

MAINE STATE LEGISLATURE

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Legislative Record

OF THE

Seventy-Seventh Legislature

OF THE

STATE OF MAINE

1915

HOUSE

Wednesday, January 13, 1915.

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Rev. Mr. Broken-shire of Hallowell.

Journal of previous session read and approved.

At this point the Senate came in and a joint convention was formed.

In Convention

(President Hersey in the chair.)

Chairman HERSEY: The joint convention will be in order. Without objection the secretary of the convention will call the roll.

A call of the roll showed that the following were present:

Albert, Sen. Allen, Kennebec; Allen, Machias; Sen. Ames, Washington; Ames, Stockton Springs; Averill, Ballard, Sen. Bartlett, Beal, Benn, Bernier, Besse, Blake, New Gloucester; Blake, Oakland; Bonney, Bourque, Sen. Boynton, Bradbury, Bragdon, Brann, Brown, Brown, Auburn; Brown, New Sharon; Sen. Burleigh, Bussey, Sen. Butler, Campbell, Carson, Chadbourn, Chamberlin, Chaplin, Sen. Chatto, Sen. Clark, Clement, Clifford, Cobb, Coffin, Sen. Colby, Colcord, Sen. Cole, Sen. Conant, Connelan, Connors, Corliss, Currier, Daigle, Danforth, Davis, Descoteaux, Dilling, Douglass, Drapeau, Drummond, Sen. Dunton, Durgain, Sen. Durgin, Dutton, Edwards, Ellis, Sen. Emery, Erskine, Evans, Fay, Sen. Flaherty, Ford, Fossett, Sen. Fulton, Gallagher, Sen. Garcelon, Gerrish, Gilmour, Goldthwaite, Gooding, Goodwin, Gould, Grant, Groaton, Greeley, Greenlaw, Greenleaf, Hanson, Saco; Hanson, Sanford; Haraden, Harper, Hart, Haskell, Sen. Hastings, Sen. Herrick, Sen. Hersey, Higgins, Hill, Hobbs, Hodgkins, Holt, Gouldsboro; Holt, Skowhegan; Jameson, Sen. Jillson, Jordan, Lawrence, Leader, Sen. Leary, Lewis, Libby, Littlefield, Lombard, Lord, Mansir, Maxwell, McCarty, McCarrison, McCurdy, McIntire, McKinley, McNally, Meader, Millett, Mitchell, Morrison, Morse, Sen. Moulton, Mulligan, Mullin, Sen. Murphy, Neilon, Newell, Nicholas, Noyes, O'Connell, Peabbles, Sen. Peacock, Perham, Perkins, Peterson, Picher, Pierce, Farmington; Pierce, Houlton; Plummer, Pollard, Sen. Price, Ranney, Ricker, Roberts, Robinson, Russell, Alfred; Russell, Lewiston; Ryder, St. Clair, Calais; St. Clair, Rockland; Sanborn, Sen. Scammon, Small, Smith, Snow, Sen. Swift, Tabbutt, Tate, Thibodeau, Ft. Kent; Thibodeau, Van Buren; Thombs, Sen. Thurston, Tobey, Towle, Trafton, Turner, Tuttle, Varney, Sen. Walker, Ward, Wasgatt, Washburn, Waterhouse, Watts, Webb, Welch, Sen.

Weld, Wescott, Wheeler, Wilkins, Wilson, Wise, Woodman, Wyman.

Present, 182.

Absent, 0.

Chairman HERSEY: The Chair understands that all the members of the joint convention are present. Without objection, the Chair understands that the remaining executive councillors-elect are present who have not been sworn, and unless the convention objects, at this the Chair will submit to them the oath required by the constitution. Hearing no objection the Chair will appoint the Senator from Cumberland, Senator Murphy, as a committee to conduct the councillors-elect to the Chair for their obligation.

Thereupon Senator Murphy of Cumberland conducted the Hons. C. M. Sleeper of Berwick, J. A. Cunningham of Ellsworth and O. W. Simmons of Kingfield, executive councillors-elect, before the convention, where they took and subscribed the oaths required by the constitution to qualify them to enter upon the discharge of their official duties.

Chairman HERSEY: The Chair lays before the convention the unfinished business of yesterday, which is the election of treasurer of State. Before we proceed with the new ballot the Chair feels that an explanation is necessary or that instructions are due the convention.

It has come to the attention of the Chair in a way and manner that cannot be disregarded that certain members of the joint convention intend at this morning's session to use a different ballot from the official ballot provided by the secretary of the convention, and the Chair wishes to say at this time, that we may understand each other, the Chair feels it to be its duty to instruct the Convention that by the ancient usage, custom and laws governing a convention this kind in legislative assembly, from all the writers on parliamentary law without a dissenting opinion, that the mode and practice of this convention for a hundred years is well known. This convention is composed

of members of the two branches of the legislature, the Senate and House, meeting in joint convention; the secretary of the convention is the secretary of the Senate; the messengers of both houses are here but they are under the charge of the messengers of the Senate; the President of the Senate presides at this convention; the ballots, when ballots are to be used in the convention are furnished by the secretary of the Senate because the State pays for these ballots; they are the official ballots of the State for the time being; no one has a right to substitute any other ballot. To be sure, a member has a right to take the official ballot and write the name of any candidate he pleases upon it and deposit it but when he comes to the ballot box he must come with an official ballot in size, one that is furnished by the secretary of the convention; and it is the duty of the committee in charge of the ballots, and I so instruct them as chairman of this convention, that they must not allow any other ballot knowingly to be put into the ballot box, and if they find anything but official ballots in there, it is their duty not to count those ballots, or, if they count them, to return the ballots to this convention and exhibit them to the convention and ask the convention whether they shall be received and counted or not. If the convention understands me, we will now proceed to the work of the convention.

Senator BOYNTON of Lincoln: Mr. Chairman, from the ruling of the Chairman of the convention I respectfully appeal to this convention.

Chairman HERSEY: Senator Boynton of Lincoln appeals from the ruling of the Chair, and the question before this convention is: Shall the ruling of the Chair stand as the judgment of this convention?

Mr. PERKINS of Augusta: Mr. Chairman, I move that this appeal be supported. The Democrats in this House simply — — —

Chairman HERSEY: The Chair rules that there can be no debate up-

on this appeal. The question is: Shall the decision of the Chair stand as the judgment of this convention? All those in favor — — —

Mr. CLIFFORD of Lewiston: Mr. Chairman, I would like to take an appeal from your last ruling.

Chairman HERSEY: The Chair will state that while one ruling is pending another one cannot be made. The gentleman from Lewiston (Mr. Clifford) will be seated. The question is: Shall the decision of the Chair stand as the judgment of this convention? Those who are in favor of the opinion of the Chair standing as the judgment of this convention will say yes; those opposed will say no.

A viva voce vote being doubted.

Senator BOYNTON of Lincoln: Mr. Chairman, I will now ask for a division of the House upon this question.

Mr. HILL of Corinth: Mr. Chairman, I would like to ask a question. Has the Chair a right to vote in this convention upon his own ruling?

Chairman HERSEY: The gentleman from Corinth (Mr. Hill) asks of the Chair a parliamentary inquiry, whether the chairman of this convention can vote on his own ruling. The Chair rules that he can.

Mr. PLUMMER of Lisbon: Mr. Chairman, in regard to the question of the appeal from the ruling of the Chair — — —

Chairman HERSEY: The gentleman is not in order. A division has been called for and no debate is in order. The Chair will appoint as monitors of the convention the monitors of the House, who will now take their places. The question before the convention is: Shall the decision of the Chair stand as the judgment of this convention? Upon that question a division has been called for. Those who are in favor of sustaining the Chair will rise and stand in their places until counted and the monitors have returned the vote.

A division being had, 91 voted in the affirmative and 91 against.

Chairman HERSEY: 91 having voted in the affirmative and 91 in the

negative, the decision of the Chair is sustained.

Mr. DESCOTEAUX of Biddeford: Mr. Chairman, as I made the count, there were 91 yeas — — —

Chairman HERSEY: The Chair rules that the gentleman is not in order. The Chair now lays before the convention the unfinished business of yesterday, the election of a treasurer of state. The committee will take charge of the ballots and see to the distribution of them.

Senator MURPHY of Cumberland: Mr. Chairman, I move that the ballot box be emptied to show that it is empty before the vote is taken.

Mr. CLIFFORD of Lewiston: Mr. Chairman, I rise to a point of parliamentary inquiry in regard to your decision.

Chairman HERSEY: The Chair rules that it is too late for the gentleman to make that inquiry.

Mr. PIERCE of Houlton: Mr. Chairman, I would like to ask, so that there will be no misunderstanding, if I am to understand that the ruling of the Chair applies to what is to take place in future, and that you will instruct the committee to count no votes except those returned upon the ballots passed out by the pages and messengers?

Chairman HERSEY: The Chair will state that it did not wish to be understood that way. The Chair instructed the committee that it was their duty to select those ballots and present them to this convention for its approval or disapproval, if there were any put into the box, if they find anything but official ballots in the box to return the whole ballot, official and unofficial, and let the convention settle the question.

The Chair wishes to state that a member of the committee, the gentleman from Merrill (Mr. Libby) says that on account of sickness he would like to be excused from the committee, but not excused from his presence in the House. Is it the pleasure of the convention to excuse him from the committee?

Senator BOYNTON of Lincoln moved that the gentleman from Merrill (Mr. Libby) be excused from the committee.

The motion was agreed to, and the gentleman was excused.

The Chair thereupon appointed the gentleman from Woodstock, Mr. Perham, to take the place upon the committee previously occupied by Mr. Libby of Merrill.

Sixth ballot: Having attended to the duties assigned it, Senator Moulton from the committee reported as follows:

Whole number of votes cast,	182
Necessary for a choice,	92
Elmer E. Newbert had	91
Joseph W. Simpson had	87
Morrill N. Drew had	4

The report was accepted.

Chairman HERSEY: The Chair declares that there is no election. The convention will proceed to a new ballot.

Senator BOYNTON of Lincoln: Mr. Chairman, I move that this joint convention do now adjourn until 10 o'clock tomorrow.

Senator Moulton of Cumberland seconded the motion.

Mr. HIGGINS of Brewer: Mr. Chairman, I trust this motion will not prevail——

Chairman HERSEY: The Chair rules that no debate is in order. The question before the convention is on the motion of the senator from Lincoln (Senator Boynton) that this convention do now adjourn until 10 o'clock tomorrow.

A viva voce vote being taken,

The motion was lost.

Senator BOYNTON: Mr. Chairman, I would respectfully doubt the vote and ask for a division of the convention.

A division was ordered.

Chairman HERSEY: The question before the convention is the adjournment of the convention until 10 o'clock tomorrow. Upon this question a division has been ordered. The Chair will appoint as monitors of the convention the monitors of the House, who will now take their places. Those in favor of the motion to adjourn until 10 o'clock tomorrow will rise and stand

in their places until counted and the monitors have returned their count.

A deviation being had,
93 voted in the affirmative and 55
adjairst.

So the motion prevailed.

Senator COLE of York: Mr. Chairman: I move that we reconsider the vote whereby we voted to adjourn until tomorrow at 10 o'clock.

Chairman HERSEY: Did the gentleman vote to adjourn?

Senator COLE: I did.

Chairman HERSEY: The senator from York, Senator Cole, now moves that we reconsider the vote whereby we voted to adjourn until tomorrow at 10 o'clock.

Senator COLE: Mr. Chairman, I believe that is debatable, is it not?

Chairman HERSEY: A motion to reconsider a motion to adjourn at a time certain is debatable, yes.

Senator COLE: Mr. Chairman, I do not know what motive prompts this early adjournment after one ballot has been taken, but apparently there must be some motive behind it, when one party unitedly votes in favor of a thing and another party unitedly votes against it. We are here to do business of the State in a joint convention, to elect the State officials. I believe it is our duty to ourselves and to our State to appear to be doing business in a logical and orderly manner, and that the adjournment which is being voted for here is being carried through not for the sake of expediting the business of this joint convention

Mr. PLUMMER of Lisbon: Mr. Chairman, I rise to a point of order.

Chairman HERSEY: The gentleman from Lisbon, Mr. Plummer, will state his point of order.

Mr. PLUMMER: Mr. Chairman, I think the motion to reconsider a motion to adjourn is not debatable except as to the time to which adjournment shall be taken.

Chairman HERSEY: The Chair understands that is what we are debating. The point of order raised by the gentleman from Lisbon, Mr. Plummer, is overruled. The gentleman from York, Senator Cole, will proceed.

Senator COLE: Mr. Chairman, as I say, we are here today to do business of the State in the election of a State treasurer; and when this Convention adjourns, so far as I know, at this time in the session of the Legislature there is not very much business for either branch of the Legislature to attend to. I know of no good reason why, if this joint convention should want to take a recess for half an hour in order to patch up something, or if it should desire to take a recess for an hour, it could not do so; but is there any reason which any member of this joint convention can advance why we should sit around here all day and waste our time and waste the money of the State and not attend to the business which we are sent here to attend to? These State officials need to be elected; this joint convention needs to be adjourned without day, in order that the business of the Legislature may proceed, but as long as we are in session here from day to day we know that the business of both branches of the Legislature is being stagnated and that nothing is being done, and that nothing will be accomplished, and that it will simply prolong the session. Whenever this session is prolonged it means a burdensome expense to the people of the State of Maine, and we are held accountable to the people of the State of Maine for that expense.

Mr. Chairman, I see no reason, and I believe there is no reason which any individual member here can advance for adjourning after one solitary ballot for one official in one day. If we had ballotted here for a few hours until there was need of a change or of rest, there might be a good reason advanced, but there is no man here who is physically debilitated on account of the action of this convention this morning; there is no man here who is suffering and who needs a change, rest or food at the present time; and for that reason, Mr. Chairman, it seems to me useless, unwise and unpolicy for this State to be held up to contempt, to the charge that we are playing little, low, petty, partisan politics. We ought to rise above it; if either side can win in an open convention by open and honorable meth-

ods then let the best side win or the side that has the votes, but if we are simply here jockeying along from day to day in order to gain some advantage, and wasting the time and money of the State, then I believe we are not worthy representatives of 750,000 people. We are 182 men chosen from the whole body of the people of this State, sent here to do business for those people, and I believe they expect us to do business and that the record which we are making here is not a record of which we shall be proud unless we stop here and attend to business. For that reason, Mr. Chairman, I make the motion that we reconsider the vote we hereby we voted to adjourn, hoping that it will be carried and that we shall at least cast two more ballots and have a show of decency.

Mr. HILL of Corinth: Mr. Chairman, I rise to a point of order.

Chairman HERSEY: The gentleman will state his point of order.

Mr. HILL: Did the gentleman last speaking (Senator Cole of York) vote to adjourn?

Chairman HERSEY: He says so. The Chair has to take his word for it.

Mr. PIERCE of Houlton: Mr. Chairman, the senator from York, Mr. Cole, asks what sensible reason can we assign why Senator Boynton should have made his motion that this joint convention should be adjourned until tomorrow at 10 o'clock. I wish to reply very briefly, as best I can, to the question asked by Senator Cole of York, and the answer to that question is this: Every one knows, because it has been in all the papers of the State, that there are two members of this House, both members of the same party, whose right to sit here has been challenged by the candidate who opposed them at the election in September every member of the convention knows that an election committee was appointed, not on the first day that it might have been appointed, gentlemen, but after a reasonable delay; it was appointed with all the other House committees, and every one knows that that election committee has not rushed through their hearings, and has not crowded people ahead, and has not gone ahead without proper deliberation, al-

though a majority of that committee are members of the Democratic party. The opposing candidates, the two Republican candidates, will tell you that they and their counsel have had every opportunity to come before that committee to present their case at such length as they saw fit, to introduce whatever evidence they may have had, to present their arguments, to file their briefs and otherwise put in their case according to their own good judgment and according to the good judgment of their counsel. These hearings have been completed this morning at five minutes of ten o'clock, and since that time the committee has not had time to get together and pass upon the matter, and what the decision of that committee will be neither I, the chairman of it, or any of its members know. This much it seems to me must be evident to any fair-minded man.

This convention is composed of the members of the Senate and of the House of Representatives; and being composed of the members of the Senate and House of Representatives, no one should take part in the deliberations of either branch or take part in the deliberations of this Convention, unless he has been properly and in due manner elected to the House where both these contests are. For that reason it seems to me perfectly proper that this joint convention should adjourn in order to enable the election committee to have time to go over these cases and decide what in their judgment is proper, and, if there should be two reports, that these reports may be prepared, and that the House may take the matter under advisement and proceed in a proper manner. It seems to me that this idea that we must proceed to vote exactly according to the certificates of the governor and council, all members of the party, that we must proceed indefinitely to vote with a membership made up on that basis is absolutely wrong and illogical. We should proceed to vote, gentlemen, in a proper way. There is probably no matter which to many people is so important as the duty which this legislature will have to perform in the election of these State officials; and it seems to us proper, fair, right and reasonable that the committee on elections should have a proper time to make up its report, and that the House have a proper time to pass upon

that report and to decide whether or no one or both of these gentlemen shall be unseated. In one case there is no contention on the part of the contestant that he is elected; he only contended it was a tie; in the other case there are two contentions, one, that on a certain rule there is a tie, and on another that on a certain other rule which the contestant advocates and the sitting member repudiates, that the contestant is elected.

Now, gentlemen, that is the reason why this motion is made in all fairness, that the question of the right of who should sit in this convention may be settled decently, orderly and in good season.

It is perfectly possible, if the members of the Democracy had been inclined to insist upon their right to try and put anything through the House because they had a majority—we could have had night sessions and debated this question before now, and we could have had these hearings before now if we had it in mind to go ahead in other than a proper manner, and if we had a majority in the House we could unseat these two Republican members, and we could have done that long ago if we had been inclined to proceed otherwise than in a decent and orderly manner. The time has come when this deadlock is unbreakable; we are not getting ahead on this ballot and it seems to me proper that we should adjourn and settle once and for all time who are the men that were elected to this House of Representatives have a legal and a moral right to vote in this convention. (Applause)

Senator THURSTON of Oxford: Mr. Chairman, I rise to second the motion of Senator Cole of York.

Senator GARCELON of Androscoggin: Mr. Chairman, I question his right to second that motion.

Chairman HERSEY: The motion does not require any seconding, anyway. The question is on the motion of Senator Cole of York that we reconsider the vote whereby we voted to adjourn until tomorrow at 10 o'clock. Those in favor of the motion to reconsider that vote will say yes; those opposed will say no.

A viva voce vote being taken,
The motion was lost.

Chairman HERSEY: The convention stands adjourned until tomorrow at 10 o'clock. The House will remain in the hall; the Senate will retire to the Senate chamber.

Thereupon the Senate retired to the Senate chamber.

In The House

(The Speaker in the Chair.)

From the Senate: The joint committee on reference of bills came from the Senate with the President of the Senate, ex-officio, and Senator Boynton of Lincoln named as members of the committee in that branch. The committee in the House being composed of the Speaker, ex-officio, and Messrs. Gallagher of Bangor and Higgins of Brewer.

On motion by Mr. Connellan of Portland,

Adjourned until 3 o'clock this afternoon.

Afternoon Session

The House met according to adjournment and was called to order by the Speaker.

Journal of previous sessions read and approved.

Papers from the Senate disposed of in concurrence.

Orders

On motion of Mr. Drummond of Winslow, it was

Ordered: That the Maine Sportsmen's Fish and Game Association be granted the use of Representatives' hall for the annual meeting of said association on Thursday afternoon, January 21st.

Mr. PIERCE of Houlton: Mr. Speaker, in behalf of the committee on elections I wish to present two reports; first, the unanimous report of the committee on elections in the case of Peter Harmon against James J. Clement reporting that said Peter Harmon received 608 votes, and that said James J. Clement received 612 votes and that therefore the said James J. Clement received a plurality of votes for the office of representative to the 77th legislature of Maine from the class of towns of Montville, Burnham, Knox, Thorndike, Unity, Freedom and

Troy in the county of Waldo, the report being signed by Messrs. Pierce, Connors, Besse, Hanson, Campbell and McCarty for the committee.

The report was accepted.

Mr. PIERCE: Mr. Speaker, in behalf of the committee on elections I wish to present the majority report of the committee on elections in the case of Fortunat O. Michaud of Van Buren against Levite V. Thibodeau of Van Buren, and move for its acceptance and immediate consideration.

Mr. Pierce then presented the majority report of the committee on petition of Fortunat O. Michaud praying that he may be admitted to the seat now held and claimed by Levite V. Thibodeau from the class district composed of the towns of Van Buren and Grand Isle and the plantations of Cyr and Hamlin in the county of Aroostook, reporting that the committee had the matter under consideration and after hearing the evidence in the case and the arguments of counsel beg leave to report that said Fortunat O. Michaud received 356 votes, and that said Levite V. Thibodeau received 353 votes, and that therefore the said Fortunat O. Michaud of said Van Buren was legally elected a representative from said district to the 77th legislature of Maine and shall be seated as said representative and from henceforth be and become the duly accredited representative from said class district; also reporting a resolve, that it is the judgment of this House that Levite V. Thibodeau, the sitting member from the class district composed of the towns of Van Buren and Grand Isle and the plantations of Cyr and Hamlin in the county of Aroostook was not legally elected and shall not longer act as the representative from said class district, and that Fortunat O. Michaud of said Van Buren (was legally elected, as representative from said class district to the 77th legislature of Maine, and shall be seated as said representative and from henceforth be and become the duly accredited representative from said class district. Signed by Messrs. Pierce, Connors, Edwards, Campbell and McCarty of the committee.

Mr. Hanson of Sanford presented the minority report of the same committee in the case of Fortunat O. Michaud, contestant, against Levite V. Thibodeau,

reporting that said Levite V. Thibodeau received 353 votes and that said Fortunat O. Michaud received 352 votes and that therefore the said Levite V. Thibodeau received a plurality of votes for the office of representative in the 77th legislature of Maine from the class towns of Van Buren and Grand Isle and the plantations of Cyr and Mamlin, and is entitled to retain his seat in the House of Representatives of the 77th legislature of Maine, in accordance with the certificate issued to him by the governor and council. Signed by Messrs. Besse and Hanson of the committee.

Mr PIERCE of Houlton: Mr. Speaker and gentlemen of the House, the question before the House in this election case resolves itself into two different and distinct phases. Upon one of them the gentleman from Lewiston, Mr. McCarty, is prepared to speak and is prepared to deal with that. That deals with a question which you have all seen mentioned in the newspapers, the alleged lost ballot, wherein the return did not agree with the record. The other question which arises in this case, and which is necessarily involved in the making up and acceptance of the majority report and the accompanying resolve, has to do with the so-called sticker. You all understand probably just how this question comes up. The name of Levite V. Thibodeau was printed upon the Republican ballot as candidate for representative from this class district. In this town of Van Buren three men who voted with a cross in the Republican ticket attempted, so your committee believed and so we think you will all be satisfied, to vote for Mr. Michaud for representative instead of for Mr. Thibodeau; they attempted to do so by that common practice which we do at all elections in this State, by the use of a sticker, but when they put those stickers upon the ballot they did not cover the name of Mr. Thibodeau. The sticker, you understand, is in the square where the representative's name comes, at the bottom in the left hand or Republican column on the ballot, but the sticker is placed there perhaps 1-24 of an inch below the name of Mr. Thibodeau so that in fact it does not

cover the name of Mr. Thibodeau upon the ballot; and I will say further that there is no pencil mark, ink mark or any other mark drawn through the name of Mr. Thibodeau.

So, gentlemen, the question as to those three ballots presents itself squarely to this effect: Is this House of Representatives to decide that those three men who intended to vote for Mr. Michaud, whether they are to lose their votes because they got their stickers 1-24 of an inch below perhaps where they should under the laws and procedure of this court have placed them? That is the question and the only question concerned in these three ballots. The same question came up in the Harmon and Clement case and was argued there before the committee, and the majority of the committee felt then that those ballots should be counted. There were not, however, enough ballots of that kind so that ruling against Mr. Harmon on two of the ballots which he claimed he lost, Mr. Harmon, the Democratic contestant, lost that according to the judgment of all the members of the committee, and accordingly that report has gone in and has been adopted and Mr. Clement has been confirmed in his seat here, as he probably thought and should have known in the judgment of our committee he was fairly entitled to it. It was an argument and a debatable question; there was one ballot which could have been counted either way; but the Democrats on that committee felt if Mr. Clement had been elected to this Legislature he ought to have his seat, and if he had not been elected to this Legislature, he should not, and feeling that he had been properly elected they joined with the Republicans in signing the unanimous report of the committee which you have already adopted.

Now, on the question of these stickers there is a divergence of judicial opinion. I am willing to admit, and it is a fact that the supreme court of this State in the much-discussed case of Bartlett vs. McIntyre, wherein the sheriff of Oxford county was the subject under discussion—In that case, the supreme court decided that the stickers cast for Mr. McIntyre, the

Democratic candidate for sheriff, should not be counted for him, and they threw out those ballots and did not count them for Mr. McIntyre, and as a result his opponent was elected; and that, so far as the supreme court is concerned settles the law, and until the supreme court sees fit to change its mind, it settles the law as far as the law is concerned.

I would, however, call to the attention of every attorney here, and I would call also to the attention of every layman, whoever reads a legal report, and ask you at some time to look at the opinion in the case of Bartlett against McIntyre upon that point. The Supreme Court of Maine in that case settles that question in just four lines, taking up no more space on the page than that, and there is no discussion, no argument, no citation of cases at all; they simply say he has not voted in the manner that the statute provides and consequently the votes cannot be counted, and there they stop and that is all there is to it. It is a strange situation, Gentlemen, that that case was decided that way, for this reason, that there is in these United States, in England, in Scotland and in the National House of Representatives an almost unbroken line of decisions holding exactly the reverse to what the Supreme Court of Maine held in that case. The question has come up time and time again. The Maine Supreme Court said in the beginning of that opinion in the case of Bartlett vs. McIntyre that the statutes in other states were different from our statutes and that for that reason the cases from other states had no significance. There may be such a divergence in the statutes that such a statement by the Court would be proper and correct, but if you read the Australian ballot act you will be struck again and again not by the divergence in the form of the statutes but by their similarity. The original Maine Australian ballot law is copied, as far as those sections are concerned, absolutely from the Massachusetts law. In the Massachusetts House of Representatives they pre-

serve their election cases and use them as precedence, and you will find in those cases a line of decisions holding that such ballots shall be counted for the man whose name is on the sticker, on the grounds that the highest test and the real test and the right test of an election is, who did the voter intend to vote for; and they put the question up to the attorney-general of Massachusetts, Attorney-General Pillsbury, of whom every lawyer here has heard time and again, one of the recognized leaders of the New England Bar, and this was put up to him:

"Question—At a special election for representatives to the General Court, where the official ballot bears only one name, and the printed name of another candidate is pasted, not in the space at the end of the list of candidates, but in the space where the name of the regularly nominated candidate is printed on the official ballot, but not covering such name, and the x mark is placed in the space to the right of both names, can such ballots be counted for either candidate, and if so, for which candidate?"

"Answer—At a special election for representative to the General Court, where the official ballot bears only one name, and the printed name of another candidate is pasted, not in the space at the end of the list of candidates, but in the space where the name of the regularly nominated candidate is printed on the official ballot, but not covering such name, and the x mark is placed in the space to the right of both names, such ballots can be counted for either candidate, according to the voter's choice, if it is possible to determine his choice; and it is a settled rule of election law that the writing or otherwise inserting or affixing a name to or upon a ballot is competent evidence to show that the voter intended to vote for the person whose name is so inserted or affixed."

There is a case which came before the supreme court of Wisconsin, in which case the question before the court was: Who did those parties intend to vote for? If they intended to vote for one man, he

should be seated, and if the court was satisfied as reasonable men that when a man put a sticker below a printed name he intended to vote for the man whose name was on the sticker. That question, gentlemen, I do not think we need to argue here because every one of you know, if you stop to think of it, Democrat, Republican or Progressive, that when a man puts a sticker on a ballot in the space where the office for which that man is a candidate comes he intends to vote for the man whose name is on the sticker. You may say he intended to vote for two men, but, gentlemen, there is not a town east of Bangor where there are two candidates for representative to the Legislature. However, I will say that I speak subject to correction, but I do not think of any; everybody knows in those small places the contest is between this man and that man, and they know absolutely and positively that they cannot vote for both men, and they never intended to vote for both of those men when they put their sticker on that ballot.

In the case in the state of New York court of appeals, the highest court in that state, I find this:

"The intention of the voter is to be inferred, not from evidence given by him of the mental purpose with which he deposited his ballot, or his notions of the legal effect of what is contained or omitted, but by a reasonable construction of his acts. His writing a name upon a ballot in connection with the title of an office is such a designation of the name for that office as to satisfy the statute, although he omits to strike out a name printed upon it in connection with the same office. The writing is to prevail as the highest evidence of his intention."

It will doubtless be argued here and may present itself to your minds that this is all right and that the law in other states may be thus and so, but that here in the State of Maine, in this Legislature, we should follow the decisions of the Maine courts. Gentlemen, the representative in this State that seeks to dodge his responsibility beyond that is not living up to his oath. The constitution of this State provides that this House is the final judge of the qualifications and election of its own members. We are a co-

ordinate branch of the government, as the gentleman from South Portland (Mr. Sanborn) argued yesterday morning; we are a co-ordinate branch of the Maine State government; these are powers we are justified in using; we are just as high as the supreme court; we have the powers to decide this question fair and right between these two candidates for this office, and it must follow as the night the day that, having the power to so decide, we have the right and the duty to look at this case absolutely upon its merits, unfettered by technical rules of law which this court or that court or the other court has promulgated.

The question comes up here before this House without a single precedent in this House, as far as I am aware, to be settled and settled right. What do our election statutes contemplate, gentlemen? Do they contemplate that it is the brightest voter, or the best educated voter, or the man who can most closely follow a lot of complications? Do they contemplate it is that voter that shall settle the affairs of this State, or rather do they contemplate that every man who votes honestly, as provided by the statute, without exposing his ballot, shows as an intelligent, reasoning man the intention he had when he cast that ballot? Our statute contemplates that this vote should be counted according to the intention of the voters. This, gentlemen, is a popular government, a government by members of the electorate, not a government by a court; it is supposed to be a government according to the will of the people. The will of the people is plain in this case; and the majority of the people of Van Buren wanted Fortunat O. Michaud to be their representative in this Legislature; and I cannot believe that this House will go on record and say that because a man made a mistake of a fraction of an inch that the will of those voters up there in northern Aroostook shall not prevail. I hope and trust that the members of this House will vote yes on the passage of this motion. (Applause.)

Mr. McCARTY of Lewiston: Mr. Speaker: As has been suggested by my colleague, Mr. Pierce, my authority in discussing this case will be confined largely to the discussion of a question of fact.

The report that has been submitted here by the minority members of the committee is based upon the finding of a certain number of ballots in the ballot box, on the return to the Secretary of State. And an investigation of those ballots showed that 47 of them cast in Hamlin Plantation were for Levite V. Thibodeau, and if likewise were cast for the contestant in this case, Fortunat O. Michaud.

It is the contention of the contestant that he should receive 48 votes, rather than 47, and he bases that contention primarily upon the returns of the town clerk of the plantation, and upon the evidence of witnesses who were present, who took part in the count, and others who listened and followed the count as it progressed.

It is the contention of the contestant that that report of the town clerk is correct, and that if there are but 47 ballots in his favor to be found in the box today, then that that ballot was lost or disappeared in some manner unknown to him.

So far as the evidence disclosed before the committee—and it is not my intention to go into it fully, but to treat it generally—two bundles of ballots were forwarded by the Secretary of State to this plantation, each containing or presuming to contain 60 ballots. Of that number, 120, there appeared at a prior inspection of those ballots, and appeared today, 115 ballots.

Now then, the question resolves itself into this, whether or not the appearance of that ballot box is to decide the vote of Hamilton plantation, or whether the official returns made by the town clerk, the official charged with that duty, are to be sustained by this legislature.

It appeared in evidence that each of the assessors, and there were three of them, took part in this count. Each one of them told the committee that that count resulted in this, 48 votes for Michaud, 47 for Thibodeau. The result of that vote, announced as it was in open meeting, was authorized to by the town clerk. The assessors

were not alone in stating the result of that count. Seven witnesses, some of them appearing in person before the committee, testified very positively upon that point. They were not thinking much about anything else up in Hamlin plantation last September, except who was to be their representative here in January. It happened to be that two candidates, both of French extraction, were soliciting the votes of the voters of Hamlin plantation, a very great percentage of whom are of the same nationality. They were interested in that contest. Why, even the official representative of the Progressive party knew nothing about the rest of the vote that was cast there.

Now then, here is this town clerk, one Remi P. Cyr, who was so interested in the candidacy of Mr. Thibodeau that he was parading through the byways and highways of Hamlin plantation with his automobile decorated with these words "vote for Thibodeau." I do not suppose that Mr. Thibodeau had a more enthusiastic supporter in that plantation than Remi P. Cyr, and yet counsel comes here and questions the truth, the veracity, the correctness of that interested supporter of Mr. Thibodeau.

They did not conduct their election there perhaps with that care we do in the larger municipalities. After the votes were cast, and after they were counted, the evidence disclosed that they were placed on a table and Mr. Cyr comes in and gathers them up and puts a string around them, and he takes them a mile and a half away and leaves them at his house, for how long? Did he do that duty as it is outlined by our law? Did he ship them by express within twenty four hours to the Secretary of State? Gentlemen, the evidence is undisputed in this case that these ballots laid there in Cyr's home until sometime the following Wednesday, unsealed, the only protection they had a piece of twine tied around the box. And then somebody by the name of King came over, I think Tuesday night and they sat down and untied that string and made

account and found 47 ballots each for those candidates.

And that is where the trouble starts. They were accompanied by their wives, or at least King was, and they went out to visit and the women stayed in the house. I don't know whether woman's suffrage has reached Hamlin Plantation or not. If it has you can imagine what those women did as soon as those men got outside the door. (Laughter.)

I say that these ballots were not guarded with the care they should have been. They were valuable public documents and should have been jealously guarded, free from tampering and free from the opportunity for tampering.

The next phase of this is the giving of the ballots to the woman postmistress, and leaving them there, tied up as before, and waiting there until one of the assessors came to sign the certificate. Finally they get to Augusta, and here they are now.

Now, then, do you consider that the conduct of these officials in caring for these ballots was so careful as to avoid the possibility of mistake? They had one ballot up there that was defective for some reason or other. Both sides agree to that. Did they put it back in the ballot box? No, sir. It was thrown on the floor, thrown one side. It was useless and they had no use for it at all. Instead of returning it to the secretary of State they used it to decorate the school-house floor. If that was their conduct in throwing aside that defective ballot; and if it is true that five of those ballots are missing today, then what conclusion can you arrive at in regard to this ballot that we claim was lost in the shuffle?

The question presents itself as to whether or not you are going to take this traveling ballot box, going from house to house, from hand to hand, take that as the best evidence of the vote of Hamlin Plantation, take it as above the official record supplied by him who is charged with that duty. Why, those ballots would no more be seriously considered in a court of law, as presented before this committee, than nothing at all. They should not receive consideration. If it were a legal proposition we have

abundant authority to decide in favor of excluding them.

It is not necessary for me to wade through these voluminous citations, but I will read this from a case in the Arkansas reports, *Hill vs. Wyman*, in which the court says: "The authorities are abundant that where ballots have been so exposed as to have afforded opportunity to be tampered with, and have not been guarded with that zealous case which will contravene suspicion. they lose their presumptive purity and are no longer to be relied upon as evidence in a content or judicial inquiry as to the result of an election."

Another authority on elections says: "Before the ballot should be allowed in evidence to overturn the official count returned it should appear affirmatively that they have been safely kept by the proper custodian under the law, and that they have not been exposed or handled by unauthorized persons, and that no opportunity has been given for tampering with them."

That is a rule of law in regard to the admission of ballots in cases similar to this we are now discussing. Have these ballots been guarded with that jealous care such as the eminent jurist has remarked? Have they been kept in such a place or such a condition as to prevent tampering? We do not say that they were tampered with. We admit, probably, that they are in the same condition now as when Mr. Cyr took them, but we say that in that mixup, when he bundled them all up into this box, and when they were throwing the defective one around the schoolhouse, and when they failed to return the unused ballots, the defective one, we say under those circumstances that that is where Fortunat O. Michaud's ballot went.

I do not want to repeat this too often, but this is the question: Are you going to substitute for the official return the supposition upon which the minorities report are based?

This is an important case—as my colleague has said—important to the people of Hamlin Plantation, important to Mr. Thibodeau, and important to the contestant here. If Mr. Michaud has been elected to a seat in this House there is not a man in this House, I believe, who

would be so unfair as to deny it to him, and if Mr. Michaud is not elected to a seat in this House, he is so qualified that he does not want it. All he is seeking for is his right. The committee is not prejudiced in this matter, the majority of them. I think the state of mind of the members of that committee is well exemplified in the report you have already adopted; non-partisan, attempting to be fair, attempting to be honest, attempting to do right between these men.

We were satisfied by the evidence in this case that Mr. Michaud received the exact number of votes that the town clerk of Hamlin plantation said he received. We were satisfied that he received more than that; we were satisfied that he received three extra votes concerning which my colleague has already spoken.

Gentlemen, if he did receive that vote Mr. Cyr says he did, and if these three men are to be given the same right that you and I demand as a right, the privilege of having our votes counted, then he is entitled to this seat, and you will give it to him.

I trust that when the matter comes to a vote you will support the majority report in this case. (Applause)

Mr. PERKINS of Augusta: Mr. Speaker, I move that when the vote is taken it be taken by the yeas and nays.

The motion was agreed to.

Mr. THOMBS of Lincoln: Mr. Speaker and members of the House, I think that we all regret exceedingly the most arduous and difficult duty which is now imposed upon us, and, as the gentlemen who have preceded me have so well stated, it is certainly one which demands of us serious and careful consideration; and as I have sat here and heard them argue their side of the case, it has occurred to me that possibly we might wish for a different mode of attaining our knowledge of the issues in contested cases. It seems to me that it might be well, or would have been well if we could have resolved ourselves into a committee of the whole here this afternoon and had all the evidence presented to us sitting as a jury, brought forward by the one side and the other. What we get from the speakers in the

House this afternoon is more or less, of course, from their side or their viewpoint as they see the matter in controversy. I do not wish to say that the gentlemen are mis-stating it in any particular; I think they are too fair to do that, and I do not believe they would do it, but of course I cannot expect them, or Mr. Thibodeau does not expect them perhaps to present his side of the case. I regret that you have not had a better opportunity, possibly a longer opportunity to consider this matter after the issues that have been brought out in the hearing had been clearly presented to your minds. I know you feel the responsibility, and I know that you do not want to decide hastily; I know that you want ample time, and that you want to know the contentions upon the one hand and upon the other bearing upon this case in all its phases.

Now, gentlemen, I am very sorry, and I want to apologize for rising and speaking as I do in behalf of Mr. Thibodeau, that I am not better prepared to present his side of the case. I attended the hearing. I knew nothing about the case before I came here to Augusta. I attended the hearing last night and this morning but of course I have not had access to the papers which the committee have had placed before them. I have endeavored in this short time which I have had to devote to this matter to familiarize myself somewhat with the facts of the case. I think the gentleman from Houlton (Mr. Pierce) has stated to you very plainly the two issues. As I understand the matter now, in order to seat Mr. Michaud they are claiming that you should give him four votes. The gentleman from Houlton (Mr. Pierce) has asked you to give him three votes that were cast in the town of Van Buren for the reasons which he has stated; and I say that he has stated to you the conditions existing in regard to the ballots and the votes themselves very fairly; I am not able to verify the measurements that he has given you as to the exact position of the sticker, but I think he will agree with me in this statement, that it is very plain from an inspection of the ballot, and not disputed at all, that

there are two names appearing for the office of representative to this Legislature; there is the name which was printed on the ballot, and underneath that there is a sticker bearing the name of Fortunat O. Michaud. He argues to you that you should take the voter's intention. I believe you want to get at the voter's intention, his honest intention, but I also believe that in doing that you are willing to confine yourselves and ought to confine yourselves within a reasonable limit.

The supreme court of the State of Maine has had a similar case to decide recently, and they have decided that under similar circumstances the ballots should not be counted for either one; and as I understand their position, it is this—I do not argue that perhaps it is not plain to discern the intent of the voter, but I do say to you when you are giving expression to the intent of the voter in any particular case you are opening up a dangerous proposition, and by that I mean dangerous in this way, if you are going to allow a vote to be counted in this case under the circumstances in which the sticker is found on this ballot you are establishing something like a precedent which may or may not have some effect in succeeding contested election cases. Now then, if you are going to accept these ballots in the face of the decision of the supreme court of the State of Maine, against whom of course there is no suspicion of bias and for whom we all have the greatest respect—what is to hinder any succeeding election case from departing a little further and further each time, until finally perhaps you find a ballot with a sticker bearing the name of some officer that is entirely outside of the square within which you would naturally find it? This tribunal will not be deprived of considering that a vote if it chooses; and I say to you, gentlemen, that it seems to me that you are entering upon a dangerous proposition when you undertake to enlarge upon the rule that has been so clearly laid down to you by our own court.

In order that there may be no occasion for mistake, I just want to read to you

from the syllabus in this case: "A ballot must be rejected where in attempting to vote a split ticket the voter did not follow either of the statutory methods and failed to erase" * * and it is not claimed there was any erasure in this case of course * * "or cover the name of one candidate, therefore leaving the names of two candidates for one office". That, gentlemen, is exactly the case that you have got on those votes that were cast in Van Buren, and there is no question about it. What are you going to do? You will have to decide it one way or the other. Will you reject the opinion of the Supreme Court of the State of Maine and set up your own opinion, or do you think that it is entitled to such respect and that you should reject those ballots? That is the question for you to decide.

In Hamlin Plantation there arose a different question, and there again I feel that we are handicapped by not having at firsthand for our own inspection many of the exhibits and much of the testimony that was offered. I was impressed at the hearing last night that the vote in Hamlin Plantation as taken in the last September election, was taken in an exceedingly loose manner; it seems unfortunate that the rights of any parties should be subjected to so much carelessness as it was apparent was there used. It appeared in the testimony that at least a dozen persons,—and I think I am safe in saying that it was apparent that anybody who wanted to count the ballots that night after the election was over had a right to do so. In what other town in the State of Maine did you ever see that done? I never saw it in any town. In my own town we have an enclosure within which only the proper officers are allowed; a voter is admitted and he receives his ballot and passes out the other end of the enclosure. It was apparent from the testimony produced before the committee last night that no such regulation was adopted there. They had a table in their voting room around which they all crowded, officers of the town and spectators alike and, as my brother says, there was a good deal of rivalry between those candidates up there. I want you to consider those conditions for just a moment, and the likelihood of getting a correct interpretation of the vote.

One phase of the hearing last night that was quite prominent was the testimony, both oral and by deposition, that was offered upon the one side and the other. My brother Powers of Fort Fairfield introduced oral testimony and depositions, and after he was through my brother Dutton of Augusta introduced several depositions exactly disputing the contention of Mr. Powers; it seemed to me that there was a direct conflict of testimony, that is, a certain man said there was a certain number of ballots cast; a certain other man, as far as I could see entirely respectable and entitled to the same credence, gave an exactly opposite version, and I wondered to myself what this committee would do with such testimony as that. It seemed to me that, as an attorney might say, the proponents had not met fully and fairly the burden which is imposed upon the moving party. That was the way that phase of the situation struck me, and I wish, gentlemen, that you could all have been there and heard this testimony because I would like to know how that testimony would have impressed you.

The gentleman from Lewiston (Mr. McCarty) would have you understand that in another phase of the case they rely entirely upon the fact that there are not a sufficient number of ballots in the ballot boxes as they were received and are now found in the State House here in Augusta. I want to say to you that there is something else in the case there so that you do not have to consider that as conclusive, and I do not feel under the particular circumstances of the case that it ought to be because it is not in dispute that the ballots were very loosely handled, and I think the gentleman correctly states the fact when he says they were kept there for several days before they were finally sealed up and sent away. It also appeared in testimony that there was one ballot which was considered defective and which was thrown upon the floor, and no one at present knows what became of it. It is incumbent upon the presiding officers at an election to make out several sets of returns, one set of returns indicating the vote as they count it, and another set of returns indicating the whole number of ballots cast. If I understood the testimony before the committee correct-

ly, there was no contention at the time of the election that there were more than 95 ballots cast in this plantation. The returns made up and signed by the election officers, and which are entitled to as much credence at your hands as the other set declaring the vote, returns the total number of votes cast as 95. It further appeared that of the ballots cast there was ballot which all hands admitted was defective; it was thrown down upon the floor and at the present time no one knows where it is or what has become of it. So that it seems to me the number of ballots is verified in this manner.

It further appeared in evidence before the committee as to the manner of the count of the vote, which was a peculiar one. Owing to the intense rivalry that existed over the election of representatives, it appears that they counted the ballots for representative first. The only thing they did, as I understand, before they counted for representative was to verify the total number of votes cast; that is, they counted the entire number of ballots that they took from the box and found them to be 95; then they commenced to count for their candidate and instead of counting from the top, as I think election officers naturally would do, they commenced from the bottom, and they counted the votes for representative, counting 48 for Mr. Michaud and 47 for Mr. Thibodeau. Then they proceeded and at some time after that in counting when they came along to the top of the ballot I presume they found that one ballot was defective in that it had no mark in the square over the party column, and that ballot bore a "Michaud" sticker and was of course thrown out. I don't know the fact, and I contend it is impossible to tell what it may be, but it seems to me that the mistake was made right there and an honest mistake no doubt. I think these gentlemen having charge of the election when they counted those ballots made a computation of 48 and 47, and subsequently finding one was defective, they threw it out and neglected to correct the return. That seems to me to be the only reasonable explanation of the matter.

I am sorry that I cannot make the matter plainer, and I wish that the testimony produced before the committee

were before you, because I believe that every member of the House wants to do exact justice between Mr. Thibodeau and Mr. Michaud and towards the electors in that class. I believe you want to do it. I think you are going to do it to the best of your ability, and I regret that you have not more definite information to guide you in reaching a conclusion: as I said before, it seems to me upon the first proposition you are treading upon dangerous ground if you accept the contention that is advanced; upon the second proposition it seems to me that Mr. Thibodeau has fairly and reasonably established the manner in which the vote was made up. Under those circumstances I want you to consider the matter carefully; I want you to consider it honestly, and I know you will do so as far as you are able with what you have to guide you, so that at whatever conclusion we may arrive in this matter we may feel that we have done the best we could with what we had at hand to judge from and with. (Applause.)

Mr. SANBORN of South Portland: Mr. Speaker: My own engagements have been such that it has been impossible to attend the hearing of this case, and I am entirely dependent upon things which have been given to us by the gentlemen who have so well presented the matter.

I only want to make one observation, for it is not my purpose to enter into an extended discussion. There is probably no necessity for it, and there is certainly no disposition on my part to in any manner delay the final conclusion.

I will say that I have heard in the corridors remarks concerning the status of this case which lead me to believe it might possibly develop so that I should find it my duty to come here and sustain the position of this contestant.

I only want to speak for a moment upon the attitude which I think should be ours in regard to the disposition of these three votes. I understand, as I have it from the gentleman from Houlton, if they were to be disregarded then Mr. Thibodeau would be elected. It has been stated to you him, very fairly and clearly, that the supreme court has declared that such votes should be disregarded, not counted, and he has with

equal fairness and plainness stated to you that we are not bound by their decisions. I fully agree with that statement of his. We are supreme and final in our decision in this matter. There is no appeal. But it should be borne in mind that it presents itself to us in the same way it should if it were a sheriff or other officer to the supreme court. And I only ask you to keep this fact in mind, that we have ordinarily a good deal of respect for the opinions of the supreme court. We place a great deal of confidence in their judgment of facts, and in their interpretation of the law.

As I understand it we are to decide this case according to the facts as presented to us, and in the light of the law. The facts are not in dispute. It is only a matter of law. Many of you—unfortunately I have not had that privilege—many of you have sat as jurors, and you have certainly heard from jurors the expression of a wish, during the hearing of a contested case, that they might gather something of the judgment, of the opinion, of the judge presiding as to what could be the proper disposition of the case. I have frequently heard the sentiment expressed that the court was in a better position to judge than the jury, and the feeling that some guidance could be had from his opinion. If we have that opinion, any of us, it seems to me that we may be safely guided by the position of the court, and I feel we shall not go far away if we decide the case in regard to those three ballots just as the supreme court has done.

That is the only observation I have to make, but it seems to me one well worthy of consideration.

Mr. PIERCE of Houlton: Mr. Speaker: I wish to say just a few words to further our contentions in this matter. The distinguished gentlemen from Lincoln (Mr. Thombs) is in error in his statement that when they counted up the ballots and compared them with the check list they found 95, and being in error the gentleman argued as to how this thing happened, and it is absolutely false.

The certified copies of the checked list were presented before the committee, the sworn testimony was taken, and counsel for Thibodeau will bear

me out, that there were 96 names checked on the list, and the testimony of Remi P. Cyr, the gentlemen who was an ardent supporter of Mr. Thibodeau, whose deposition is on file and sworn to in this case, is that this check list is correct, and that 96 men voted. One ballot was thrown out and 95 were counted.

The reason why we contend that the argument on that is wrong, is this: Mr. Cyr, the town clerk, Mr. Parent, the assessor and Mr. Paradis, were there in open town meeting, and they counted those votes. They seemed to be perfectly competent to count those votes, and those men agree, and agreed then, and Remi P. Cyr agreed in his deposition that at that time they counted 48 ballots for Michaud and 47 for Thibodeau, and they made up their return that way.

You take the returns for the other officers voted for there and 95 were checked—96 were thrown, and one of them defective; 47 and 48 make 95. There were nineteen men who voted on the Democratic ballot. One man scratched Gov. Haines to vote for Mr. Gardiner; a Republican scratched his ticket, scratched Gov. Haines to vote for Mr. Gardiner. Mr. Gardiner had 26 votes and Gov. Curtis had 18 votes and Gov. Haines had the balance. Take the Register of Deeds who was on the ticket in the northern registry district, and the Register of Deeds was on the Republican and the Progressive ticket, and his vote added to 19 which the Democratic candidate had, makes 95. Take Senator Hersey and Senator Burleigh, their votes added to the Democratic and Progressive for Senator makes 95. The return is consistent with itself from top to bottom. And the statement of these witnesses that 95 were returned; they might have meant that it was 96 returned and 95 counted, but that is not the way they stated it. The check list proves that 96 votes were cast and 95 returned. It was upon that basis that the return was made up.

It is inconceivable that Mr. Cyr, a strong supporter of Mr. Thibodeau, in counting less than 100 votes, ever

agreed to a return that gave one more vote to Mr. Michaud than to Mr. Thibodeau, unless that was correct according to the ballots and he knew it.

The gentleman from Lincoln (Mr. Thombs) said that the burden is upon the proponent to sustain the burden of proof. In this case that is not the fact. The first record, the *prima facie* record, is the return. If the return is set aside the seated member must produce the evidence to show that the return is correct. Mr. McCarty spoke of this.

The question before the committee and the question before you, is this, whether you will allow that return to be set aside by ballots which in not one single respect were kept as provided by statute, or in any way as the law provides, and you are familiar with it. This law was passed by the 1907 Legislature. It went to the referendum. If there ever as a law that was entitled to the respect of the Legislature it is that law, because it was passed by the Legislature and then went to the people of this State, and that law provides, this is not a technicality, the law provides that the ballot shall be taken that night while everybody is there; after the result is announced the ballots shall be tied up and sealed then and there and forwarded by express within the next 24 hours to the Secretary of State, so that no one has access to those ballots. These could have been sent by mail, but they were not sealed that night, nor the next day, or the next day after that until sent to the postoffice and left there in the custody of the postmistress, and until one of the assessors came and signed the returns.

If ballots are to be introduced to contradict returns, those ballots must have been preserved between the time of the election and the time they are introduced before a committee of this House, with some reasonable, ordinary, safeguard.

What became of the ballots? They may have been lost in the schoolhouse; the children playing around the house may have taken them out of the box.

These ballots show up here and there are five less than by law there should

be. It is just as much the duty of the clerk to return the unused ballots as it is the used ballots. You can see the reason for that. If you check up an election you must have all the ballots, and the law provides that you shall return the used ballots, the cancelled ballots and the ballots that are left, and then you know absolutely and mathematically that you have the ballots that were cast in the town. But when the ballots are allowed to be strewn all around the neighborhood, these were, you have no ballot safeguard.

One more word in regard to the three ballots that the gentlemen from South Portland (Mr. Sanborn) spoke to you about. I yield neither to the gentlemen from South Portland nor to any other member of the Maine Bar in my respect for the Supreme Court. I do not mean that we should override the Court, but that it is our duty to decide this case and we should decide it as the circumstances show are right, as we think it is right. We have no right to shelter ourselves behind the decisions of the Supreme Court. Every lawyer has reason frequently to believe that the Supreme Court is not right. No Court is infallible and never will be. The question is will you abide by the decisions of our court or will you follow the decisions of Courts scattered all over the United States, decisions of the National House, and will you return to a seat in this House a man who without question had a majority of the votes and whom the voters in that district wanted to have here for your representatives. (Applause)

Mr. THOMBS of Lincoln: Mr. Speaker and gentlemen, just a word. I think the gentleman from Houlton (Mr. Pierce) unintentionally perhaps has placed me in a false position before you. I do not now remember having spoken of the check list at all, but since he mentions the matter I wish to make plain to you the contention of the parties in the matter of the check list, as I understand it. In this matter also we are handicapped, and you are handicapped by not having at your disposal this check list as the committee have had it. It is not admitted by Mr. Thibodeau that the check list is correct; in fact, it is his contention,

as I understand it, that one too many names are checked, and an inspection of the check list seems to show there a name checked and an attempt made to erase it. That is my explanation of the matter of the check list as far as it shows one extra vote; that is my remembrance of the fact relating to the check list.

Mr. ST. CLAIR of Calais: Mr. Speaker, considerable has been said here in regard to carrying out the intention of the voter. Ordinarily I believe that is the rule that we should follow, but we are unable to follow it sometimes. For instance, take the case where the voter has placed at the right of the name of every man on the ticket a cross, and that vote is thrown out, and there is no doubt how he intended to vote; everybody knows that, but he did not vote as the statutes say he should vote, by placing a cross in the square above the ticket, although we can determine how he intended to vote. In regard to counting these three ballots, we are asked to set aside the decision of the Supreme Court of other states. It seems to me that is a rather bald proposition to put up to the legislature of Maine. It is certainly evident that a man might lose his vote; I admit that, and we all admit that. The Supreme Court of this State has said that ballots voted as those three ballots which have been spoken of were voted could not be counted for either party, and that should be the law in the State of Maine.

Mr. SNOW of Mars Hill: Mr. Speaker, this being an Aroostook county case I have just a word to say. I had the pleasure of seeing the check list and the original list used in this case, and it does appear that at least two names were checked and then an attempt to cross that check off or mark it off. The names were close together, and it seems likely that a mistake might have been made, and the name crossed and then a mark put through it to mark it off. Now, as to that lost vote in the election at Hamlin Plantation. I heard witnesses say last night that there was a statement made at the counting of those votes that Mr. Thibodeau had 47 and that Mr. Michaud had 47. I think at least three parties had made that statement, that it was made in open town meeting, and

that they were very much interested in the election of a representative. They were asked if they made any demonstration, and they said, no; it was usually the case to cheer the winning man, but it does appear that some one at least said in that town meeting that it was a tie, and that there was no cheering for anybody, and they went out and went away and went home and the town clerk gathered up the ballots and took them with him.

In the case of the Van Buren stickers you lose and do away with the safeguard of the election when you count stickers where the name of the other party is plain to be seen. I think the law says that first a cross shall be made in the square at the head of the party column, and then the name shall be erased if you want to vote a split ticket, and a new name inserted.

Now, if these votes are to be allowed men will say that it doesn't make any difference, we have no need to cross out any names, we will put our stickers on and leave the two names exposed. The instructions upon the package containing the ballots are very clear, no voter needs to mark his ballot without knowing how to do it; they have every opportunity to acquaint themselves in regard to the manner of voting, and it takes all responsibility away from the voter.

Gentlemen, it appears that three parties were concerned in the vote in this district, the Progressive, the Republican and the Democratic. I am reminded of a story in the Bible where Isaac sought to bless his sons. One, you know, was a mighty hunter with hard and hairy hands, and that is the Progressive party in this district, and they went out through that district hunting votes. Gentlemen, you know that Jacob, the other son, could disguise his hands, but his voice was inevitable, it was the voice of Jacob. He didn't care who hunted the votes, Jacob and the Democratic party wanted the blessing. (Laughter.)

Mr. GREENLEAF of Portland: Mr. Speaker, I move the previous question.

THE SPEAKER: This motion requires the consent of one-third of the members present under the rules. All those in favor of the previous question will please arise.

A sufficient number arose.

The SPEAKER: The previous question is demanded, and the question before the House is, shall the main question be now put? All those in favor will say yes; all those opposed will say no.

A viva voce vote being taken,
The motion was agreed to.

The SPEAKER: The question now is upon the adoption of the majority report of the committee. Upon this question the yeas and nays have been called. The clerk will call the roll, and all those in favor of accepting the majority report of the committee, which would have the effect of unseating the sitting member, Mr. Thibodeau, will say yes; all those opposed will say no. In this voting the gentleman from Van Buren, Mr. Thibodeau, being interested, would not have the right to vote, and the clerk will omit his name in the roll call. The clerk will call the roll.

YEA—Ballard, Bernier, Blake of New Gloucester, Bourque, Brawn, Brown of Auburn, Brown of New Sharon, Campbell, Chadbourne, Clifford, Colcord, Connelan, Connors, Corliss, Currier, Davis, Descoteaux, Douglass, Drapeau, Durgain, Edwards, Fossett, Gallagher, Gerish, Gilmour, Goldthwaite, Gooding, Goodwin, Greeley, Greenleaf, Haraden, Haskell, Hill, Hobbs, Hodgkins, Holt of Skowhegan, Jameson, Leader, Lewis, Libby, Lord, Maxwell, McCarty, McCarrison, McCurdy, McIntire, Millett, Mulligan, Mullin, Neilon, Newell, Noyes, Peabables, Perkins, Picher, Pierce of Farmington, Small, Smith, Tabbutt, Tate, Traf-ton, Turner, Ward, Wasgatt, Watts, Webb, Welch, Wheeler, Wilkins, Wilson, Woodman, Wyman—78.

NAY—Albert, Allen, Ames, Averill, Beal, Benn, Besse, Blake of Oakland, Bonney, Bradbury, Bragdon, Brann, Eusse, Carson, Chaplin, Chamberlin, Clement, Cobb, Coffin, Daigle, Danforth, Dilling, Drummond, Dutton, Ellis, Erskine, Evans, Fay, Ford, Gould, Grant, Greateon, Greenlaw, Hanson of Saco, Hanson of Sanford, Harper, Hart, Higgins, Holt of Gouldsboro, Jordan, Lawrence, Littlefield, Lombard, Mansir, McKinley, McNally, Meader, Mitchell, Morrison, Morse, Nicholas, O'Connell, Perham, Peterson, Ranney, Ricker, Russell of Alford, Ryder, St. Clair of Calais, St. Clair of Rockland, Sanborn, Snow, Thibodeau of Fort Kent, Thombs, Tobey, Towle, Tuttle, Varney, Washburn, Waterhouse, Westcott, Wise—72.

So the motion prevailed.

The SPEAKER: The Chair declares that the majority report of the committee has been accepted by this House.

Mr. PIERCE of Houlton: Mr. Speaker, I now move that the resolve annexed to the majority report receive a passage in this House.

The motion was agreed to.

The SPEAKER: The Chair therefore declares that the seat of the gentleman from Van Buren, Mr. Thibodeau, has been declared vacant by the action of this House, and also that the gentleman from Van Buren, Mr. Michaud, is entitled to that seat.

On motion by Mr. Plummer of Lisbon, that gentleman was appointed a committee to conduct Mr. Fortunat O. Michaud, the member-elect to the governor to receive the oath necessary to qualify him to enter upon the discharge of his official duties.

Subsequently Mr. Plummer reported that he had performed the duty assigned him and that the member-elect had taken and subscribed the oath necessary to qualify him to enter upon the discharge of his official duties. (Applause.)

The SPEAKER: The gentleman will now take the seat previously occupied by the gentleman from Van Buren, Mr. Thibodeau. (Applause.)

Orders of the Day

On motion by Mr. Ricker of Castine, the report of the committee on salaries and fees of the 76th Legislature was taken from the table, and on further motion by the same gentleman the report was ordered printed subject to reference to a committee.

Mr. THOMBS of Lincoln: Mr. Speaker, I would like to inquire how many copies of that report would ordinarily be printed. I imagine that is something in regard to which there will be a great demand throughout the State, and if we can use an additional number of copies it might be well to have them printed at the same time. I would like information as to the number that would be usually printed.

The SPEAKER: The Chair is informed by the clerk that ordinarily 750 copies are printed.

Mr. THOMBS: I would inquire of the gentleman from Castine, Mr. Ricker, through the chair, whether he thinks that will be a sufficient number?

Mr. RICKER of Castine: Mr. Speaker, I would refer the gentleman to the gentleman from South Portland, Mr. Sanborn, who is a member of that committee as I understand it.

Mr. SANBORN of South Portland: Mr. Speaker, I should judge there might be quite a demand for that document over the State, and I would move that 1000 copies be ordered printed.

The motion was agreed to.

On motion by Mr. McNally of Ashland,

Adjourned until tomorrow morning at 9.45 o'clock.