

HOUSE....No. 25.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, Jan. 30, 1851.

The Committee on Elections, to whom was referred the remonstrance of Thomas E. Loring and others, legal voters of the town of Plympton, against Joseph B. Nye, who has been declared to be chosen representative from the town of Plympton aforesaid, holding his seat in the House of Representatives as representative from the town of Plympton, &c., have considered the same, and

R E P O R T :

That the committee find, that the warrant for the town meeting, held in Plympton, Nov. 11, 1850, was duly signed by the selectmen of said town, and that legal notice was given of said meeting; and that the only article in said warrant, in relation to the choice of a representative from said town, is as follows, to wit: "Also, to bring in their votes for a representative, to represent them in the General Court, to be holden in Boston on the first Wednesday of January next." And a part of the record of said meeting to be as follows, to wit: "After that the selectmen declared the number of votes given for each person voted for, and that there was no choice of a representative to said

General Court, a motion was made to adjourn the meeting, and it was voted not to adjourn. Then a motion was made to dissolve the meeting; but, as the votes given in for governor, &c. had not yet been declared, and, of course, as a vote to dissolve the meeting would render the votes given in for governor, &c., illegal, the selectmen refused to call the vote. After the motion (made) to dissolve the meeting was made, and the selectmen refused to call a vote to dissolve, a motion was made not to send a representative to the General Court of Massachusetts; but as there was no article in the warrant for the meeting, that the subject matter thereof authorized such a vote, and, of course, such a vote would be illegal, the selectmen refused to call a vote not to send a representative, but called for the votes for a second time, voting for a representative to represent said town in the General Court of Massachusetts, for the year 1851."

The committee examined many witnesses, adduced by the remonstrants and by the sitting member, who testified in substance as follows, to wit:—

LEWIS BRADFORD.—I am town clerk of Plympton, and have held the office since 1812. Was at the town meeting held November 11, 1850. I think the third motion was, not to send a representative; Col. Loring made the motion; the selectmen refused to put the motion, as there was nothing on the subject matter in the warrant. There was considerable noise. I heard some one second the motion made by Col. Loring. There was motion made to dissolve the meeting, but as the votes for governor, &c., had not been declared, the selectmen refused to put the motion.

COL. THOMAS E. LORING.—Live in Plympton; was present at the town meeting held November 11, 1850. After balloting for representative, and before the selectmen had declared the vote for governor, &c., they declared there was no choice for representative. I made a motion not to send; immediately after, the selectmen held out the box, and said, bring in your votes for representative. Refused to put the motion, because the subject matter was not in the warrant. Some few words were had, when the chairman said the board would consult upon it; and, after consulting, he said the majority had concluded not to put the

motion; and it was not put. A motion was then made to dissolve, and was put, but contrary minds not called; some hands were held up. The motion not to send was made first; then there was a motion made to adjourn, which was not put. After I made my motion not to send, some one said to the selectmen, Hand out your boxes—let us vote—who cares for them—we will pay your fines. Eight or ten were endeavoring to deposit their votes. Was present when the meeting begun. There was only three or four who asked me to have my motion put; two-thirds voted on the second ballot; no votes had been deposited in the ballot-box, after the second ballot was called for, before my motion was made.

MARTIN HAYWARD.—Was present at the election of representative, November 11, 1850; heard the warrant read; the vote was called for, I think, without delay; no previous vote; the selectmen declared there was no choice of representative; they called for a new balloting. Mr. Loring made a motion not to choose a representative. Know it was seconded; heard it seconded; thought it was Daniel D. Wright who seconded the motion made by Mr. Loring; there was considerable noise about this time. Other motions were made; some to adjourn, and some to dissolve; considerable confusion all the time. There were calls for the box; some were for discussing the subject; some attempted to do so. Then the selectmen went into a consultation. Mr. Loring repeatedly called for his motion to be put; the selectmen declared, that a majority had decided that the motion could not be entertained. Then there was considerable agitation, and some said, I will not vote. I think I did vote. The greater part that were opposed to the decision of the selectmen, did not vote. I have no reason to suppose that any person had left the hall. It was a pretty full meeting. I attempted to get the floor, to discuss Mr. Loring's motion, but, at this time, the selectmen made their declaration; I did not address the chair; I think Mr. Thompson did. I think the list of voters was read, after the meeting was opened. I heard no motion made, not to send, in the outset; the first motion made was, not to send; then the motion was made to dissolve the meeting; an appeal was made to the town clerk, whether the motion was in order; he said it would vitiate the whole, as the vote for gover-

nor must be sealed up in open town meeting; and, on that ground, the selectmen decided the motion was not in order.

JOHN McLANE.—Was present at a meeting, on Saturday night before the election, at which Cephas C. Bumpus was present; heard him say that the subject matter must be in the warrant, and if it was not in the warrant, he should, as one of the selectmen, object to put such motion as not to send, as the warrant was written. The subject of not sending a representative was under discussion at the time. Mr. Isaiah Churchill took the ground that they ought to put the question. I was present at the town meeting, but withdrew before the first vote was declared.

DANIEL S. McLANE.—I was present at the town meeting, held November 11, 1850; was there when second balloting begun, and when the discussion took place. Saw Mr. Isaac Wright holding his hand over the box; turned it in several positions; he seemed agitated. While this was going on, heard them say there was no choice, and the motion made not to send; then a motion to adjourn. I voted not to adjourn, and Mr. Loring was calling for his motion; some one asked if it was seconded; Daniel D. Wright seconded the motion. The third motion made was to dissolve the meeting; Mr. Bumpus said it would be legal. Mr. Loring then called for his motion; the chairman hesitated; Mr. Bumpus said that one could not decide; all the time, Mr. Wright held the box in his hand. The selectmen then consulted, and told them to bring in their votes. I saw no votes in the box, and think none had been put in; and, if there had been, they would have been tipped out, as the box was turned on its side several times. Saw several votes on the table; saw Mr. Wright sweep them off; I thought it probable they came out of the box. I voted on the second balloting. Did not see my name checked; it might have been. I saw no one vote before I voted.

REUBEN THOMPSON.—Was at the town meeting held Nov. 11, 1850; heard three motions made. I stood considerable distance from the chair; they declared there was no choice for representative on the first ballot. Mr. Loring made a motion not to

send ; some one asked him to withdraw his motion, that a motion might be made to adjourn ; Mr. Loring's motion was made within two minutes immediately after the declaration that there was no choice ; I think the selectmen called for the balloting first. What satisfies me the most about the order of the motions, was the request made to Mr. Loring to withdraw his motion so that a motion to adjourn might be allowed ; heard Mr. Loring's motion seconded ; I addressed the chair immediately, and I know that they heard Col. Loring's motion. I did not vote the second time ; there was a good many present who did not vote.

CEPHAS C. BUMPUS.—I am one of the selectmen of Plympton ; signed the warrant for November meeting, and was present at that meeting ; the first business was to revise the list of voters, one hour before the meeting was opened ; then the warrant was read about ten minutes to one o'clock, P. M ; then the list of voters was read and notice was given to those whose names were not on the list, and if legal voters, to have their names put on. From the time of reading the warrant to the commencement of voting was about twenty minutes ; the voting then began for all the officers set forth in the warrant ; the check list was used ; the polls were open two hours and three minutes. I counted and assorted the votes for representatives and found there was no choice. After I got through with my count, I took hold and helped the others to count the governor vote ; while the town clerk was making the vote to be declared, the vote for representative was called for, and I declared the vote, that there was no choice ; the chairman called immediately for votes again for representative ; the voters were huddled up near the polls, and Mr. Edward S. Wright deposited his vote after his name had been checked on the list ; two or three minutes elapsed after Wright had deposited his vote, before a motion was made to adjourn ; the chairman put the motion, and he declared there was thirty in favor of adjourning, by hand vote ; the negative was called, and there appeared so many opposed to it that it was unnecessary to count them ; immediately after this vote was declared, a motion was made to dissolve the meeting. The chairman called for the affirmative, but they were not counted. I considered the motion out of order, and was the first person

to address the chair; the reason I gave was, that the votes for governor, &c. had not been declared and sealed up in open town meeting. The negative was not put; about thirty voted in the affirmative. Then Col. Loring made a motion not to send a representative; I presume it was seconded, though I did not hear it. The chairman said he did not know exactly how to act, as he did not know whether the subject-matter was in the warrant or not. Mr. H. Soule said that the subject could be acted upon under the warrant. Mr. Reuben Thompson took the same view of the case; during this time the chairman stood with his hands over the ballot-box, to prevent voting. The chairman was about to put the motion, when I asked him if he had taken the opinion of the majority of the selectmen; he then turned to us, and I gave him my opinion, that the motion could not be put, as the proper time had gone by; the time occupied by these several motions was about fifteen minutes. Mr. Bisbee had charge of the check list on second ballot. I assisted him part of the time; all names were checked who voted the second time. There were several persons who voted for Mr. Nye on the first ballot, who were not there on the second ballot; also some who voted against him were not there.

ISAAC WRIGHT.—I was at the meeting held Nov. 11, 1850. I am chairman of the selectmen; I called for the second ballot for representative; can't say exactly when. I don't know of any votes being put into the ballot box; there may have been; before the motions were made, there was a motion made to adjourn; I did not consider the motion to dissolve in order. I commenced putting the motion to dissolve, but did not take the question. I said the majority of the selectmen have ruled that we proceed to business, and I called for a second ballot for representative; my impression was, that the motion to dissolve was not in order; and my impression is, that we could not take the question not to send, because it was not in the warrant, and because the question had not been made in the first place. I believe I held my hands over the box, and said I should object to voting till the check list was used, and that question was settled. I am sure there was no vote in the box, to my knowledge. I am not able to say which motion was made first. I think there was a motion made first not to send, but no second to it; still I may be altogether mistaken

about it. The meeting continued full to the last. I held the box all through the second ballot; received no votes that were not checked.

THOMAS D. ELLIS.—Was present at the town meeting held Nov. 11, 1850; was there when the first vote for representative was declared. Mr. Wright called for second ballot; two or three minutes intervened. I voted on second ballot; I heard no motion made before I voted. Edward S. Wright voted before I did. Don't know that I heard all motions made; I think there could not have been a motion made and I not have heard it. I think the chairman's hand was on the box; there was plenty of chance to put my vote in without his raising his hand; it was an open box. I did not vote until I knew my name was checked; I had a reason for voting when I did. I did not hear the motion to adjourn, or to dissolve the meeting. I think the meeting was not full at the second ballot; there was a crowd around the ballot box. After voting I left the hall.

EDWARD S. WRIGHT.—Was present at the meeting held Nov. 11, 1850; heard the warrant read, and list of voters. Sufficient time elapsed for motions to be made; none were made. The chairman called for second ballot; I voted on second ballot; no motions were made before I voted. My name was checked on the list. Mr. Bisbee called my name, and it was checked before my vote was put in the box. I heard no motion to adjourn, or to dissolve. As soon as I deposited my vote I went out of the hall. His arm was on the box, as he usually keeps it, when I voted. I know that I was the first one that put a ballot into the box. I heard no motion not to send.

Upon the foregoing evidence in this case, a majority of the Committee are of opinion that the supposed election of Joseph B. Nye as representative of said town of Plympton, was void, and that he is not entitled to a seat in this House, and that the same is hereby declared vacant.

EVERETT ROBINSON.

In behalf of a majority of the Committee.

