

HOUSE...No. 31.

Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, February 2, 1858.

The Committee on Elections to whom was referred the Petition of Allen Cummings, of Dunstable, claiming to be admitted to a seat as a member of the House from the twenty-sixth district in the County of Middlesex, in the place of Eliel Shumway, of Groton,

R E P O R T :

The said district is composed of the towns of Shirley, Groton, Dunstable, Westford and Pepperell, and is entitled to two representatives.

The Petition sets forth that it appears from the records of the several towns in said district, that at the annual election in November last, the petitioner received three hundred and fifty-one votes for representative, and that the sitting member, Eliel Shumway, received only three hundred and forty-three votes. It was admitted that the transcript of the record of the vote of Shirley, which was carried by the clerk of Shirley to the meeting of clerks held on the day following the election, declared that fifty-two votes were given for *Alden Cummings*, whereas it appears from the record itself that these votes were given for

Allen Cummings. In consequence of this error the certificate of election was issued to Eliel Shumway, the sitting member.

The answer of Mr. Shumway admits the truth of the facts set forth in the Petition, but asserts that there were errors in counting, declaring and recording the votes in the town of Groton; that by the records of said town of Groton it appears that said Shumway received only one hundred and thirty-two votes, whereas in fact he received one hundred and fifty-one votes or more, and that if the votes of Groton had been counted, declared and recorded correctly, he would have been duly elected.

The record of the votes for representatives in Groton was as follows:—

Whole number of ballots,	283
Eliel Shumway, of Groton, had	132
Allen Cummings, of Dunstable, had	132
Robert P. Woods, of Groton, had	126
Andrew Spaulding, of Dunstable, had	70
Norman Shattuck, of Groton, had	8
John W. P. Abbot, of Westford, had	69

It is agreed that the names of Shumway and Cummings were generally borne upon the same ballots, they being the regular candidates of the same political party; and it was claimed by Mr. Shumway, that Shumway and Cummings received each one hundred and thirty two votes upon the same one hundred and thirty-two ballots, and that the scattering votes for said Shumway and Cummings were accidentally omitted, either by the selectmen in counting and declaring, or by the clerk in recording, the votes of the town.

The committee submit an abstract of the testimony laid before them.

The votes for representatives were received in a box by themselves. Immediately after the polls were closed, a meeting was organized, in the same room, for the transaction of town business. The chairman of the selectmen and the town clerk were occupied by the business of this meeting, for about half an hour. The other two selectmen, (Robert P. Woods and Norman Shattuck,) proceeded at once to sort and count the votes. They separated the ballots for representatives into four parcels,

one parcel for each of the three regular tickets, and one parcel for the irregular or scattering ballots. All the witnesses agree that the largest parcel of regular tickets bore the names of Shumway and Cummings, and that Mr. Shumway's name was also borne upon some of the scattering ballots, though they differed in their estimate of the number. The witnesses also all agree that there were only four or five single ballots, or ballots bearing only one name. The town clerk (George D. Brigham) testified, that after the town business had been disposed of, he saw the chairman of the selectmen count the largest parcel of votes, containing the names of Shumway and Cummings; that at first he made the number one hundred and thirty-one, but finding this to be one less than the count which had been made by the other selectmen, he counted it again and made the number one hundred and thirty-two, thus agreeing with the other selectmen.

The chairman of the selectmen (Joshua Gilson) testified that he counted the parcel of regular tickets for Shumway and Cummings, and that he did not count any other ballots containing the name of Shumway; but he could not state, from his recollection, how many ballots this parcel contained.

Another witness (J. J. Randall) testified, that he stood so near the table that he could read the names on the ballots, that he saw the other two selectmen count the parcel of ballots which bore the names of Shumway and Cummings, that the witness counted with the selectmen and made the number of ballots one hundred and thirty-two, and that he saw one of the selectmen write the number one hundred and thirty-two on a piece of paper, as the result of his own count of the said parcel of ballots.

Another witness (E. S. Clark) testified, that he saw one of the selectmen count the parcel of regular ballots for Shumway and Cummings; that he inquired of him the number of votes for Shumway and Cummings, and was told that they had received one hundred and thirty-two votes each.

All these witnesses testified that there was a parcel of scattering votes on the table which had not been counted to make up the one hundred and thirty-two votes in question.

There was some testimony tending to contradict these witnesses, but not enough to affect their credibility or accuracy, in

the minds of the Committee. The other two selectmen testified that they sorted and counted the votes in the usual manner, and they believe that they declared them, and gave them to the town clerk correctly.

There was a great difference of opinion between the different witnesses as to the number contained in the parcel of scattering ballots, but no one estimated it to be more than thirty.

No witness could testify from memory, how many votes Shumway or Cummings had in this parcel. The two selectmen (Woods and Shattuck,) thought that the number of scattering votes for Shumway and Cummings was equal, but the other witnesses, who spoke to this point, testified that Shumway's name was borne on most of the scattering ballots, while Cummings's name was on few, if any, of them.

Had the case stopped here, the Committee, though satisfied that there was an error in the record, might have found it difficult to determine whether Shumway or Cummings was elected. But it further appeared, from the testimony of sixteen legal voters, that each of them voted for Mr. Shumway and some other person, not Mr. Cummings; and from the testimony of three other voters, that each of them voted for Mr. Shumway and no other person; thus proving that Mr. Shumway had nineteen votes at least in the parcel of scattering ballots. It also appeared that there was one ballot for Cummings and Woods; and it was not shown that Mr. Cummings received any other scattering votes. Unless we discredit the testimony of these nineteen witnesses, we are constrained to regard the testimony of those who state that the number of scattering votes for Shumway and Cummings was precisely equal, as the result of an inference from the appearance of the record, rather than an exercise of the memory. That there is an error, is apparent from the record itself, and was admitted by both sides. After allowing for the four single ballots proved to have been cast, the whole number of ballots does not correspond with the aggregate number of votes for the different candidates; but if the scattering votes shown to have been cast for Mr. Shumway and Mr. Cummings be added to their recorded votes, it would reconcile the record with itself as nearly as from the nature of the case could be expected.

The Committee are satisfied that Mr. Shumway received one hundred and fifty-one votes, and that Mr. Cummings received one hundred and thirty-three votes, in the town of Groton, making the whole vote of Mr. Shumway in the district, three hundred and sixty-two, and the whole vote of Mr. Cummings in the district, three hundred and fifty-two. The Committee therefore recommend that the petitioner have leave to withdraw.

MARCUS MORTON, JR., *Chairman.*

