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SENATE. No. 3.

REPORTS

OF

COMMITTEE ON SENATORIAL VOTES.

MAJORITY REPORT.

The committee on senatorial votes having already submitted to the consideration of the Senate their reports relating to all the counties in the State except the County of Washington, beg leave to submit their report relating to that county, which constitutes the fifteenth senatorial district. And this is their final report under the order of the Senate.

The only difficulty in determining the election of senators in this District, arises from the vote of the town of Cutler. By the provisions of the Constitution, it is required that the votes shall be received, sorted, counted, and declared in open town-meeting; that the clerk shall make a list of the persons voted for, with the number of votes for each person against his name, and *shall make a record thereof in open town meeting*; that *copies of the list of votes shall be attested by the selectmen* and town clerk, and *sealed up in open town meeting*, and be delivered into the office of Secretary of State, thirty days at least before the first Wednesday of January.—*Constitution of Maine, Art. 4, Parts first and second.*

The return of votes from Cutler, in the Secretary's office, is in the usual form, and purports to be signed by the town clerk and by two of the three selectmen of Cutler. But it was proved to have been signed in fact by the town clerk and one selectman only—the sig-

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nature of the other having been put to the return by a third person without any authority whatever, several weeks after the election, and while such selectman was absent from the town, in Bangor. It was also proved that *no list of persons voted for was made by the town clerk in open town meeting; nor did he make any record of the votes in open town meeting, nor any record at all until nearly four weeks afterwards; nor was any return of votes made and sealed up in open town meeting, nor any return at all, until several weeks afterwards.* The evidence satisfies the committee that the *present return in the Secretary's office was made in the store of one of the selectmen, on Sept. 26th, the meeting having been held on the 8th; and that it bears the genuine signature of the town clerk and of one of the selectmen only.*

The provisions of the Constitution before referred to were wisely designed to protect and preserve the vital principle upon which rests the whole theory of our popular form of government—the purity of our elections.

It was well understood by the framers of that Constitution that the conflicting interests of parties, and the rivalries of opposing candidates at our elections, must be carefully guarded against. At the time of our separation from Massachusetts, and for a long time prior thereto, the statutes of that State had required that in all elections for State officers, and for senators and representatives, the votes should be sorted, counted and declared in open town meeting; that the clerk should make a record of the vote in open town meeting; and that the returns should be prepared, signed, and sealed up in open town meeting, and be afterwards transmitted to the Secretary of State.

The whole proceedings were thus in public—open to everybody. Opposing candidates and their friends could be present and know that the votes were correctly counted and recorded, and, what was of still greater importance, that the proper evidence thereof, viz., the returns of the votes, had been made in accordance with the truth, *duly attested by the officers of the town, and sealed up in the presence of all parties, so that they could not be afterwards opened except by the governor and council.* Thus every party knew that there could be no subsequent tampering with the votes; that all his rights were protected, proved, and safely secured beyond the reach of fraud or the intemperance of party zeal.

Our fathers deemed these statute provisions of such importance

that they incorporated them into the Constitution of the State, and they thus became a part of our organic law.

And a majority of the committee do not feel, under the oath which they have taken to support that Constitution, that they have any power to override or disregard its provisions. To attempt to do so, even in a matter of minor importance, would constitute a precedent dangerous indeed. But in a matter of so vital moment as this, destroying, as it would, all the safeguards thrown by the Constitution around our elections, such a precedent would be of the most dangerous character. To allow the officers of towns to make up the returns of votes weeks after the election, and behind the backs of those whose rights and interests are in their hands, would eventually—and perhaps at no distant day—endanger our whole system of government. In times of great political excitement, and when elections are close, unscrupulous town officers might delay making their returns until they had ascertained how many votes their favorite candidates needed to elect them; and the necessary number would be eventually found in their returns when made. *The policy of the Constitution is that all votes shall be recorded, and all returns signed and sealed up at the moment of the election, and before results elsewhere can be known, and in the presence of all persons interested; and thus effectually guard against all imposition and fraud.*

And a majority of the committee do not think they ought, or that they have the power, to disregard these provisions of the Constitution, and they are of opinion that the vote of Cutler should be rejected.

This conclusion is more than sustained by the decisions and practice in Massachusetts. In that State, it is provided by statute that a check list shall be used, and every man's name checked when he votes. In the case of the town of Granby, in 1843, it appeared that a check-list was used by the selectmen at the first balloting; that no choice having been made, a second was ordered; that "the selectmen all stood by the ballot-box with the check-list before them, and with their eyes on the voters as they came up; that they personally knew every man whose name was on the check-list, and if any man had come forward to vote whose name was not on the list, they should have detected him at once, and they were confident that no person voted whose name was not on the check-list; and that no person voted more than once. *And there was no ques-*

tion but that the member returned was fairly elected by a majority of all the votes cast."

Yet, although the provision requiring the check-list to be used was by statute only, and not by any requirement of their constitution, the character of such a precedent was regarded as too dangerous, and as giving too great opportunity to commit frauds, and thus destroy the purity of elections; and the vote of Granby was rejected.—*Reports of Mass. Election Cases*, 506.

The whole number of votes thrown in the District, rejecting the vote of Cutler, (which was 106) was, ... 5,260

Necessary to a choice, ...	2,631
John Plummer has	2,633
William Duren has	2,609
John C. Talbot has	2,597
George Walker has	2,593

John Plummer having a majority of all the votes, is elected; and no other person having such majority, there is one vacancy in the District.

Of the three other persons voted for, William Duren and John C. Talbot having received the highest number of votes, are the constitutional candidates to fill such vacancy. All which is respectfully submitted.

DAVID D. STEWART,
N. WOODS,
A. P. EMERSON,
LEVI CRAM,
B. M. ROBERTS.

MINORITY REPORT.

The undersigned, a minority of the Committee "appointed to examine the returns of votes for Senators, and report the names of those elected to the Senate," ask leave to submit the following report, relating to the election of Senators in the Fifteenth Senatorial District.

By the 5th section of the 3d article of the Constitution of this State, it is provided that "the votes for representatives shall be received, sorted, counted and declared in open town meeting, in the presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each against his name; shall make a fair record thereof in the presence of the selectmen, and in open town meeting, and a fair copy of this list shall be attested," &c.

By the 3d section of the 4th article, it is provided that "the meetings for the election of Senators shall be notified, held and regulated, and the votes received, sorted, counted, declared and recorded in the same manner as those for Representatives; and fair copies of the lists of votes shall be attested by the selectmen and town clerks of towns, and sealed up in open town meeting; and the town clerk shall cause the same to be delivered into the Secretary's office," &c.

By the 5th section of the same article, it is provided that "the Senate, on the first Wednesday of January, annually, shall determine who are elected to be Senators, by a majority of votes in each District."

These are the only constitutional provisions in regard to the manner in which the election of Senators shall be determined. By reason of great carelessness on the part of town officers, in several towns in the State, it was absolutely impossible to determine with entire accuracy the whole number of votes given for Senators, or the whole number of ballots thrown.

In some towns the number of ballots returned was too great,

almost equal to half the population of the towns; in others the number was too small; and in others the whole number was not returned at all.

The Committee acting with a desire, as it was believed, to give full force to the wishes of the people, when the same could be reasonably ascertained, in order to determine who were elected Senators by the requisite number of votes, added together the highest numbers returned for two persons, one on each list, voted for; at the same time making such disposition of scattering votes as justice seemed to require, and concluded that one vote more than half the sum of the numbers thus added together was the requisite number for an election.

In this manner was the election determined in each of the districts, save the second and fifteenth.

In the Second District it appeared by the returns that one of the four Senators was not elected. And upon a *mere suggestion* a copy of the record of the town meeting of Brunswick was sent for, and it appearing by that that the returns from that town were not correct, the record was adopted as showing the true state of the vote, and all the Senators in that district reported as elected.

The *votes* in each district controlled the election, notwithstanding there were apparent irregularities and disregard of constitutional requirements in very many cases.

By the returns of votes from the Fifteenth District, it appeared that the Hon. John C. Talbot and Hon. George Walker were elected Senators, but the Hon. John Plummer and Hon. William Duren held the certificates of the Governor, and were occupying seats in the Senate chamber.

It was suggested that the returns of votes from the town of Cutler should not be regarded in determining the election in the Fifteenth District, for the reason that they were not made up in the manner prescribed by the Constitution.

Upon this suggestion, the Committee notified the gentlemen holding the seats, and also those appearing by the returns to be elected, and a hearing was had before the Committee, at which evidence was introduced relating to the manner in which, and the time when the returns from the town of Cutler were made up.

There was clearly a disregard of the constitutional provision, requiring the returns to be sealed up in open town meeting; it appearing by evidence on both sides that such was not done till

several days after the adjournment of the meeting. As to the question of signing the returns by the Selectmen, in the opinion of the undersigned, the official certificate of the Selectmen should be regarded as evidence, and no man allowed to contradict his own acts done in the discharge of his official duty, if by such contradiction he prejudices the rights of other persons, and virtually disfranchises the voters of an entire town.

On the face of them the returns from the town of Cutler were as correct as those from any other town in the State; but by the deposition of Isaac Wilder, one of the Selctmen who signed the returns, it appeared that no record was made in the town meeting, except a memorandum kept by himself on pieces of paper, and that from this memorandum the returns were made up some days after the adjournment. He farther testified that the name of Isaac G. Johnson, one of the other Selectmen, was signed to the returns by one Davis, in the presence of Wilder and of the town clerk. The names of only two of the Selectmen appeared on the returns. By the deposition of Mr. Johnson it appeared that he did sign the returns. Neither Davis nor the town clerk was before the Committee. For these reasons a majority of the Committee, it is presumed, agreed to disregard the vote of the town of Cutler.

A copy of the record of the town meeting was before the Committee, which showed that the names of the persons voted for, and the number of votes each received were correctly stated by the returns. And it was conceded by all parties that no fraud was intended, and none practiced at the meeting; but that every thing was conducted with fairness, and the vote of the town correctly reported.

Mr. Wilder, the Chairman of the Selectmen, was a republican in politics, and a member of the Board of County Commissioners of Washington County.

For the reason that no fraud was suggested, the undersigned did not believe that the people of the town of Cutler should be disfranchised. On the proper day the voters assembled, and in a lawful manner cast their votes for Senators; those votes were returned, and by the fraudulent acts of a single Selectman, the will of the people of an entire Senatorial District is thwarted.

It is difficult to perceive what the moral sense of Mr. Wilder can be, who in his official capacity, and under his official oath could certify to certain things, and in a few weeks after could, on oath,

declare that his certificate was false and a forgery; and it is equally difficult to perceive how credit could be given to his statements, and they allowed to deny his officially declared acts. The Committee had before them the copy of the records of the town meeting, resting upon which was no suspicion of fraud, and if the returns were not made up in such manner as the law requires, there was then before the Committee precisely the same kind of evidence from which to determine the result of the election, as was before them, and upon which the result of the election in Cumberland County was declared, viz: the copy of the town record. This should have been used, and the votes in the town of Cutler counted, thereby recognizing the rights of the people.

The almost universal rule adopted by Legislative Assemblies in this State, and in all other States, so far as is known, relating to the election of members, is to ascertain the wishes of the people, if possible, and then to give effect to those wishes by declaring those persons elected whom the people desire. Even if the strict letter of the law was not followed in recording and making returns.

It is by the Constitution a majority of *votes* that is required to elect, and in the opinion of the undersigned, that number can easily be ascertained in the Fifteenth District, by adopting the same rules as were adopted to determine results in other Senatorial Districts.

There was evidence before the Committee tending to show that the town records of the town of Robbinston were not made up till some days after the day of the election. And it was argued that hence the returns from that town should be rejected; for the reason that by the Constitution it is required that the returns shall be a copy of the record, and the record not having been made up, there was hence no record from which the returns could have been made; that there was no legal record, and as a consequence, no legal returns. If the Committee had adopted the same kind of reasoning and applied the same rules in the case of Robbinston as in the case of Cutler, the returns of R. must have been rejected, and the result of the election would then have been the same as it would have been had the votes in Cutler been counted.

Another question came up before the Committee, viz:—Whether a majority of votes or a majority of ballots is required to elect Senators? The rule adopted by the Committee, as before stated, had been to declare those elected who had a majority of *votes*. By the

Rev. Stat., ch. 4, sec. 25, it is provided, that "in order to determine the results of any election by ballot, the number of persons who voted at such election shall first be ascertained by counting the whole number of separate ballots given in, which shall be distinctly stated, recorded and returned. Blank pieces of paper, and votes for persons not eligible to the office shall not be counted as votes, but the number of such blanks, and the number and names on ballots for persons not eligible, shall be recorded and return made thereof." The section then declares who shall be elected by a plurality of votes, and then provides that "in all other cases (viz., except in cases of elections by plurality) no person shall be deemed or declared to be elected who has not received a majority of *votes* counted as aforesaid.

It is believed that this statute is in strict accordance with the provisions of the Constitution before cited, and that it requires a majority of *votes*, not *ballots*, to elect Senators.

The whole number of ballots is to be returned, and blanks and votes for persons not eligible are not to be counted as *votes*, but to be recorded and returned. The evident reason for this is, that the board whose duty it is to declare the result of elections may have before them the entire number of ballots given in, and also the entire number of blanks and votes for persons not eligible to the office, in order that from the whole number of ballots they may subtract the whole number of blanks and of votes for persons not eligible, and ascertain by the remainder the whole number of votes actually cast, and thereby determine what number is a majority. The provision requiring a "majority of votes to be counted as aforesaid" must mean that the whole number of votes shall be ascertained in the manner above indicated, by deducting the whole number of blanks and of votes for persons not eligible, from the whole number of ballots. This construction is in perfect accordance with the provisions of the Constitution, which nowhere uses the word "ballot," and it is believed is the only construction that can, with even a *show* of reason, be given to the same.

By any other construction by which a majority of *ballots* is required to elect, you must disregard the Constitution and pervert the known and universally accepted meaning of words.

By counting all the votes returned from the fifteenth Senatorial District, and thereby giving to the people the right to determine

who shall and who shall not represent them in the Legislature of the State, the whole number of votes is, . . . 5,385

Necessary for choice, ... 2,668

John Plummer has 2,650

William Duren has 2,626

John C. Talbot has 2,686

George Walker has 2,682

William Freeman has 1

and John C. Talbot and George Walker are elected.

E. R. WIGGIN.

The undersigned, one of said Committee, concurs with the minority report so far as the admission of the vote of Cutler is concerned, but does not concur in the conclusion that a mere majority of *votes* is sufficient to elect a senator unless such person shall receive also a majority of the whole number of *ballots* thrown for senators, which in the fifteenth District elects the Hon. John C. Talbot, and creates one vacancy—the meaning of the word *votes* in the Constitution not being repugnant to the meaning of the word *ballots* in the Revised Statutes.

J. A. PETERS.

STATE OF MAINE.

IN SENATE, February 14, 1863.

On motion of Mr. WOODS, laid upon the table and 350 copies of the majority and minority reports ordered to be printed for the use of the Senate.

EZRA C. BRETT, *Secretary.*