

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1859.



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1859.

THIRTY-EIGHTH LEGISLATURE.

HOUSE.]

[No. 1.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Jan. 27, 1859.

The Committee on Elections, ask leave to REPORT: that the claim of Milton G. Shaw, Esq. of Greenville, in the county of Piscataquis, to a seat in this House, as the Representative of the *class* composed of the towns of Abbott, Monson, Greenville, Guilford, &c., in said county, is contested by George L. Howard, Esq. of said Abbott, who claims the same seat as the Representative in this House, of said class, elected by the legal votes of the qualified electors of said class, certified, &c., according to the requirements of the Constitution of this State. Mr. Howard gave due notice to Mr. Shaw of his intention to contest his seat and accordingly presented his remonstrance to this House to the same effect specifying certain reasons and grounds on which the claim of Mr. Shaw to said seat would be contested by him. The parties have been fully heard by your Committee.

The following is a statement of the several matters relied upon by the parties, respectively, in support of their claims.

On the part of Mr. Shaw are presented certain papers purporting to be certificates signed by the Selectmen and attested by the Clerks of the towns, &c., composing the class in relation to the votes cast for the Representative thereof in the State Legislature.

Of these, the certificates from the following towns appear to be correct in form and substance and made on blanks furnished by the Secretary of State for that purpose, and it is admitted state truly the number of votes cast in these towns respectively at the meetings holden on the thirteenth day of September last, for the choice of

Representative to the Legislature of this State, with the names of the persons for whom the same were cast, viz :

The certificates from the towns of Blanchard, Guilford, Abbott, Shirley and Monson, from which it appears that the aggregate of votes cast for Mr. Shaw in these towns was two hundred and seventy-six and for Mr. Howard was two hundred and ninety-nine, being a plurality for Mr. Howard of twenty-three votes.

The certificate from what purported to be plantation No. 2, Range 5, giving four votes for Mr. Shaw was by consent of parties excluded as not coming from territory, &c, within the *class*. Mr. Shaw also presented the paper marked A. in support of his claim, which is herewith submitted as a part of the case, purporting to be a statement signed by the Selectmen of said Greenville and attested by Sumner Barton, town clerk, and offered by said Shaw as a certificate of the votes cast in said town of Greenville for Representative to the Legislature at the last September meeting. This paper was rejected by your Committee as wholly defective, both in form and substance, and as furnishing no evidence that could be applied to this case, and as in itself of no validity whatever.

To supply the apparent and palpable defects in the evidence as to the vote of Greenville, exhibited in the certificate marked A. Mr. Shaw offered the testimony of Sumner Barton, town clerk of the town of Greenville, who was duly sworn, and testified in substance, that as clerk of said town of Greenville, he attended the meeting of the inhabitants thereof, holden on the thirteenth day of September last, at the place named in the warrant calling the same. That at said meeting the Selectmen received, sorted, counted and declared the votes cast for the several persons voted for, including the votes cast for Representative to the Legislature of this State, in open town meeting and in his presence; that he made a minute on loose pieces of paper in open town meeting, and in the presence of the Selectmen, of the number of votes cast for each person voted for as candidates for the offices to be filled by the elections holden on that day. That he made no record other than said minutes, in open town meeting nor in the presence of the Selectmen, of the number of votes cast, &c., at said meeting. That on said minutes the number of votes was stated in figures; that after the adjournment of the meeting on the same evening or the next day he made a record on the town

clerk's book of records from said minutes, which was not done in the presence of the Selectmen; that the paper marked A. was made and signed by the Selectmen and himself, in open town meeting, and was the same that he sent to the meeting of the Selectmen of the several towns composing the class, holden for the purpose of ascertaining whether any person had been elected Representative thereof; that the number of votes stated in said paper as cast for the persons therein named, was correctly stated and entered thereon by himself. The said Barton also exhibited the book of records of the town clerk of Greenville, in which was entered the record made by him of the warrant calling said meeting of the inhabitants of Greenville, and the constable's return thereon, with the record of the votes as made by him after the adjournment of the meeting as above stated, and as altered and amended by him at several times afterwards. Also a new and amended record of the proceedings at said meeting, made by him on the day of his examination before the Committee, which he testifies is made up according to the facts. The deposition of Mr. Barton taken at the request of Mr. Howard is referred to as exhibiting the manner in which the record was first made by him on the town clerk's book, and the alterations and amendments thereof made by him afterwards, from time to time. This testimony of Mr. Barton is offered by Mr. Shaw to sustain his claim to his seat, and is objected to by Mr. Howard, including the records as made, altered and amended as above stated, as incompetent and admissible under the provisions of the Constitution. The deposition of Aretas Chapin is referred to as to the meeting of the Selectmen of the towns composing the class, held on the day after the said town meeting, at the office of John H. Rice, Esq. in Monson, to examine the return of votes for Representative to the Legislature, and ascertain whether any person was duly elected to that office from said class. No other evidence of such meeting or of the doings thereof, or of the persons attending the same being offered to your Committee. The proceedings of the Selectmen at that meeting are not considered by your Committee to be of any importance in determining the matter in controversy. The majority of the Committee are of opinion that the testimony and evidence in regard to the votes of the town of Greenville, offered by Mr. Shaw, embracing the records of said town clerk as made and amended by him and his parol testimony touching the

number of votes cast, &c. at said meeting, is inadmissible under the provisions of the fifth section of the first part of the fourth article of the Constitution, and that the same ought to be rejected. If deemed admissible this testimony would show that Mr. Shaw received forty-six and Mr. Howard twelve of the votes cast for Representative to the Legislature in the town of Greenville, at the meeting of the inhabitants of said town, holden for that purpose on the thirteenth day of September last, and that Mr. Shaw was elected to the seat he now *occupies* by a plurality of eleven votes over those cast for said contestant. Believing that no evidence (competent and admissible under the said provisions of the constitution,) of the votes cast for Representative to the Legislature by the inhabitants of Greenville, qualified according to the Constitution as electors, at their meeting held on the thirteenth day of September last, has been submitted to them, the majority of your Committee are constrained to report as their conclusion, that Milton G. Shaw, Esq. is not entitled to hold his seat in this House as the Representative of said class, and that George L. Howard, Esq. appears by the legal and competent evidence touching this matter presented to the consideration of your Committee to have been elected, by the votes of the inhabitants of the towns composing said class, at the legal meetings thereof, holden in said towns respectively on the thirteenth day of September last, for that purpose, the Representative of said class in the Legislature of this State and that having been so elected he is entitled and ought to be admitted to his seat as such Representative in this House.

Which is respectfully submitted,

JAMES STACKPOLE, *Chairman.*

APPENDIX.

A.

At a legal meeting of the inhabitants of the town of Greenville, qualified by the constitution to vote for a Representative to represent said town as a representative district in the State Legislature, the same were received, sorted, counted and declared in open town meeting, by the Selectmen of said town, who presided, and in the presence of the Clerk of said town, who formed a list of the persons voted for, and made record thereof, as follows:—

The whole number of ballots given in was	58
For Milton G. Shaw (forty six)	46
“ George L. Howard (twelve)	12

STEPHEN DARLING,	} <i>Selectmen</i>	
MILTON G. SHAW,		<i>of</i>
WM. SHAW,		<i>Greenville.</i>

Attest: SUMNER BARTON, *Town Clerk.*

B.

I, Sumner Barton of Greenville, Maine, on oath depose and say, in answer to interrogatories, questions by John H. Rice, attorney to George L. Howard—

1st. Are you Clerk of the town of Greenville, and duly elected and qualified as such, and when was you so elected and qualified?

Answer. I am Clerk of said town, elected last March, and legally qualified.

2d question by same. Was you present at the town meeting in said town, in your official capacity, held for the election of State and County officers, in September last?

Answer. I was.

3d, by same. Did you make a record of the warrant and proceedings of said meeting? If so, when?

Answer. I did make such record; cannot recollect whether I made it the eve of election, or the next day.

4th, by same. Did you make such record in open town meeting, before the adjournment thereof, and in the presence of the Selectmen of said town?

Answer. I made a minute of it in open town meeting, and in presence of the Selectmen, which minute I afterwards copied in the book in making up the record, after the adjournment of said meeting.

5th, by same. Were said minutes made upon paper separate and apart from said book of records? And if so, have you said original minutes in your possession?

Answer. Said minutes were made on paper separate from the book kept for such record. I think I have the original, but not with me now.

6th question, by same. Did you make and sign, in your said official capacity, a certificate of the ballots and votes given in at said election for representative in the State Legislature? If so, when was such certificate made, and was it made from such minutes in the record book?

Answer. It was made from the minutes, and in open town meeting, and signed by the Selectmen and myself.

7th, by same. Was the number of ballots and the number of votes set forth in said certificate, a true and correct copy of said minutes?

Answer. Said certificates gave the true number of ballots and votes, as appears by said minutes.

8th question, by same. Was the number of ballots and the number of votes for each candidate upon said original minutes, written out in full in words, or put down in figures only?

Answer. I cannot recollect positively, but presume I wrote them in figures.

9th, by same. Have you made a true and correct copy of the record of the warrant and return and of the doings of said town meeting in Greenville? And is the paper hereunto annexed, and marked A, such true and correct copy of said record?

Answer. It is.

10th, by same. Has there been any alterations or amendments of said record? And if so, when were such alterations and amendments made?

Answer. I have supplied omissions this day in the record, which omissions were in accordance with the facts?

11th. Will you please indicate such supplied portions of said record, upon the annexed paper marked by including the same in brackets?

Answer. I have indicated such omissions in three several places, in brackets, thus [].

12th, by same. Are the amendments referred to in the last question and answer, the only alterations, amendments or additions to said record, made since the original entry? And if any such have been made, will you please indicate the same upon the annexed paper marked A, by inclosing all such portions in double brackets?

Answer. I have indicated further omissions supplied since the

original entry, by double brackets [[]], in the annexed paper marked A, which omissions are all in accordance with the facts.

13th, by same. When were said last named omissions inserted in said record?

Answer. I think some time in the month of December last.

14th, by same. Was it done before or after you heard that George L. Howard had notified Milton G. Shaw that he should contest his right to hold his seat as Representative?

Answer. It was after I heard of that fact.

15th question by P. S. Merrill, who appeared in behalf of said Shaw—

Were there any blank returns furnished to the town of Greenville, to be used in making up the returns of votes, at the September election of State officers?

Answer. There were no blank returns furnished for the town of Greenville, at the last September election. We were expecting them, and waited until near the close of the meeting, when I was obliged to make out all the returns, in writing, partly assisted by the selectmen.

16th. Did you have any form in making out the aforesaid returns?

Answer. Partly assisted by the Maine Townsman; other than that, we had none.

17th. Did you make the certificate of votes and ballots cast for Representative to the Legislature?

Answer. I made the form, but I think one of the Selectmen filled out the blanks in part or the whole.

18th. Has there been any alterations or amendments in any way to the said certificate, as originally made and signed by the Selectmen and yourself?

Answer. Not to my knowledge.

SUMNER BARTON.

PISCATAQUIS, SS.—On the thirteenth day of January, in the year of our Lord one thousand eight hundred and fifty-nine, the aforesaid deponent was first sworn according to law, to testify the truth, the whole truth, and nothing but the truth relating to the cause about which the deposition was to be taken, and thereupon gave the foregoing deposition, which was reduced to writing by said deponent, and the same having been carefully read over by him, was by him subscribed. Taken at the request of George L. Howard, to be used in a case of contested election pending between said George L. Howard and Milton G. Shaw, before the House of Representatives of the State of Maine, and to be heard and tried at Augusta, in the County of Kennebec, before said House of Representatives (now in session,) on the eighteenth day of January, A. D. 1859; and the adverse party was notified according to law to attend the taking of said deposition, and was present by Paul S. Merrill, his attorney. The

said deponent lives in a town other than that in which the House of Representatives sits, before which the cause is pending, is the cause of taking this deposition.

CYRUS A. PACKARD, *Justice of the Peace.*

FEES.

Deponent's travel and attendance,	\$2 18
Justice fees,	2 00
Notice to deponent,	1 00
" to adverse party,	1 00

A.

To Milton G. Shaw, Constable of the town of Greenville.

You are hereby required in the name of the State of Maine, to notify and warn the inhabitants of the said town of Greenville, qualified as the constitution requires, to assemble at the School House in District Number One, in said town, on the thirteenth day of September next, at one o'clock in the afternoon, to give in their votes for Governor, Senator, Sheriff, County Attorney, County Commissioner, County Treasurer, Register of Probate, Representative to Congress, and Representative to represent them in the Legislature of this State.

The Selectmen will be in session at the School House above-named, on the day of election, at half-past twelve o'clock, P. M., for the purpose of correcting the list of voters.

Dated at Greenville, the 31st day of August, A. D. 1858.

STEPHEN DARLING,	} <i>Selectmen</i>	
MILTON G. SHAW,		<i>of</i>
WILLIAM SHAW,		} <i>Greenville.</i>

GREENVILLE, August 31st, A. D. 1858.—Pursuant to the within warrant to me directed, I have notified and warned the inhabitants of said town of Greenville, qualified as therein expressed, to assemble at the time and place and for the purpose therein mentioned, by posting up an attested copy of such warrant at the School House in District Number One, in said town, being a public and conspicuous place in said town, on the 31st day of August, A. D. 1858, being seven days before said meeting.

MILTON G. SHAW, *Constable of Greenville.*

[A true copy of the warrant and return thereon.]

[Attest: SUMNER BARTON, *Town Clerk.*]

[At a legal town meeting duly notified and holden at Greenville, in the County of Piscataquis, the thirteenth day of September, A.

D. 1858, the legal voters gave in their votes by ballot for said officers, and the persons voted for severally received the number of votes following, viz :]

<i>For Governor.</i>	{	Whole No. votes thrown was fifty-eight,	58
		Menassah H. Smith had thirty-four,	34
		Lot M. Morrill " twenty-four,	24
<i>Rep. to Congress.</i>	{	[[Whole No. of votes, fifty-eight, 58,]]	58
		James S. Wiley had thirty-four,	34
		Israel Washburn " twenty-four,	24
<i>Senator.</i>	{	[[Whole number of votes, fifty-eight, 58,]]	58
		E. B. Averill had thirty-four,	34
		J. H. Gilman " twenty-four,	24
<i>County Commissioners.</i>	{	[[Whole number of votes, fifty-eight,]]	58
		William Cross had thirty-four,	34
		Leonard Robinson had twenty-four,	24
<i>County Att'y.</i>	{	[[Whole No. votes thrown, fifty-eight,]]	58
		P. S. Merrill had thirty-four,	34
		J. H. Rice " twenty-four,	24
<i>Reg'r of Probate.</i>	{	[[Whole No. of votes thrown, fifty-eight,]]	58
		Augustus W. Walker had thirty-four,	34
		Samuel Whitney " twenty-four,	24
<i>County Treasurer.</i>	{	[[Whole number of votes, fifty-eight,]]	58
		Calvin Chamberlain had thirty-four,	34
		Elias J. Hale " twenty-four,	24
<i>Sheriff.</i>	{	[[Whole number of votes, fifty-eight,]]	58
		Walter G. Jewett had thirty-eight,	38
		Calvin S. Douty " twenty,	20
<i>Repr'e to the State Legislature.</i>	{	[[Whole number of votes, fifty-eight,]]	58
		M. G. Shaw had forty-six,	46
		G. L. Howard " twelve,	12

[The selectmen of said town were present and presided at said meeting, received, sorted and counted the votes, and declared the same, in open town meeting, in my presence.]

A true record.

Attest : SUMNER BARTON, *Town Clerk.*

A true copy.

Attest : SUMNER BARTON, } *Town Clerk*
[of
Greenville.]

C.

I, Aretas Chapin of Monson, Maine, on oath depose and say, in answer to interrogatories, question by J. H. Rice, Att'y, to George L. Howard :

1st. Are you now and was in September last one of Selectmen of the town of Monson, duly elected and qualified as such?

Ans. I am—and was so qualified in March last.

2d, by same. Was you present at the meeting of the Selectmen of the several towns and plantations in the Representative District composed of said Monson, Guilford, Greenville, &c., for the purpose of examining and comparing the returns of ballots and votes given by the inhabitants of said towns and plantations in September last? if so, when and where was said meeting held?

Ans. I was present; the meeting was held on Tuesday the next following the day of election at the office of J. H. Rice, Esq., in Monson.

3d question by same. Was any one present at said meeting claiming to be or acting as one of the Selectmen of said Greenville?

Ans. There was not to my knowledge.

4th, by same. Was there any person present who was a resident of said Greenville?

Ans. There was not.

5th, by same. Was there a paper before said meeting purporting to be a return of votes and ballots given in by the inhabitants of said Greenville for Representative?

Ans. There was.

6th, by same. Were the number of ballots and the number of votes, appearing by said return to have been given in by said inhabitants of Greenville, written out in full in words, or put down in figures? or either?

The above question was objected to by P. S. Merrill, Esq., who appeared for M. G. Shaw.

Ans. The number of votes for each candidate were put down in figures only.

6th, by same. Do you know by what means said return came before said meeting of Selectmen?

Ans. Mr. Horace Flanders came in with it. Mr. Flanders lives in Monson.

Question by P. S. Merrill in behalf of M. G. Shaw:

At the meeting held in Mr. Rice's office the day after the September election referred to by you, did it appear to the Selectmen from the towns composing said Representative District so assembled that any person was chosen as Representative to the Legislature, and if so, whom?

It did appear to us that Milton G. Shaw had the most votes, and we decided that he was elected.

Question by same. Who delivered to said Shaw the certified copies of votes that you had at said meeting?

Ans. I did.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Feb. 2, 1859.

The undersigned, a minority of the Committee on Elections are unable to concur in the opinion of the majority of the Committee, denying the right of Milton G. Shaw to a seat in this House, as Representative from the District, composed of the classed towns of Guilford, Abbott, Monson, Greenville, Blanchard, Shirley and sundry other plantations; we, therefore, ask leave briefly to state some of the reasons for our opinion, that Mr. Shaw, the sitting member, should not be deprived of his seat.

The vote in said District stood as follows:

			For Milton G. Shaw.	For Geo. L. Howard.
Guilford,	-	-	102	78
Abbott,	-	-	69	82
Monson,	-	-	50	114
Greenville,	-	-	46	12
Blanchard,	-	-	10	24
Shirley,	-	-	45	1
			<u>322</u>	<u>311</u>

Plantation No. 2, Range 5, Milton G. Shaw had four votes. This plantation is misnamed in the Act of Apportionment, and the four votes given in it for Mr. Shaw being deducted, he would then have a majority of eleven votes over Mr. Howard.

Mr. Howard gave due notice to Mr. Shaw of his intentions to contest his claim to a seat in this House, as the Representative of said District, specifying various objections, all of which were abandoned, and no proof whatever offered to sustain them, except to the four votes from No. 2, Range 5, and the objection to the vote of Greenville, set forth in the said notice as follows:

“That the return of ballots and votes given in by the inhabitants of said Greenville, in said Election, should not be received and

counted, for the reason that the said return does not show and exhibit the number of the ballots and votes so given, according to the formalities and requirements of law.”

This notice, it will be observed, refers simply to the mode of stating the number of votes received by the candidates, and makes no objection, whatever, to the form of the heading or caption of said return.

The question then turns upon the reception, or rejection of the vote from Greenville. If the vote of that town is counted, Mr. Shaw is elected; if rejected he is not elected.

That the meetings were legal, and the votes stated were fairly given by the qualified electors, received, sorted, counted and declared in open town meeting, by the Selectmen who presided, and in presence of the town clerk, in this, and all the other towns composing said District, was not, we believe, questioned or denied before the Committee.

It appeared in evidence, however, that the town clerk of Greenville, did not receive from the Secretary of State any blank returns for Representative, and in making up his returns without a blank, he omitted to state in the caption, the date of the meeting. But the return docs state, correctly and truly, in writing the essential facts, that the votes were received, sorted, counted and declared in open town meeting by the Selectmen who presided, and in presence of the town clerk, and the names of the candidates voted for, and the number of votes received by each.

The town clerk appeared before the Committee and produced the town records of Greenville, and testified that he was present at the meeting, held on the 13th, day of September last; and there the votes were received, sorted, counted and declared in open town meeting, by the Selectmen who presided, and there he formed a list of the persons voted for, with the number of votes for each person against his name, in open town meeting, in presence of the Selectmen, in writing upon a sheet of paper, which he copied into the book of records that evening or the next day.

When he first made his entry on the book of records, it contained no formal caption, but it immediately followed a copy of the warrant and return, and contained a list of the persons voted for, and the number of votes received by each against his name.

He produced, upon the books, an amended record, which he testified he had made that day, according to the truth and facts, as they took place at the meeting aforesaid. This amended record was in due form, showing the entire proceedings to be correct.

It is not denied, we believe, that Mr. Shaw received a majority of the votes of the qualified electors in this District, nor that they were received, sorted, counted and declared in a proper manner; so that at the time of the declaration he must have been legally elected.

But the opinion of the majority of the Committee, if adopted, would reject the votes of the town of Greenville, and thus defeat the will of the people, because the town clerk made his original entry of the list of the persons voted for, with the number of votes received by each, on a sheet of paper, and not on the book of records.

The undersigned cannot concur in this opinion. They do not understand the constitution to contain such requirements, as that the entry or record of this list must be made upon the town books. They believe it to be a substantial compliance with the provisions of the constitution referred to (Art. 4, Sect. 5) when the proper entry is made, during the meeting, upon a separate sheet of paper and is afterwards entered upon the books of the town. The language is, that the clerk "shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the Selectmen, and in open town meeting."

In our opinion, the entry of this list in writing upon a sheet of paper by the clerk, is a record whether in the town book or not; or, if subsequently entered in writing on the town book or books, and attested by the town clerk, it is no less a record.

Such, we think is a fair construction of the language, and all that is required. Such has been the construction given to this provision of the constitution from its adoption to the present time. Nearly every town in the State has adopted it in practice, and continued it uninterrupted for a period of nearly forty years.

It is a well known fact, that the practice in our towns is so general, as to be nearly universal, for the clerk to make his record on a sheet of paper during the meeting, and enter it on the books, at his leisure, after the adjournment. Indeed, it is almost a matter of necessity in many of the towns where the meetings are continued to

a late hour; and in all of them it would be exceedingly inconvenient and difficult to enter on the books all the formalities of a record with that care and attention to neatness and accuracy, which are desirable, before an adjournment is allowed.

The object to be secured is a correct record, on paper, of the names of the persons voted for, and the number of votes received by each, and to this the constitution has reference.

The undersigned do not feel at liberty to change the whole practice of the State and repudiate a practical, convenient and common sense construction of this constitutional provision, sanctioned for so long a period, for a new and quite impracticable and technical rule, that must lead to interminable contests, in which crafty schemers would manoeuvre to defeat the will of the people.

When the thing done is right, when the proceedings of the meeting are correct, the mere formal omission of the clerk in making up the evidence, is altogether a different thing from an error in the proceedings themselves.

The amended record in this case is correct and full, shewing that the votes in Greenville were given under all the requirements of law, and should be received.

The courts of law, we believe, allow town clerks to amend their records according to the facts, at any time while in office, even in judicial proceedings, and hold that it is not only the right, but the duty of the clerk to make his record conform to the truth.

If this is admissible under the rigid technical rules of courts of law, much more is it so in a case like this, before a tribunal not bound by technicalities, but fully authorized by the constitution itself to prescribe its own rules of interpretation, and carry out its spirit in a fair and liberal manner.

The constitution makes the House the supreme judge of the election of its own members. The power is full and ample. It comes from the constitution itself. It confers on the House the unquestionable authority to give such construction to the provisions respecting the election of its members, as it shall find to be reasonable.

The House is not only the judge of the construction of these provisions, but also of the penalty of their violation. And it by no means follows that that penalty should be to vitiate and declare void the whole proceedings of a meeting, which were in themselves

correct, merely because the clerk made an omission in his record of them. He may be subject to a fine; but he should rather be required to supply his omission according to the truth; and the proceedings should be sustained. Upon any other course of action, it will always be in the power of a clerk to render void the entire action of a town and defeat any candidate, he may desire to, by neglecting or refusing to spread out his records on the books in all their extent and formality during the bustle and haste of the meeting.

The undersigned do not feel authorized to reverse the practical construction of forty years of that clause of the constitution under consideration, nor to hold, that a neglect of duty on the part of the clerk is to be visited with the penalty of disfranchisement of the legal voters in the town, and a loss of the rights of those persons, who were fairly elected to office.

Unlike the Governor and Council, who are restricted in their power to the examination of the returns for various officers, laid before them, this House has full power to inquire into, and ascertain the facts in the case relating to the election of its members.

If the principle is to be inaugurated, that elections are to be set aside in towns where the clerk makes his record of their proceedings during the meeting upon a sheet of paper, and not upon the book of records, and afterwards extends it upon the book, would it not be well to inquire, what would be the legitimate consequences flowing from the application of this principle. Would not every member, that knows he holds a seat in this House by virtue of the votes of a town where the record was made up in this manner, be required to resign it at once. If he did not resign, would he not continue to hold his seat in violation of constitutional requirements, which he had decided to be essential. How general and disastrous the adoption of such a principle would be on the members of this House can readily be understood; nor will they apply to another, a rule they are not ready to adopt in regard to themselves.

Being of the opinion that Mr. Shaw is fairly elected, the undersigned believe that Mr. Howard, his contestant, should have leave to withdraw.

Which is respectfully submitted.

D. PEIRCE,
E. EDDY,
J. PORTER.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Feb. 2, 1859.

On motion of Mr. BALCH of Waldoborough, laid on the table and 350 copies of same ordered to be printed for the use of the Legislature.

GEO. W. WILCOX, *Clerk.*