

SENATE No. 13.

Commonwealth of Massachusetts.

IN SENATE, January 13, 1871.

The Special Committee to whom was referred the petition of James H. Leland, of Walpole, for a seat in the Senate from the Third Norfolk Senatorial District, having heard all parties interested who desired to be heard, respectfully submit the following

REPORT:

The petitioner claims that, through mistake or otherwise, the votes cast in the town of Norfolk, at the last general election, were so carelessly and erroneously counted that it is impossible to ascertain the true count thereof; and that for this reason the returns of votes of said town ought to be rejected. As the petitioner had a plurality of the votes given in the remaining towns of the district, he prays to be admitted to a seat in the Senate.

It appeared in evidence before the Committee, that on the day of election the polls were opened in the town of Norfolk about ten o'clock in the forenoon, and closed between the hours of two and three o'clock in the afternoon; and that the votes were received, sorted and counted by the selectmen, and public declaration made of the result in open town meeting as required by law.

By the marks placed upon the check list used on election day, opposite the names of those who voted, it appeared that one hundred and six persons had cast their ballots, but the returns show that the whole number of votes given for governor was one hundred and twenty-one, and for lieutenant-governor, one hundred and twenty-three.

For the candidates for other offices, the whole number of ballots cast was as follows, viz. :

For Secretary of the Commonwealth,	104
Treasurer and Receiver-General,	104
Auditor of Accounts,	104
Attorney-General,	104
Councillor,	104
County Treasurer,	104
Register of Deeds,	104
County Commissioner,	106
Representative in Congress,	99
District-Attorney,	78
For Senator,	92
Of which Francis W. Bird had	41
J. F. Ellis,	26
James H. Leland,	14
J. G. Ray,	11

All the candidates, except those for representatives to the general court, were voted for upon one ticket, and it was in evidence that the names of some were scratched.

The petitioner contended, upon these facts, that as the returns show an error in the counting of the votes for governor and lieutenant-governor (a greater number having been returned for those officers than there were names checked upon the voting list), and that as the number of ballots for district-attorney, and for senator, appeared to have been considerably less than was cast for the other candidates upon the same general ticket, the selectmen must have included in the count of the votes for the first two officers, ballots which were given for the last two; and that it is impossible, therefore, now to determine

how many votes were cast for senator, and for whom they were cast.

If these views of the petitioner are correct, inasmuch as the sitting member was elected by a plurality of only twelve votes, it would undoubtedly be justifiable to recommend the rejection of the returns from this town. The Committee, however, while satisfied that there was an error in the record of the number of votes given for governor and lieutenant-governor, has failed to discover any link in the testimony connecting that error with the senatorial vote.

An analysis of the returns shows that only the candidates for county commissioner received the whole number of votes cast, while those for seven other offices had two less and the candidate for representative in congress seven less than that number.

It is evident, therefore, that only one of the electors exercised the right of voting for candidates for all the offices, and that while all the rest appeared to appreciate the value of that privilege so far as relates to most of them, many failed to express at the ballot box their preferences for the prosecuting officer of the county and for senator.

Upon all the facts the Committee is of opinion that there were no such informalities, irregularities or mistakes in the counting of the votes in the town of Norfolk, at the last election, or in the returns thereof, as would warrant a recommendation that the prayer of the petitioner be granted, or that a new election should be ordered. The Committee, therefore, recommend that the petitioner have leave to withdraw.

For the Committee,

S. H. RHODES, *Chairman.*

