducted from the ticket for which the same was cast. Such votes can affect the result only to the number they are proved. "The rule obtains in every state, that an election is not to be set aside and declared void, merely because certain illegal votes were received, which do not change the result of the election. In *ex parte* Murphy, 7, Cowen, 153, two ballots were put in the box in the names of two persons who were formerly voters, but who had died some weeks before the election. 'To warrant the setting aside the election' the court observes, 'it must appear affirmatively, that the successful ticket received a number of improper votes, which, if rejected, would have brought it down to a minority. The mere circumstance that improper votes were received will not vitiate an election,' the extra vote should never be rejected, when it is possible to ascertain the fraudulent vote." Such is the language of our court in *Prince vs. Skillin*, 71 Me., 373.

While the contestants claim that eight other votes of a similar nature were cast in ward six, they admit that under the law applicable to such votes, as illegal votes simply, they cannot by themselves, affect this contest, as taken alone they would not change the result.

The contestants, however, rely upon fraud in ward six and say that because of that they should be given the seats of the seated members.

It appears that although 660 ballots were received by the city clerk of Lewiston for ward three, 600 for ward five, 600 for ward six, and 720 for ward seven, all in the requisite number of sealed packages of 60 each, and the various wardens receipted to him respectively, for such number, the actual number received by each of these wardens, and reaching the ballot clerks in the respective wards, were in each case, one package, or sixty ballots, less. There is no evidence that any of these ballots, abstracted from those sent by the secretary of State to the city clerk of Lewiston, before the ballots were delivered to the wardens, reached the ballot boxes, or were used in the election, except in ward six. In this ward nine packages containing 540 votes were delivered to the ballot clerks. A tally was kept of the number of packages used, and at the close of the polls, seven full packages and part of the eighth had been used, and one unbroken package remained. There were 33 votes of the broken package remaining unused. From this calculation the number of votes in the ballot box should have been 447. Upon the vote being counted the box was found to have contained 473 votes, an excess of 26. This cannot be accounted for by any supposed overrun in the number of ballots in a package, for it appears that at four o'clock, an hour before the close of the polls, the names checked on the check list, and the ballots then remaining in the possession of the ballot clerk were counted, and the sum of the two was 540. To this time it was apparent that the actual number had not overrun the number properly in the several packages, for if it had, the names checked as the ballots were given to the voter, must have exceeded the difference between 540 and the number of ballots then remaining. The fact that the names then checked were precisely that difference renders it highly improbable that any error in checking could offset any overrun of ballots, and demonstrates that the excess found in the ballot box cannot be accounted for in that way. At the close of the polls the ballot clerk's check list was again counted and 447 names were found checked thereon; again the precise number that appeared to have been deposited in the ballot box when the number of ballots remaining unused was subtracted from the total that the pack-

ages delivered to the ballot clerks ought properly to have contained. The check lists of ward six instead of now containing the names of only 447 voters checked thereon, contain, one the names of 470 and the other the names of 471; additional names evidently having been marked thereon since the close of the polls, and with the fraudulent purpose of concealing the fraudulent deposit of twenty-six votes.

We need not examine or decide how, when, or by whom, some portion of the bundle of 60 ballots that had been abstracted from the package of ballots belonging to ward six (and they must have been from this bundle, for each bundle had printed on the back thereof the number of the ward, and there was no other source from which ballots for ward six could have been obtained) were deposited with the ballots counted at the close of the polls. They were there and there is no explanation consistent with the undisputed facts for their having been legitimately there. We may ignore, if we choose, all testimony that is questioned, and relying solely upon undisputed facts, must come to the conclusion that twenty-six votes were fraudulently in the poll of ward six. It is equally apparent that this could not be without the connivance, or what is equally as bad, the culpable negligence, of the city clerk, and some of the election officials, at least of the warden.

There was fraud upon the ballot in ward six in Lewiston and the officials whose duty the law makes it to see that there is an honest ballot, are responsible for it. Where, as in this case, the ballot box is surrounded by officials representing the two leading political parties, who themselves violate the law and attempt, even if they do not in all cases succeed in doing so, to get illegal and fraudulent votes deposited, fraud cannot be too strongly condemned and punished. As apparent as it is that fraud was both attempted and committed, it is equally apparent and expressly admitted, that neither the seated members nor the contestants, had any part in, or in any way did or would countenance it. It is unavoidable that the innocent must suffer with the guilty; it is not necessary that the innocent should suffer for the guilty; nor is it proper that under pretence of a zealous desire of rebuking fraud, an innocent party should be deprived of his legal rights. He must suffer the necessary consequence of the fraud, but beyond that we cannot go, nor ought we to allow such con-

sideration to warp our judgment. The fraud proved deserves rebuke, and it should be rebuked in so far as is consistent with a proper and just determination of the case now in hand.

What then under the principles of law as established by the courts and legislative precedents, is the effect in this case, of the facts as they appear. The first duty of the body passing on an election, is to give expression to the result as shown by the legal vote cast, if it can be done.

1. *The Illegal Votes.*

Eight names now appearing on the check list of ward six as having been voted upon, the contestants contend, were those of persons who either had no right to, or who in fact did not vote; or that upon such names, some person not entitled to vote deposited a ballot. If votes were deposited in the box upon these names, they were deposited in the regular way; a name being given by the party desiring to vote, the name checked and a ballot delivered to him. Such votes are commonly termed illegal votes as distinguished from fraud, which vitiates the return or poll. They are the precise kind of votes alluded to by our count in the extract already quoted from the case of Prince vs. Skillin and come entirely within the law as laid down by our court in the case of Attorney General vs. Newell, 85 Me., 276, in the following language: "It, 'the return,' may be impeached in various ways. It may be shown incorrect if the office be elective, by proving illegal votes to have been cast. In such case the proof must go further. It must show a sufficient number of such votes to change the result else the certificate still shows a valid choice, and the certificate is good until overthrown."

Other authorities say that the party attacking the return because of such votes must go still further and show that such votes were cast for the successful candidate. The most that can be, and as we understand is, claimed here, is that such votes, even though not shown to be for the successful candidates, ought under the circumstances to be deducted from their vote; they can in no event have any greater effect under the law as laid down by our court, and whether or not we give them the full force claimed, cannot change our conclusion as to any seat in question.

We do not say that there may not be such a design and purpose of receiving illegal votes, in which the election officials take

part, as to amount to fraud that might vitiate the poll; we simply say such is not here claimed or proved, and that these particular votes can have no greater effect than above stated.

From the evidence we believe these eight names checked were in fact a part of those marked in the check list subsequent to election to make the names checked compare with the vote counted; if so they in no way affected the vote.

Considering them and the vote of George Fred Williams as illegal votes to be deducted from the vote of the seated members, they would not seat either contestant.

2. *The Fraud in Ward Six.*

The dependence of the contestants is upon the fraud which they say existed in ward six. This they say should exclude ward six from the canvass of the vote of the city of Lewiston, and they therefore are elected. Upon them is the affirmative of this proposition and the burden of proving their case. If no evidence were introduced the seated members must necessarily retain their seats. This burden was assumed, and we have no doubt rightly assumed, by them in presenting the case. What must they prove in order to sustain it? They must prove fraud. This they have done. But to stop there is not sufficient. No one will for a moment contend that, if fraud is proved, which by no possibility could extend beyond five votes, in a case where a majority for the successful candidate was one hundred; that on that account a whole poll, in which a successful candidate had received a majority of two hundred, should be excluded, and his opponent declared elected. That the discrepancy is less, and therefore the evident injustice is not so apparent can make no difference in the principle. No! for the contestants to stop with the simple proof of fraud is not enough; they must go one step further and show that the fraud in the polls was sufficient in amount to have changed the general result, or such in its nature as to render it doubtful. We do not say or hold that a poll which is tainted with fraud, particularly such fraud as must have been perpetrated with the knowledge of the election officials, should only be rejected to the extent that such poll can be shown to have been fraudulent; we simply say it should not be wholly rejected unless by fraud the result has been made uncertain. That it should be wholly rejected as to any candidates whose election was thus

rendered uncertain, and no further. It is only necessary to show general fraud, the bounds of which cannot be determined, and not to show that there was sufficient of such fraud to change the result; but if the boundaries of the fraud are fixed it is then necessary to warrant the exclusion of the poll, that such fraud would change the result.

The burden, therefore, stated in brief, is to prove fraud that might have changed the result. The burden of such proof does not shift as the case progresses. "The proof upon both sides, applies to the affirmative or negative of one and the same issue, or proposition of fact; and the party whose case requires proof of that fact, has all along the burden of proof. It does not shift though the weight in either scale may at times preponderate." *Small vs. Clewley*, 62 Me., 157; *Shaw vs. Waterhouse*, 79 Me., 180.

If the fraud is such that the whole poll is excluded, then either party nevertheless may prove what legal votes were actually cast for him. This is not a case of *quo warranto* brought in behalf of the public which only determines by what right an incumbent holds his office, only ousts one for want of title and does not place another in the office. In such a proceeding the State says "by what authority" and the burden is upon the official to show his authority.—*Encyclopedia of Pleading and Practice*, Vol. 17, Pg. 1,471.

In such case the burden is upon the incumbent from the beginning to the end, he sustains it in the first instance, by showing his certificate of election. "Where that is shown to be fraudulent and false, its validity is destroyed * * * * leaving the holder of it in the same situation as if he had no certificate of his election and had produced none. The burden therefore that was originally upon him to show title to the office still remaining, must be met, and must be met with other proof." Such is the language of our court in *Attorney-General vs. Newell*, 85 Me., 277. This language shows that the burden of proof in that proceeding and this, is entirely different; and while in that case, the burden being from the beginning in the respondent, it was necessary simply to show fraud to require him to produce other evidence, the contestant's burden in this case cannot be so sustained. The rule, therefore, laid down in that case is not applicable in this. The burden necessarily lies on the opposite side.

Proof of less than we have here stated will not justify the rejection of an entire poll. McCrary, in his work on elections, Par. 488, says: "The power to reject an entire poll is certainly a dangerous power, and though it belongs to whatever tribunal has jurisdiction to pass upon the merits of a contested election case, it should be exercised only in an extreme case, that is to say, a case where it is impossible to ascertain with reasonable certainty, the true vote." And the authority there cited is even more strict, for it says: "Power to throw out the vote of an entire precinct should be exercised only under circumstances which demonstrate beyond reasonable doubt that there has been such disregard of law, or such fraud, that it is impossible to distinguish what votes were lawful and what were unlawful, or to arrive at any certain result whatever."

The same author, Par. 489, says: "Undoubtedly the general rule is that if legal votes have been cast in good faith by honest electors, it is the duty of the court or tribunal trying the contest, to ascertain their number and give them due effect, notwithstanding misconduct or even fraud on the part of the election officers. Such fraud, or misconduct, may destroy the value of the officer's certificate, and may subject him to severe punishment, but the innocent voter should not suffer on that account, if by any means his right can be upheld." If the absolute verity of the return be destroyed it may nevertheless be used with other evidence in arriving at a result.

The author above referred to, Par. 490, says: "If the voice of the electors can be made to appear from the returns, either alone or aided by extrinsic evidence, with reasonable clearness and certainty, then the return should stand, but not otherwise." If it is rejected as the evidence of the legal vote it is still competent evidence of other facts.

The rejection of the return is one thing; the exclusion of the whole vote of the precinct of which it is the return is quite another. McCrary says: Par. 483, "To set aside the returns of an election is one thing; to set aside the election itself is another and very different thing. The return from a given precinct being set aside, the duty still remains to let the election stand, and to ascertain from other evidence the true state of the vote. The return is only to be set aside, as we have seen, when it is so tainted with fraud, or with the misconduct of the election offi-

cers, that the truth cannot be deduced from it. The election is only to be set aside, when it is impossible from any evidence within reach, to ascertain the true result, when neither from the returns nor from other proof, nor from all together, can the truth be determined. It is important to keep this distinction in mind." While evidence of any fraud may be sufficient to prevent the return being received at its face value, the proof to exclude the poll must go further.

WHAT THEN IS THE RESULT IN THIS CASE?

There were twenty-six fraudulent votes in Ward six. The majority of Michael A. Coyne in the city was eleven. The fraud in Ward six therefore renders the result as to him uncertain, and as to him that precinct must be excluded; with the result that Stephen J. Kelley is one of the four candidates for representative in this legislature, receiving the largest number of votes in the city of Lewiston and is elected and entitled to the seat now occupied by Michael A. Coyne.

The majorities of Frank A. Morey and Alonzo M. Garcelon are 47 and 58 respectively, and therefore the effect of the fraud upon them requires further consideration. Has the burden of the contestants been sustained in these cases? We think it has not. It is apparent from the evidence that 447 names were checked on the voting list, and for each name checked, a man claiming that name entered and received one ballot; it is also apparent that of the 540 votes received by the ballot clerks, 447 were given one at a time to men claiming to be the persons whose names appeared in the check list. It follows from this that 447 votes were deposited in the ballot box free from fraud; these votes were necessarily proper and the electors casting them were entitled to have them counted unless this number should be reduced because of illegal votes. Illegal votes can have no effect beyond the number proved. The extent of such proof claimed in Ward six is eight. The fact that fraud is otherwise shown in this ward can give these votes no more extensive effect in the result. These, if illegal, should be deducted. The evidence then shows 439 legal votes cast in Ward six. What evidence have we as to how many were received by the different candidates? The returns although not showing the true number of legal votes, are still competent to show the result of the votes counted as determined by counters representing both parties,

including legal, illegal and fraudulent votes. They can at least be used to refresh the recollection of those who counted, and enable them to testify as to the result of that count; and it is admitted that the return is a true return of the vote as counted. By the vote of Ward six as counted added to the returns for the remainder of the city, Frank A. Morey had fifty-seven (57) majority. Deducting from his majority the one illegal vote in Ward two, all the votes cast in Ward six, in excess of 439, viz., 34, and we must come to the conclusion that he received in that ward, at least 293 votes, a number sufficient, when all the votes counted in that ward for the Republican candidates are allowed them, to elect him by twelve majority.

The only possible element of uncertainty in this calculation is the uncertainty as to whether the vote of Ward six, although counted by representatives of both sides, was counted in accordance with the fact. The best evidence to determine this would be the votes themselves, but we have determined that the votes in some wards certainly have been tampered with since the election, and it may be they have in all, and we therefore cannot depend on them. Although not evidence for that purpose they are evidence of their present condition. An examination of them discloses that assuming all marks that can be considered to have been made after the count, and would affect these representatives, to have been so made, they would produce a difference of only six as between Morey and Haskell and a less difference as between Garcelon and Little. We must therefore conclude that any error on this score could not when added to all other possible deductions have produced a difference in the result.

While we cannot arrive at a conclusion as to what the precise legal vote was in Ward six for the several candidates, we can arrive at the conclusion that Frank A. Morey must have received a sufficient number to have given him a majority in the whole city. While the precise vote is uncertain the result is not, and there is not that uncertainty which justifies a rejection of the whole poll, and the contestants have not sustained the burden resting on them when they claim its rejection.

Our conclusion therefore is that Frank A. Morey received a majority of the legal votes cast and is entitled to retain his seat.

All that is said of the case of Frank A. Morey is true of Alonzo M. Garcelon and is reinforced by his large majority. Alonzo M. Garcelon we conclude is therefore entitled to retain his seat.

This result would not be changed if the rule applicable to a quo warranto applied to this case and the burden was on the seated members to prove they had in Ward six sufficient legal votes to elect them. This would not change the conclusions to be drawn from the evidence, viz., that 439 legal votes were there cast of which at least 293 must have been for Frank A. Morey, and a larger number for Alonzo M. Garcelon. It is not necessary that these votes should be proved by the individuals who cast them, although the value of the return as evidence showing the true vote is destroyed by proved fraud, they may be proved by any competent evidence and the return may nevertheless make a part of that evidence, or in any event be used to refresh the recollection.

If it may be said that the burden being upon the seated members a part of that burden is to prove that the man who purported to cast each vote actually did so and that he was legally entitled to vote, and there is no direct evidence as to these facts; we say it can be fairly presumed when there is no evidence to the contrary, and the poll being surrounded by representatives of both parties, personally acquainted with the voters, that the ballots delivered by the ballot clerks were delivered to and deposited by legal voters. To make the supposed rule as to what is necessary to sustain the burden the rule in such case would be in the last degree technical and would ignore all probabilities and presumptions. The strong probability is that even those wrongly checked, which we have deducted in Ward six, as representing illegal votes, do not represent votes actually deposited, but marks made on the check list to offset the 26 fraudulent votes.

The contestants in proving their case have necessarily shown the limits of the fraud and the whole evidence does not justify us in presuming it was of greater extent. We are not therefore justified by our finding in rebuking the fraud further than is done by this result and are compelled to leave the criminal law and the city of Lewiston to further purge their corrupt politics.

ARTHUR S. LITTLEFIELD,
DAVID H. BUXTON,
JOSEPH H. CARLETON,
OAKLEY C. CURTIS,

Of Committee on Elections.

MINORITY REPORT.

To the Honorable House of Representatives of the Seventy-first Legislature of Maine:

The Committee on Elections to which was referred the remonstrances of Stephen J. Kelley, Jacob R. Little and George B. Haskell, in which they claim that Alonzo M. Garcelon, Frank A. Morey and Michael A. Coyne should not occupy seats in this House as representatives from the city of Lewiston, Maine, because they, the said Kelley, Little and Haskell, received a plurality of all the votes legally cast and given for representatives to said legislature, in the September election, 1902, in said city, and that they, the said Kelley, Little and Haskell, should, therefore, be admitted to the seats now held and claimed by said Garcelon, Morey and Coyne, having heard all the evidence in the case and the arguments of counsel, after full consideration beg leave to report:

That they are convinced by the evidence that there were, in said election, in said Lewiston, practices of gross fraud and flagrant violations of those laws calculated to insure the purity of the ballot box; that officers whose sworn duty it was to surround the ballot box with all the protection of the law that the will of the people might be registered, were not only guilty of culpable negligence in the discharge of their duties but were active participants in a base and fraudulent combination to pollute the ballot box and pervert the will of the majority; that the Democratic city clerk of said Lewiston unlawfully and for the fraudulent purpose of voting or having the same voted, in accordance with a prearranged plan, abstracted sixty ballots from each of several wards in said city while the ballots were in his possession prior to said election; that the votes cast at said election in said city have since the election, while in the legal custody of the said Democratic city clerk, been unlawfully and fraudulently mutilated and changed, so that now they are absolutely worthless as records of the votes cast at said election for representatives to the seventy-first legislature, and the contestants are thereby unlawfully deprived of a recount of said votes as the law provides.

Your committee further find upon the evidence in the case that the check lists used at said election, in Democratic Ward six, in said Lewiston, have been, since said election, by the said Democratic city clerk, in accordance with a prearranged plan, unlawfully and fraudulently altered and changed to conceal evidences of gross fraud perpetrated at said election in said ward, and that said check lists were thereby rendered of no value as evidence to determine the names of persons who actually voted in said Ward six at said election.

And your committee believes that twenty-six and more ballots were, through the connivance and consent of the Democratic officials of said ward, unlawfully and fraudulently deposited as votes in said Ward six ballot box at said election, and presumably such unlawful ballots were cast and counted as Democratic votes; that divers persons unlawfully participated in said election in said Ward six.

Your committee find that the fraud in said Ward six at said election was so general, open and flagrant both in and about the ballot box and in the mutilation of the check lists of said ward, that they are absolutely unable to confine and limit said fraud, and as the contests in said city were so close, your committee believe that the effect of said fraud in said Ward six was sufficient to change or render uncertain the results of said election.

Upon the facts established, your committee believe that justice imperatively demands such a solution of this matter as will give expression to the honest votes of said Lewiston, in wards where general fraud did not obtain. An attempt to confine fraud in Ward six to twenty-six ballots, in the face of the established fact of the existence of such general fraud, must be based on the merest conjecture. A settlement of this question on such a basis would do violence to the honest voters in said Lewiston who live outside of Ward six and would encourage the lawless to continue with greater energy their contemptible practices. It would say: Commit your frauds, stuff your ballot boxes, vote non-residents and others who have no right to vote, mutilate your check lists, change and deface ballots after election, destroy all records and the evidences of your frauds, and so far as we cannot detect such frauds by counting the actual extent thereof, you shall profit by such unlawful acts. Would such a decision ren-

der secure a pure ballot and an honest count, the very foundations of our popular government? We think not.

It is of no consequence in the determination of this matter what the standing, ability or party relations of the gentlemen who are now occupying or contesting the seats in question may be; but it is of paramount importance that this House place its emphatic disapproval upon fraudulent elections, and then the honorable element in every community will feel called upon to prevent such pernicious practices as obtained in the city of Lewiston at the last September election.

Your committee find that sound legal precedents hold that where general fraud obtains, as in Ward six, it vitiates the entire returns from such ward and renders such returns absolutely unreliable for any purpose except to show that an election was held, and the returns of vote of such ward should be stricken out and the number of honest votes cast may be proven by extrinsic evidence. Following such precedents, the returns of the votes cast in said Ward six at said election should be deducted from the vote of the city as shown by returns, and then the seated members must show by extrinsic testimony such a number of honest votes cast for them in said Ward six which added to the number cast for them as shown by the returns which have not been impeached, would be sufficient to elect them, or they would not be entitled to hold their seats in this House. No such evidence has been introduced to show the number of legal votes cast in this ward at said election, and we have no right to surmise or guess at the number.

Therefore, in accordance with legal precedents and in the interests of clean elections, your committee recommend that the said returns of the vote cast in said Ward six at said election be entirely eliminated from the returns of the vote given in at said election, in said city, for representatives to this legislature. The elimination of the returns of the vote of said Ward six from the vote of said city for said representatives would give the vote of said city for said representatives as follows:

George B. Haskell, 1,598; Jacob R. Little, 1,594; Stephen J. Kelley, 1,613.

Alonzo M. Garcelon, 1,319; Frank A. Morey, 1,318; Michael A. Coyne, 1,299.

George B. Haskell, Jacob R. Little and Stephen J. Kelley having received, as we believe, a plurality of all the legal votes cast in the city of Lewiston at the last September election for representatives to the seventy-first legislature of Maine, were elected as said representatives and are entitled to the seats now held and claimed by Alonzo M. Garcelon, Frank A. Morey and Michael A. Coyne. And your committee beg leave to report the accompanying resolve.

Respectfully submitted,

ARTEMUS WEATHERBEE,
CHAS. S. PURINTON,
HARRY A. FURBISH.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES OF THE SEVENTY-FIRST LEGISLATURE.

Resolved, That it is the judgment of this House that Alonzo
2 M. Garcelon, Frank A. Morey and Michael A. Coyne, who
3 were given certificates of election as representatives from the
4 city of Lewiston to the seventy-first legislature of Maine, not
5 having received a plurality of all the legal votes cast and
6 given in at the last September election, in said city, as repre-
7 sentatives to said legislature, are not entitled to and shall no
8 longer sit in this House as representatives of said city;

Resolved, That it is the judgment of this House that George
10 B. Haskell, Jacob R. Little and Stephen J. Kelley, received
11 a plurality of all the votes legally cast and given in at the
12 last September election in Lewiston, Maine, as representatives
13 from said city to the seventy-first legislature of Maine, and
14 are entitled to membership in this House as representatives
15 from said city, and to the seats recently occupied by Alonzo
16 M. Garcelon, Frank A. Morey and Michael A. Coyne.

ARTEMUS WEATHERBEE.

CHAS. S. PURINTON,

HARRY A. FURBISH.

STATE OF MAINE.

IN HOUSE OF REPRESENTATIVES,

AUGUSTA, February 3, 1903.

Tabled pending acceptance of either report, by Mr. WEATHERBEE
of Lincoln, and with Resolves accompanying ordered printed.

W. S. COTTON, *Clerk.*