

## HOUSE . . . . No. 10.

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### Commonwealth of Massachusetts.

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HOUSE OF REPRESENTATIVES, JANUARY 15, 1873.

The Committee on Elections, to whom was referred the petition of Alfred J. French, asking for the seat in the house of representatives now occupied by Horace C. Bacon, from the Third Essex District, having heard the petitioner, submit the following

#### REPORT:

At the request of the Committee, the petitioner filed the following statement in support of his petition:—

“Essex Representative District No 3, is composed of the six wards of the city of Lawrence, and the town of Methuen.

“By the returns of the ward and town officers, your petitioner received 2,163 votes, and Horace C. Bacon 2,162 votes, electing your petitioner.

“A recount of the votes of the several wards of the city of Lawrence (but not of Methuen), gave Mr. Bacon 14 additional votes, increasing his total vote to 2,177, the vote of your petitioner remaining as before.

“In ward four, Lawrence, by the return of the ward officers, changed only one vote by the recount, your petitioner was given 271 votes, and Mr. Bacon 584. On the check-list returned and certified by the ward officers as having been used at said election, and herewith produced, 855 names are checked as having voted,

corresponding within one of the aggregate vote of your petitioner and the sitting member in said ward.

“Your petitioner presents the depositions of 310 legal voters in said ward, whose names are borne on the check-list, and all checked by the ward officers as aforesaid, who make oath that their ballots bore the name of your petitioner as representative to the General Court, being 39 votes in excess of the number given him by the ward officers in their return.

“The aggregate vote of the ward for representative as aforesaid, fully equalling the names checked as having voted, these 39 votes, of which your petitioner has been wrongfully deprived, should not only be added to his total, but taken from the number given to the sitting member, resulting in the election of your petitioner by a majority of 64 votes.

“Your petitioner proposes to show by the magistrates who administered the oaths, that the deponents are the same persons whose names are checked, as having voted, on said list.

“Your petitioner further proposes to show that all of said ward officers were of one party, and during the election were conspicuous in displaying partisan feeling and bias; that the room occupied by the said ward officers in the custody and counting of the votes was separate and apart from the ward-room; that the ballots were removed from the box entirely out of sight of the voters; that the room in which they were kept and assorted was made the depository of piles of unused democratic tickets, which were, by said officers from time to time, passed out over the ballot-box to their party vote distributors; that the ward officers refused a request to permit the police officers on duty in the ward-room, or any person of the opposite party, to be stationed within the room where they could see the ballots while being counted; that the warden and others of the ward officers, while acting as such, had several bets of money upon the result of the then pending election.

“With the submission of these depositions and the other evidence, all of which your petitioner believes to be strictly and truly in accordance with the fact, he desires that your committee should summon any of the deponents, concerning the truth of whose deposition the sitting member may entertain doubt, to such numbers as may seem reasonable to your committee, and if by you considered possible, or even practicable,—either as to expense in summoning and paying, or time in examining,—to include the entire 855 or 309 witnesses.

“Your petitioner, in the interest of a fair vote and pure ballot, will patiently attend and aid the committee in the investigation.

“These facts proven by whichever form of evidence or procedure

your committee deem to direct, establish conclusively a degree of fraud, error or gross negligence, rendering it impossible to determine its further extent or amount, and demanding that the vote of this ward should be thrown out of the count and the election determined by the returns from the remainder of the district, upon which rest no taint of dishonesty or uncertainty, thereby electing your petitioner by 299 majority.

“(Signed),

ALFRED J. FRENCH.”

At the first hearing of your Committee upon the petition of Alfred J. French, the counsel for the petitioner, presented 309 affidavits, a copy of one of which is as follows:—

“COMMONWEALTH OF MASSACHUSETTS.

“ESSEX, ss. I, Alfred Ash, a legal voter in ward four, of the city of Lawrence, and Commonwealth of Massachusetts, certify that on the fifth day of November, A.D. 1872, I deposited in the ballot-box, in said ward, a ballot bearing the names of all the republican candidates for presidential electors, and also the name of Alfred J. French, for representative to the general court from Essex District No. 3.

ALFRED ASH.”

“ESSEX, ss. LAWRENCE, DEC. 30, 1872. Then personally appeared the aforesaid Alfred Ash, and made oath that the foregoing statement by him subscribed is true. Before me,

“A. V. BUGBEE, *Justice of the Peace.*”

and requested that your Committee present the affidavits, with a statement of the case, to the house of representatives and let them decide the matter, should the Committee care not to assume the responsibility of judging upon them, it being the first case of an election contested under similar circumstances, so far as they have any knowledge of, in this Commonwealth.

Your Committee were aware of the dangerous precedent it might establish should a member of the house of representatives be unseated by affidavits, without evidence of fraud on the part of the ward officers conducting any election, and they decided that it was competent for them to judge of what weight they might have in connection with evidence that might be introduced to establish fraud, and that they would take the responsibility of deciding the case, and if their

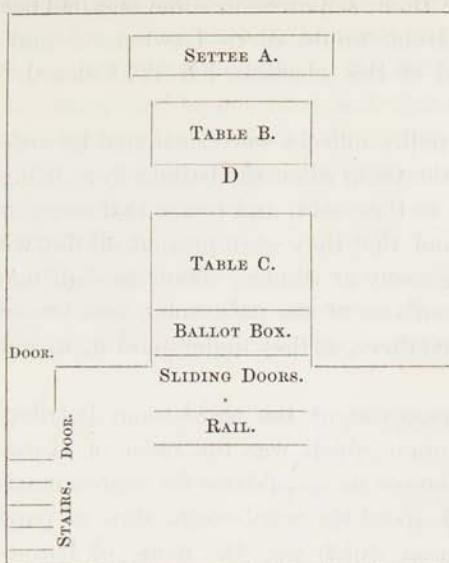
judgment should prove false the house of representatives in its wisdom could reverse their decision.

\* From the records of the city clerk of Lawrence, the returns of votes thrown in the several wards of the city of Lawrence on the 5th day of November, 1872, for representative to the General Court, show that in

WARDS, . . . . .	1.	2.	3.	4.	5.	6.	TOTAL.
Alfred J. French had . . . . .	398	390	282	271	325	176	1,842
The vote in Methuen was . . . . .	-	-	-	-	-	-	321
Recount by the aldermen of Lawrence Nov. 7, . . . . .	399	390	283	271	323	176	2,163
Gained, . . . . .	1	-	1	-	-	-	
Lost, . . . . .	-	-	-	-	2	-	
Horace C. Bacon had . . . . .	269	363	345	583	240	139	1,939
Recount, Nov. 7, . . . . .	283	364	344	584	241	138	1,954
The vote in Methuen, . . . . .	-	-	-	-	-	-	223
Gained, . . . . .	14	1	-	1	1	-	2,177
Lost, . . . . .	-	-	1	-	-	1	

The evidence as it appeared to your Committee was substantially as follows :—

That the ward room of ward four of the city of Lawrence, used at the last state election, was a suite of rooms with folding doors similar to this diagram :—



At the settee, marked A, and at the ends of the table, marked B, the inspectors and clerk were seated in their official capacity ; upon the table, marked B, the counting of the ballots was done ; at the table, marked C, the warden stood or sat with the ballot-box and received the ballots during the day ; the folding-doors were drawn up to the table, leaving an open space of four feet and eight inches.

That the warden did not empty the ballot-box for the first time till about one-half hour before the close of the polls, and that at the close of the polls he sat at the table assisting in counting the ballots at the position marked D on the diagram.

That the warden did not refuse admission to any person to the room where the ward officers were on the day of the last state election, but the janitor of the building was in and out of the room in his official capacity, yet he should have refused the admission of any person had it been requested.

That soon after the opening of the polls in the morning, democratic votes were passed out over the ballot-box to vote distributors.

That it had been the custom in that ward to keep ballots in the closet of that ward-room, to be used by vote distributors.

That some time, somewhere, some one had bet twenty dollars "that Grant would carry Lawrence," and the warden who presided at this election, Eli W. Colcord, "bet that he wouldn't."

That two police officers were stationed by order of the city marshal, in the room when the ballots were being cast, to preserve order, as they said, and to see that every man voted as he wished, and that they were present all day with the exception of being away at dinner, about one-half hour each, and in the words of one of the policemen, that two other persons were stationed there, as they understood it, to watch the ward officers.

That a person was at the ward-room distributing republican ballots upon which was the name of Horace C. Bacon, pasted over one of the candidates for representative, and there were around about the ward-room, slips of paper, known as "pasters," upon which was the name of Horace C. Bacon, and from an examination of the ballots from ward 4, it was found that such ballots had been cast.

That most of the affidavits were taken Dec. 28, nearly two months after the state election.

One of the magistrates before whom the affidavits were taken, said that out of the 125 that he thought made oath to him, he knew the greater portion of them. Another magistrate said that of the 150 that made oath to him he recognized 100 or 125 as belonging to ward 4.

That of the three other witnesses that were examined from this ward 4, whose affidavits were shown to them, one Daniel Donovan, on cross-examination said "he did not recollect whether the ticket that he voted had the name of Alfred J. French upon it."

The Committee were requested to summons and examine persons who voted in ward 4 at the last state election. They could foresee some of the difficulties that might arise from the examination of so many witnesses, but had the discrepancy been greater, your Committee felt that they could have been justified in the expense and time which it would necessarily involve; but under the circumstances of this case they declined to do so.

The Committee were of the opinion that no evidence of fraud had been proved, but that there were irregularities in the ward-room, and that the contestant, Mr. French, did have suspicions that there had been fraud and that he had been wronged; but inasmuch as it would be a dangerous precedent to establish, to let the affidavit of persons (to a certain limit, at least) decide who was entitled to a seat in the house of representatives, in the absence of any evidence of fraud on the part of ward officers, your Committee feel that they could report in no other way than that they recommend that the sitting member, Horace C. Bacon, is entitled to his seat.

E. L. BIGELOW.  
THOMAS INGALLS.  
AUSTIN HAWLEY.  
JOHN W. REGAN.  
GEORGE COPELAND.  
A. S. ATHERTON.  
DENNIS BONNER.

