

HOUSE....No. 20.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, January 28, 1858.

The Committee on Elections, to whom was referred the Petition of Sylvander Johnson, of Adams, praying that he may be allowed a seat in the House as one of the Representatives of District Number Two, in the County of Berkshire, in the place of Lansing J. Cole, of Cheshire,

REPORT:

District Number Two, in the county of Berkshire, is composed of the towns of Adams, Cheshire, Clarksburg, Florida and Savoy, and is entitled to two Representatives.

The votes for Representatives actually cast at the annual election in November last, in the several towns forming the said district, appear in the following tabular statement:—

	Adams.	Cheshire.	Clarksburg.	Florida.	Savoy.	Total.
Whole number of ballots, . . .	675	222	34	73	115	1,119
Russell C. Brown, of Cheshire, . . .	326	146	8	20	72	572
Sylvander Johnson, of Adams, . . .	329	115	9	20	70	543
Lansing J. Cole, of Cheshire, . . .	340	69	25	53	42	529
William Martin, of Adams, . . .	330	73	24	53	41	521
John J. Leroy, of Adams, . . .	6	27	-	-	1	34
Thomas Olin, of Adams, . . .	-	1	-	-	-	1

The clerks of the several towns in said district duly met, according to law, on the day following the election, for the purpose of ascertaining who were elected Representatives of such district by the legal voters thereof. It appears, by the record of their proceedings, that they rejected the votes from the town of Savoy, "in consequence of informality in not being sealed up." The effect of thus rejecting the vote of Savoy, was to give Russell C. Brown, of Cheshire, and Lansing J. Cole, of Cheshire, a plurality of the votes counted, and the said clerks thereupon declared said Brown and Cole duly elected, and issued their certificates accordingly.

The investigation before the Committee took a wide range. Upon the record of the proceedings at the meeting of the clerks, it appears that the only question raised was, whether or not the vote of the town of Savoy should be rejected because the transcript was not sealed up; but upon the hearing before the Committee, the parties alleged that similar and equally important informalities occurred in the proceedings of the officers of the other towns in the district; and it therefore became necessary to examine into the formality and regularity of the proceedings of the selectmen and clerks of each of said towns.

The provisions of law regulating the duties of selectmen and town clerks, which are alleged to have been violated in this case, are contained in the Act of 1857, chapter 311, section 5.

After the votes are received, sorted, counted and declared,

this Act provides that "The result of said ballotings shall be recorded in the town book of records, according to the declaration thereof made, and the selectmen and town clerk shall, forthwith, make out under their hands, and seal up, in open town meeting, a true transcript of the record of such result and deliver the same to the clerk." It is then made the duty of the clerk to take this transcript, thus sealed up, to the meeting of the clerks of the several towns forming the district, directed to be held the day following the election. There is no express provision that the clerk shall not break the seal and open the transcript before the said meeting of the clerks, but the Committee think that by necessary implication from the provisions of the Act, it is clearly a breach of duty and violation of law in the clerk to do so.

The Committee regret to find that in no one of the towns composing this district, were these provisions of law, in all respects, complied with.

They submit a brief statement of the facts in regard to each town.

In all the towns the votes were duly received, sorted, counted and declared in open town meeting.

In the town of Florida the clerk recorded the result of the balloting, and a transcript of the record was duly made, signed, sealed up, and delivered to the clerk in open town meeting. But on the morning of the day following, some hours previous to the meeting of the clerks, the clerk of Florida broke open the sealed envelop containing such transcript, and exhibited the transcript to one of the selectmen of Adams. He afterwards, before the meeting of the clerks, re-sealed it.

In the towns of Adams and Clarksburg, the record and transcript were made after the adjournment of the meeting, the only irregularity being, that they were not made in open town meeting.

In the town of Savoy, the clerk made up his record after the adjournment of the town meeting, and carried to the meeting of the clerks on the next day, an attested copy thereof, which does not appear to have been signed by the selectmen or sealed up.

In the town of Cheshire, the clerk made up his record on the second day after the town meeting. A statement of the votes

for representatives was drawn up, signed by a majority of the selectmen and by the clerk, sealed up and delivered to the clerk in open town meeting, and by him carried to the meeting of the clerks on the next day. By an accidental omission, the year in which the election was held did not appear upon this statement.

It should be stated that there is no suspicion of any fraudulent purpose or any intentional violation of duty on the part of any one of the officers of the several towns. The law was of recent enactment, and most of the town officers were not familiar with its provisions, and were thus led into informalities which will not be likely to occur in future.

The question which arises under this state of facts, is, whether the neglect of the town officers to comply with the requirements of law, as proved in this case, ought to have the effect to invalidate the election and defeat the will of the voters fairly and legally expressed through the ballot-box. The Committee are of the opinion, that the provisions of law under consideration, are directory to the officers of the towns merely, and are not conditions, upon which the right of the voters to be represented depends. It should be borne in mind, that in this case there has been no violation of any provisions of law defining the duties of voters or affecting the integrity of the election. The citizens faithfully observed all the regulations imposed by law, as the conditions upon which they are to exercise their highest right under the constitution, the right of suffrage, and no subsequent neglect of duty by the recording or returning officers should be allowed to operate to disfranchise them. The only provisions of law, which were violated in this case, are provisions defining the duties of town officers *subsequent to the election*; and to hold that any neglect to comply with these provisions shall disfranchise the voters, would be to place it in the power of any designing or ignorant recording or returning officer, to entirely defeat the right of suffrage.

The principle which should govern this, and kindred cases, seems to be, that the will of the people, legally expressed through the ballot-box, if it can be ascertained with certainty, shall prevail.

The Committee believe that the principles of construction which they apply to the provisions of law in question, are in

accordance with the uniform decisions of this House in cases of controverted elections, and have also received the sanction of the highest judicial tribunal of the Commonwealth.

Applying the principles above stated to the facts of this case, it results, that the votes of all the towns in the district should be counted, and that Russell C. Brown and Sylvander Johnson, having received a plurality of the votes cast in the district, were elected.

Your Committee therefore report that the said Lansing J. Cole is not entitled to a seat in this House; and that the said Sylvander Johnson was duly elected one of the representatives of the second district in the county of Berkshire, and is entitled to his seat.

MARCUS MORTON, JR., *Chairman.*

