

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE.

1861.



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1861.

FORTIETH LEGISLATURE.

HOUSE.

No. 33.

MAJORITY REPORT

Of the Committee on Elections to which was referred the Credentials of Harrison Rose of Greene, together with the Remonstrance of Timothy Jordan of Greene, aforesaid, against the right of said Harrison Rose to a seat in this House.

The Committee on Elections to which was referred the Certificate of the election of Harrison Rose of Greene, together with the Remonstrance of Timothy Jordan of Greene, aforesaid, against the right of the said Harrison Rose to a seat in this House from the Representative district composed of Greene in the county of Androscoggin, submit the subjoined

REPORT:

The remonstrant alleges that the said Harrison Rose is not entitled to a seat in this House.

1st. Because that the town meeting held on the 17th day of September, at which the said Rose claims to have been elected was illegal, inasmuch as the meeting on the 10th day of said month, although the said Rose and this remonstrant were declared to have the same number of votes, was not adjourned by vote or declaration of the Selectmen to the same day, hour and place of the next week.

2d. Because this remonstrant was duly elected Representative from Greene on the 10th of September by receiving a larger number

of votes than said Rose or any other candidate voted for on that day for said office, inasmuch as three of the votes thrown and counted for said Rose were illegal, one of which was thrown by John G. Philcox, one by Isaac Reynolds, and one by Hiram S. Stuart.

3d. Because of the reasons fully set forth in the notice and specifications served upon said Rose according to the requirements of the Statute.

It appeared by the records of the town of Greene, that at the annual election held in that town on the 10th day of September, A. D., 1860, that the two candidates for Representative, to wit: Harrison Rose and Timothy Jordan each received 139 votes.

The remonstrant introduced witnesses to prove that the said John G. Philcox, was present at the meeting on the 10th of September, and that Philcox did cast his vote for Harrison Rose.

Remonstrant then contended that said Philcox was not a qualified voter; and in testimony it appeared that said Philcox was born in Brumwash, in the county of Sussex, in England, that said Philcox came to this country about the first of November, A. D., 1832, that said Philcox resided in Saybrook, Connecticut, that he was naturalized in 1839, that some few years afterwards, while on a visit to his native land, he lost his naturalization papers.

The Revised Statutes of Maine, chapter 4, section 6, requires that "when a person of foreign birth exhibits papers of naturalization, issued to him in due form by a court having jurisdiction, to the selectmen of his town, if satisfied of their genuineness, and that such person is entitled to vote, they shall approve such papers by a written endorsement thereon, with the date thereof, signed by one of them; register in a book kept for that purpose the name of the person, the date of the papers, the date of approval, and the name of the court by which they were issued; cause the name of such person to be entered upon the list of voters; and continue his name on the successive lists so long as he continues to reside there and is in other respects qualified to vote.

If they are of opinion, that such papers are not genuine, or were not issued to the person presenting them, or that he is not for other cause a legal voter, they shall not approve them or perform the other acts required; but he shall not by their refusal to approve his

papers, or to enter his papers, be deprived of his right to vote, upon satisfactory proof of it."

Although the said Philcox did not present his papers to the selectmen of Greene, still your Committee concluded that said selectmen were satisfied, from other cause, agreeable to the provision quoted, that Philcox was entitled to vote. The Committee were further confirmed in their opinion, from the fact, that said Philcox afterwards produced a copy of his naturalization papers, duly attested, and bearing the seal of the Court.

Furthermore, as Philcox, by producing and presenting to the Committee an attested copy of his naturalization papers, the Committee were of opinion that said Philcox, upon the receipt of said papers, 1839, was thereby invested with the right to vote, as fully as if he had been born in this country.

And although the selectmen of Greene had received his vote without first receiving and endorsing his papers, still he, Philcox, having exercised the inherent right, which was delegated to him upon his receiving his naturalization papers, and the Committee being satisfied that said Philcox had received his papers as above stated, they saw no reason why they should reject his vote. In support of this position, reference may be had to Maine Reports, vol. 3, page 296, case, Mussey vs. White.

Mellen, C. J., says in reference to a neglect of duty of town officers, "that as public officers of their town, they claim of the court to view their official acts with all that indulgence which is due to honest intentions and anxious endeavors to perform their duty correctly.

Although they may in some minute particulars have erred in judgment, courts cannot grant favors to parties, but must decide upon legal principles, but in doing this, they may, and in many instances do, consider statute provisions as only *directory*."

He further says, "numerous cases might be stated where the law directs an officer to perform a certain act, and subjects him to a penalty for omission, without meaning to render all his other acts void."

Remonstrant then offered to prove that one Isaac Reynolds was present at said meeting on 10th September, and voted for Harrison, and also that said Reynolds was not entitled to vote.

Article 2, section 1, of the constitution of this State, provides that a person shall have been a resident of the town three months next preceding any election in order to be a qualified voter in that town.

The proof was clear to a majority of the Committee, that Reynolds had not made his home in Greene for several years next preceding the election of the 10th September, and therefore had no right to vote in said town. And a majority of the Committee did not understand the counsel for the parties to disagree upon the question of his right to vote, but conceded that he had no right. Although the said Reynolds testified that he voted for Timothy Jordan on the 10th of September, still the Committee, with a single dissenting vote, were of the opinion that Reynolds did *not* vote for Jordan, but that he *did* vote for Harrison Rose.

In testimony said Reynolds stated that he voted the entire Republican ticket on the 10th of September, that he tore the name of the Representative from the bottom of the general ticket, that the name of T. Jordan or Timothy Jordan was printed on the general ticket, that he could not tell whether it was T. Jordan or Timothy Jordan.

Abraham Richmond stated that the votes for Timothy Jordan were printed on pieces of paper separate from the general ticket for State and county officers, that he (Richmond) was of the town Committee, assisted in procuring the votes, and would know.

Virgil Dillingham stated that he saw Isaac Reynolds vote on the 10th September, that one ticket which Reynolds cast had the name of E. K. Smart at the top, that the name on the ticket for Representative which Reynolds cast was written and not printed, that he stood about three feet from Reynolds when Reynolds voted, and was confident that he was not mistaken.

There was no evidence to prove that the name of Timothy Jordan was attached to the general ticket in any instance, neither that any votes were cast for Jordan on that day except printed votes.

There was evidence that the votes of Harrison Rose were written.

Mr. Rose, on his part, introduced testimony to prove that one Edward Larabee was present at the meeting on the 10th of September, and voted for Timothy Jordan; also that said Larabee had no right to vote.

Remonstrant then offered as an offset for the vote of Edward Larabee, to prove that one John McMaster was present at said meeting and voted for said Rose; also that said McMaster had no right to vote.

The counsel for Mr. Rose objected, that the Committee ought not to hear the testimony, inasmuch as said Jordan in his specifications or notice to said Rose, had not notified said Rose that he (Jordan) should object to the counting of said McMaster's vote.

The counsel for Jordan contended that the evidence was admissible, and the Committee ought to hear it.

The Committee concluded to admit the testimony, communicate the same to this House, and refer the question of the right of admissibility and hearing in the case to the decision of this House. The testimony was ample to satisfy the Committee that said McMaster was born in Scotland, that he had never been naturalized, and consequently had no right to vote.

After a careful hearing of all the testimony, and a careful review of the same, the Committee came to the conclusion that the verdict in this case must rest upon the answers given to seven questions, five of which have direct reference to specifications set forth in the notice, and two suggested from facts presented at the time of the hearing before the Committee:

1st Question—Did John G. Philcox vote for Representative in the town of Greene September 10th, 1860?

Answer, unanimous—John G. Philcox did so vote.

2d Question—Did John G. Philcox vote for Harrison Rose at said meeting?

Answer, unanimous—John G. Philcox did vote for said Rose.

3d Question—Had John G. Philcox a right to vote?

Answer, unanimous—John G. Philcox had a right to vote.

4th Question—Did Isaac Reynolds vote for Harrison Rose at said meeting held September 10th?

Answer, unanimous, (with the exception of one member of the Committee)—Reynolds did vote for said Rose.

5th Question—Had Reynolds a right to vote?

Answer, unanamous, (same exception as in preceding question)—Reynolds had *no* right to vote.

6th Question—Had Edward Larabee a right to vote?

Answer, unanimous—He had not.

7th Question—Had John McMaster a right to vote?

Answer, unanimous—He had not.

The Committee would here state that the member who disagreed with the rest of the Committee upon questions four and five, expressed some doubt upon the illegality of McMaster's vote.

It will appear, then, if the House concur with the majority of the Committee in their answers to the first five questions, that the result will show that at the meeting held on the 10th September, 1860, in the town of Greene, that

Harrison Rose received 138 votes;

Timothy Jordan received 139 votes;

Thus giving Timothy Jordan the election.

But Edward Larabee voting for said Jordan, and he (Larabee) being a minor, not entitled to vote, reduces the vote of Jordan to 138 votes, thus making a tie.

Again, if this House decides that the testimony relative to John McMaster is admissible, then the vote for said Rose will be reduced to 137 votes, thus establishing the right of Jordan to the seat, he having received 138 votes.

But if this House refuse to admit the testimony relative to John McMaster, then said Rose will retain the seat by virtue of the election on the 17th day of September, 1860.

All which is respectfully submitted.

Per Order.

C. H. NORCROSS,
J. W. EATON,
G. P. WHITNEY,
THOS. SKOLFIELD,
J. P. WYMAN.

MINORITY REPORT.

The undersigned member of the Committee on Elections, finds himself unable to agree with the majority of the Committee in their report on the remonstrance of Timothy Jordan against the right of Harrison Rose to seat in this House, as Representative from the town of Greene, and asks leave to submit a

MINORITY REPORT:

Mr. Rose holds his seat by virtue of an election at an adjourned meeting, held in that town on the 17th of September, at which the vote for Representative stood—

| | |
|-----------------|-----|
| Harrison Rose, | 133 |
| Timothy Jordan, | 120 |

The remonstrant seasonably gave notice of his intention to contest the right of said Rose to his seat, and of his own claim to an election at the annual meeting on the 10th of September, specifying the following grounds of objection to the election of said Rose, viz :

1. Because the town meeting held on the 10th of September was not legally adjourned to the 17th.

2. Because said Jordan claims that he was elected a representative from said town at the meeting on the 10th day of September, by reason of having received at said meeting, a majority of the votes legally cast in said town. And the notice served on said Rose proceeds to specify "that the following named persons, viz : John G. Philcox, Isaac Reynolds and Hiram S. Stuart, who were not legal voters in said town of Greene, were permitted to vote, and did vote at the town meeting held on the 10th day of September, aforesaid, for the said Harrison Rose for Representative."

At the hearing before the Committee, the counsel for the remonstrant made no question as to the legality of the adjournment of the meeting to the 17th, provided there was no choice of Representative on the 10th; and

The vote for Representative, as declared on the 10th, stood :

| | |
|--------------------------|-----|
| Whole number of ballots, | 278 |
| Timothy Jordan, had | 139 |
| Harrison Rose had | 139 |

No proof was offered before the Committee, and no question was made, but that Stuart, one of the persons specified in the notice had a perfect right to vote. The sitting member had been to the expense of having him present to testify, and then objection to his right to vote was abandoned.

As to Philcox, it appeared that his name had been upon the list of voters for two or more years ; placed there after an examination by the selectmen who were satisfied that he had been legally naturalized and had lost his naturalization papers some years before. He produced before the Committee an authenticated copy of the record of the Supreme Court, held in the county of Middlesex, Connecticut, in 1839, showing his naturalization in that Court.

He testified, also, that he was the person named in the record, and stated the facts in regard to his loss of his original papers, and the examination before the selectmen of Greene when his name was placed upon the list of voters in that town. Although not positive that he voted for Representative on the 10th, as the ballots were put in a separate box from the general tickets, he said his intention was to vote for Mr. Rose, and if he voted at all, he did so vote ; and his impression was that he did.

There was other testimony to the fact of his voting.

I understand the Committee to agree, that Philcox having established the fact of his naturalization and citizenship, having previously satisfied the selectmen of the town where he resided of the same, and having shown that his name was upon the list of voters, and that he was permitted, rightfully, as the undersigned believes, to exercise the right of citizenship, is not to be disfranchised by the Legislature ; and that his vote should not be thrown out and rejected.

As the Committee agree on this result, I forbear to urge further considerations on this subject.

As to the vote of Reynolds, the undersigned is unable to agree with the other members of the Committee ; and he therefore deems

it to be his duty to make such report of the testimony and statements bearing on the case, as shall present the facts to the House.

There was considerable evidence upon the question whether he had, or had not, the right to vote in Greene, the town in which he was brought up, and where he seems to have considered his home to be; where he took his wife after breaking up house-keeping in Winthrop, and where he brought his child for burial in the autumn. Yet, on the whole testimony, the undersigned does not feel authorized to disagree with the majority of the Committee who are of the opinion that he had not such home in Greene as to make him a voter in that town. It will not be necessary therefore, to present the evidence on that point.

On the question *for whom he voted* for Representative, the remonstrant called before the Committee V. P. Dillingham, who stated as follows :

I know Reynolds. I live in Winthrop now, but my home is in Greene. I was at the town meeting in Greene Sept. 10th, and saw Reynolds at the town house; and saw him vote. Saw him first in the hall, a little way from the ballot box. I passed by him and saw a small written vote in his hand—saw also another vote with Smart's name on it. I crossed the hall and talked with my father. I turned and came up to the ballot box, stepped on a front seat and then saw Reynolds. He and the selectmen and others were talking. I could not understand what they were saying. I stood there a short time and saw him vote. I considered it the same vote he had in his hand when I saw him at first. He voted in both boxes. I saw Smart's name at the head of the vote he put in.

Rose's votes were written that I saw. There might have been some printed ones. I did not see any. I do not know but there may have been written votes for Jordan. There may have been printed votes for Rose, but I saw none. I had two votes for him only in my hands. It may have been ten minutes after I first saw Reynolds before he voted. Could not read the vote for Representative. There was no printing on it. I do not recollect how anybody else voted except myself and my brother.

The remonstrant then introduced sundry depositions bearing upon the question of Reynolds residence and tending to show that he had

not such a home in Greene as to make him a legal voter in that town.

Mr. Rose then called Reynolds before the Committee, who was duly sworn, and gave the following testimony :

Isaac C. Reynolds : I was brought up in the town of Greene from childhood until I was eighteen years old. I am now thirty. I was present at the annual meeting in Greene on the 10th of last September and voted. I voted the representative ticket and voted for Mr. Jordan for Representative. I also voted the general ticket in a separate box.

Cross-examined. I was at the second election. At the second election I voted for Mr. Rose. On the 10th I voted the Republican ticket all through. I had a number of votes in my hands, handed me by different persons. E. K. Smart's name was not at the head of the ticket I threw. I voted the Republican ticket—cannot now state the name of the sheriff on it. There were two boxes to receive the votes in. The name on the vote for Representative was printed—am not positive whether it was T. Jordan or printed in full, Timothy Jordan. Think it was on the bottom of the general ticket, cut nearly off, and that I took it off. I had Republican votes and Democratic votes in my hand. I voted the Republican ticket. I did have Republican and Democratic tickets in my hands. Do not recollect whether I separated Rose's name on any ticket or not. The name was printed on the representative ticket that I voted.

The remonstrant then read the depositions of L. H. Morse, R. D. Smith, C. A. Burgess and Allen Soule, stating the declarations of Reynolds, to the effect that he did not vote for Jordan for Representative on the 10th of September, that he voted for a Democrat, that he would not vote for Jordan.

Reynolds recalled, testified : I recollect the conversations with Morse, Smith, Burgess and Soule. I made the remark in joke. We got into conversation in a joking way, and I said in sport anything that came in the way.

As a matter of fact I now say, I did vote for Mr. Jordan for Representative at the annual meeting on the 10th of last September.

Dillingham recalled, said: I called the vote that Reynolds threw a written vote. I saw no printing on it.

Cross-questioned. I do not know who Reynolds voted for, I could not read the writing.

Abraham Richmond stated that he was one of the Republican town Committee—that the Republican votes were sent to the Committee; and that he saw none except what were printed on a separate piece of paper—that he did not recollect of seeing any written votes for Jordan, or any printed ones for Rose.

Cross-examined. He did not mean to be understood but that there might be written votes for Jordan, only he saw none.

The foregoing presents substantially the testimony on the main point in question. There is an unquestionable discrepancy between Reynolds and Dillingham. No evidence was offered against the character of either, and both appeared to be respectable and intelligent men. Dillingham is quite a young man, with a full share of zeal. *He was not put under oath*, while Reynolds was. If Reynolds' testimony is false, he is guilty of perjury; but no such consequence attaches to Dillingham for any mis-statement of his. To convict a man of perjury by the statements of another man not on oath, strikes me as something new, unsafe and contrary to every principle of right.

It is obvious, moreover, that the fact in question, for whom Reynolds voted, is one in regard to which he had a far better opportunity of knowing than a mere stranger. Dillingham might be honestly mistaken while Reynolds could not. When Dillingham first met him in the hall, he had Democratic votes in his hand, and having seen such votes there, Dillingham may have derived his recollection of the votes from that view, and made his statements under that misapprehension. The depositions of Morse and others as to Reynolds' declarations, are introduced to impair the credit due to his testimony. Those statements were not under oath; and as he himself says, were mere sportive remarks, made perhaps to throw prying inquisitiveness off its guard; and should not deprive Mr. Rose of the benefit of that testimony which is made under the responsibilities, and solemn sanctions of an oath. In the judgment of the undersigned, he bore well the rigid cross-examination of the

counsel; and nothing occurred, or was proved, to impair confidence in his testimony. It satisfactorily proves to my mind, that he voted for Mr. Jordan; and if the vote is to be taken from either side, it should be from his.

If the question is left in the mind of any one in uncertainty whether he voted for Jordan or Rose, then the election stands, leaving the sitting member in his seat. It is incumbent on the remonstrant to remove all reasonable doubt, and to prove affirmatively against the positive oath of Reynolds, that he voted for Rose and not for him.

Another question is presented in this case.

Mr. Rose proved that one Edward Larrabee voted for Mr. Jordan for Representative at the meeting on the 10th of September, and that said Larrabee was a minor only twenty years old. I need not state the evidence, as the Committee were unanimous on the subject. This takes one more vote from the 139 counted for Jordan, in addition to that given by Reynolds.

The remonstrant then offered to prove by one McMaster that he was an alien, and that he voted for Mr. Rose. This was objected to on the ground that no such vote was specified in the notice. He testified, however, that he was born in Scotland, and that he voted for Mr. Rose on the 10th; that he supposed he was naturalized, and shewed his papers to Mr. Hill, a Republican selectman, two or three years ago, who said it was all right, and his name was then put on the list in Greene, and he has paid a poll tax and voted ever since. On examination the paper was found to be only the preliminary application for naturalization.

The question is here raised, whether a remonstrant shall not be confined, in all cases, to the facts stated in his notice; or whether this wholesome provision of the law, intended to secure to the sitting member an opportunity to know what he has to meet, and to provide for it before he leaves home for the Legislature, shall be disregarded or frittered away. It can make no difference to him, when called upon to meet objections to a vote, whether it is offered in offset to an illegal one he has proved to have been received for the remonstrant, or any other vote.

If the new practice is to be introduced of allowing a remonstrant

to go into cases not embraced in his notice to the sitting member, the notice will be converted into a mere snare, misleading as to what he has to meet, instead of affording him the protection the statute designs to give.

In view of all the facts in the case, the undersigned believes that the effort of the remonstrant to defeat the clearly expressed popular will of the town of Greene, as shown in the vote on the 17th of September, is not sustained by the proof, and ought not to prevail; and that if any election of Representative was made at the annual meeting, it was that of Mr. Rose, and not Mr. Jordan.

C. B. CLARK.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
Feb. 20, 1861. }

Reported by Mr. NORCROSS, from the Committee on Elections,
and on motion of Mr. BUXTON of Warren, laid on the table, and
350 copies ordered to be printed, together with the Minority Re-
port, for the use of the Legislature.

CHARLES A. MILLER, *Clerk.*