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REPORT

Of the Committee of Elections on the Memorial of Rufus Easton, contesting the election and return of John Scott, the Delegate from the Territory of Missouri.

December 31, 1816.

Referred to a committee of the whole, and made the order of the day for Thursday next.

The committee of Elections, to which was referred the petition of Rufus Easton, contesting the election of John Scott, who is returned as the Delegate from the Territory of Missouri, and praying to be admitted to a seat in his stead, have had the same under consideration, and

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That at the last election in said Territory, the petitioner and the said John Scott were opposing candidates. The whole number of votes counted, cast up and arranged by William Clarke, governor of the Territory, as having been given at the said election for delegate to Congress, and upon which his certificate was founded, were 3,617; of which, 1,816 were given for John Scott, and 1,801 for the petitioner, and 30 for other persons.

The petitioner stated the following objections, in writing, to the election and return of John Scott as delegate from said Territory:
"1st. That, according to all the votes given at the election on the first Monday in August, 1816, counting those legally returned and such as were not returned within the time prescribed by law, or were rejected, he has a majority of 15 votes over his opponent, John Scott. To prove which he refers the honourable committee of Elections to the abstract of votes returned to the governor, according to the act to regulate elections in that territory, being document marked B, and to the depositions of S. A. M. Carter, Andrew Kinkaid, Clement B. Penrose and John Cunningham.

"2d. That according to the abstract of votes legally and illegally made to the governor, the said Rufus Easton has a majority of 7 votes over the said John Scott, considering the copy of the paper from Côte Sans Déssein, in the county of St. Charles, certified by the clerk of that county to be a copy, on the 12th September, 1816, more than a month after the abstract of votes from that county had been filed in the executive office, not to be an abstract of votes, but a nullity, as it certainly is; to prove which the honourable committee of Elections are referred to the 7th section of the act of the territory, entitled "An act to regulate elections," which provides, "That previous to any votes being received, the judges and clerks shall severally take an oath or affirmation," in the form therein prescribed. The deposition of Isaac Best, one of the persons who pretended to act as judge, which proves that "one Baptist Roy was the only person who acted with him as judge, and that a person of the name of Frencault acted as clerk, and no other; and that neither of the judges or clerk were sworn." The act requires that there should be three judges and two clerks to hold an election; "that the poll shall be opened
at eight o'clock in the forenoon and closed at six in the afternoon; that the persons who shall administer the oaths shall cause an entry thereof to be prefixed to the poll-books in words to the following effect:—I do hereby certify that ______ judg es and ______ clerks of the election, held in the township of _______, in the county of _______, on the ______ day of ______ in the year one thousand eight hundred and _______, were severally sworn as the law directs previously to entering on the duties of their office; which certificate shall be subscribed by the person administering the said oaths or affirmations, and be considered as a part of the record of the said elections.’ The act further requires that each clerk shall furnish himself a poll-book of the election; and, at the close of the polls, the names of the electors contained upon the poll-book shall be counted and set down, in writing, at the foot of the column in which they are entered, and the number of votes cast up and arranged, and set down, in writing, at the foot of the poll-book, and shall be signed by the judges, and countersigned by the clerks. &c. And further, that the electors shall vote by ballot. See sections 1, 5, 6, 7, 8, 9, 10, and 13, of the act to regulate elections. None of these requisites were complied with at Cote Sans Dessein; which is not only proven by the return of the persons pretending to hold an election there, but by the deposition of Joseph Roy, that ‘two persons acted as judges, and another person did the writing; that the polls were opened at 11 A. M. and closed at 2 P. M.; that one Charles Relle refused to vote for any person, but was forced to do so by the judges, who sent a paper to bring him before them.” The depositions of Francois Denoyer and Joseph Morin prove that the judges put on the list the names of
persons as voting for Mr. Scott, who did not vote, and who were not in the township on the day of the election: and the depositions of Peter Powell and Asa Williams, prove, "that George Evans, alias Avans, and Jesse Avans, whose names appear on the list as voting for Mr. Scott, had not been in the territory eight months prior to the day of election; and that the votes were given by word of mouth." The act of Congress requires a residence of one year. By the deposition of Baptiste Pineau, it appears he was out hunting on the day of election, and yet his own, or son’s name, who is about 17 or 18 years old, is listed as voting for Mr. Scott. Joseph Morin’s deposition proves, that he was absent on the day of election, that his name was listed as voting for Mr. Scott, without his consent or approbation; and that the name of Joseph Rivard, fils, (junior,) who is only 18 or 19 years of age, is listed as voting for Mr. Scott.

Notwithstanding all the defects apparent upon the face of the paper relating to the election at Cote Sans Dessein; and although the same had been rejected by a majority of the justices and clerk of the court, authorized by the 15th section of the before-mentioned act regulating elections, "to make the abstract of votes for delegate to Congress, which, being signed by the judges, or justices, and clerk, or any two of them, shall be deposited in the clerk’s office, and a copy thereof, certified under the official seal of such clerk, shall be transmitted, by express, to the governor of the Territory. And it shall be the duty of the governor, within thirty days after the expiration of the time allowed for making county returns, to cast up and arrange the votes from the several counties, or such of them as may have made returns, for each person voted for as delegate to
Congress, and shall, immediately thereafter, issue his proclamation, declaring the person having the highest number of votes to be elected as delegate to represent the Territory in the House of Representatives of the United States, and to grant a certificate thereof, under the seal of the Territory, to the person so elected; and although the abstract of votes for delegate to Congress, from the county of St. Charles, had been made and sent to the governor on the 17th day of August, 1816, after all the returns which had been made from the other counties, it appeared, according to those abstracts, that Rufus Easton had a majority of seven votes, the governor nevertheless, refused him a certificate of his election; although, according to law and common justice, he was entitled to it. The said John Scott, taking with him a certain George Ferguson, and James Brady, proceeded to the county of St. Charles, and there requested of the clerk a copy of the election return of Cote Sans Dessen. The clerk made out a copy of the paper to be found in the 3d page of Document B., and described under “Note” “The following return was received at the Executive Office (delivered by James Brady) on the 18th September,” 1816; and the said John Scott requested the clerk to fold it and direct it to the governor of the Territory: and the clerk directed it to “His Excellency William Clark, esq., St. Louis.” For which copy the clerk was paid by the said John Scott, or his order, and the copy was taken, in the night, from the clerk’s office, by the said Ferguson, or Brady; all of which facts appear by the deposition of William Christy, jun., esquire, clerk: on which paper there appears the name of Rufus Easton, with one other name under it, add the name of John Scott, with twenty-
three other names under it: which paper was not and is not an abstract of votes, and the governor had no power, legal authority, or right to make use of it as such.

3d. That according to the abstract of votes certified agreeably to law, and returned to the governor of the Territory of Missouri, according to the statute in that case provided, the said Rufus Easton has a majority of fifty-one votes over his opponent, John Scott, which appears from a copy of the said abstracts contained in document marked B.; that in the county of Lawrence the clerk has made the abstract of votes from that county himself, sent the original to the governor and not a copy, which he had no authority to do; and that no abstract of votes having been made, signed by the judges or justices, and clerk, or any two of them, deposited in the clerk's office, and a copy thereof, certified under the official seal of the clerk, the governor had no authority under the law to count the votes given in that county.

The above objections, are submitted to the honourable committee of Elections by Rufus Easton, to show that he has been arbitrarily and erroneously deprived of a right secured to him by law, in the granting of a certificate of election by the governor of the Territory of Missouri to John Scott, as the Delegate of that Territory.

The said Rufus Easton wishes it understood by the honourable committee, that by laying these objections before them he will not be prevented or precluded, at any stage of the examination, from making other statements, and exhibiting other proofs and documents in support of his right.

RUFUS EASTON.

December 12th, 1816.
By the 23d section of the act to regulate elections in the said Territory, it is enacted, in the following words, "that all elections, to be held in pursuance of this act, the electors shall vote by ballot." It was intended by the legislature to ensure to each elector the privilege of a secret vote to enable him more independently to exercise the elective franchise. The committee know of no authority competent to compel an elector to disclose the name of the candidate for whom he voted; but without such disclosure it is in vain to inquire into the qualification of an elector with a view to purge the polls. It would become important only as it related to the conduct of the judges of the election. They are clothed with full power to examine, upon oath, and adjudge every elector presenting himself to vote, either qualified or disqualified; they may admit or reject him. They are liable to punishment if they knowingly receive an improper vote, or conduct themselves, in any respect, with partiality. The committee are of opinion that their adjudication as to the qualification or disqualification of electors under the law of the Territory should be final.

The committee, therefore, overruled so much of the objections of the petitioner as related to the qualifications of the electors, and decided that they would not investigate the same, nor inquire for whom they respectively voted. Of the 3,647 votes, above mentioned, there were given in the township of Cote Sans Dessein 23 for John Scott, and one for the petitioner. The votes of this township were unanimously rejected by the committee for a variety of causes, among which are the following:

1. The election was held "viva voce."
2. But two persons acted as judges, and neither of them were sworn.
3. But one person acted as clerk, and he was not sworn.

4. The votes were rejected by the justices whom the clerk took to his assistance, in making out the abstracts to be forwarded to the governor; they were sent to the governor in an irregular manner, and the paper called a return appeared, upon its face, to be defective in many important particulars.

The committee having rejected these votes, there was left a majority of 7 votes in favour of the petitioner. It was then contended by the petitioner that he was entitled to the certificate of election, and ought forthwith to be admitted to a seat instead of John Scott, for the following reasons, submitted by him in writing:

"The 15th section of the "act to regulate elections," in that Territory, declares—"That on or before the fifteenth day after the day of election, or sooner, in case all the returns be made, the clerk of the court of common pleas of the county, taking to his assistance two judges of the court of common pleas, or justices of the peace, or one of each, shall proceed to open the several returns which have been made to his office, and make abstracts of votes in the following manner: The abstract of votes for Delegate to Congress shall be on one sheet, and the abstract of votes for Representatives shall be on another sheet, (separate from the sheet on which the abstract of votes for Delegate is contained,) and being signed by the judges or justices, or any two of them, shall be deposited in the clerk's office; and a copy thereof, certified under the official seal of such clerk, shall be transmitted by express to the governor of the Territory, or to the person exercising the government thereof: And it shall be the duty of the go-
vernor, or person exercising the government for the time being, within thirty days after the expiration of the time herein before allowed for making county returns, to cast up and arrange the votes from the several counties, or such of them as may have made returns, for each person voted for as Delegate to Congress, and shall immediately thereafter issue his proclamation, declaring the person having the highest number of votes to be elected as Delegate to represent this territory in the House of Representatives of the United States, and to grant a certificate thereof, under the seal of the Territory to the person so elected.” The duty enjoined upon the governor is to cast up and arrange the votes from the several counties, or such of them as may have made returns, for each person voted for as the Delegate to Congress, and shall immediately thereafter issue his proclamation, declaring the person having the highest number of votes to be elected as Delegate to represent the Territory in the House of Representatives of the United States, and to grant a certificate thereof, under the seal of the Territory, to the person so elected. It is not the duty of the governor to cast up and arrange votes not returned to him according to the provisions of that section of the law. The votes meant or intended to be cast up are such as are contained in the abstracts made by the justices and clerk, or any two of them, from the several returns of the election from the different townships to the clerk’s office of the county, as contained in the poll-books, which abstracts shall have been deposited in the clerk’s office, and a copy thereof, certified under the official seal of the clerk, and transmitted by express to the governor—he is not empowered or required to cast up votes contained in the return made to the clerk’s office, nor ought he
to cast up votes contained in a paper which is not an abstract; indeed he has no authority to do it. It is upon a copy of the abstracts of votes certified under the official seal of the clerk, and transmitted by express to the governor within the time prescribed by law, and upon that alone, that he is called to act. He cannot make abstracts of votes himself, nor ought he to receive any made by others not authorized to make abstracts; and if he sanctions such unwarrantable acts by casting and arranging, under the law, the votes they are supposed to contain, he violates a law which ought rigidly to be carried into execution, and tramples upon the rights of the community.

There can be no doubt, that by the abstracts sent to the governor, Rufus Easton had the highest number of votes. The governor counted for Rufus Easton 1,800 votes, and for John Scott 1,793, besides those supposed to be contained in the paper from Cote Sans Dessein, which is rejected—it is a nullity. It was then the bounden duty of the governor, enjoined upon him by law, sanctioned by his own signature, to have granted a certificate of election to the said Rufus Easton. This the governor refused to do, as will appear from a notice and request served on him the 24th September, last. And for this injury, what is the remedy? It is not to be found in the Territorial government, where public opinion has scarcely any influence upon a Territorial governor.

There is a maxim, founded on the principles of universal justice, that "there is no wrong without a remedy, and no right but what may be enforced." From my own experience in life, I am inclined to believe the maxim would be much more correct and true, if it should read—There should be no wrong without a remedy, and no right but
what ought to be enforced. And how is this wrong to be righted, and the remedy enforced, but by making the person entitled to the certificate of election the sitting member? I have been told that it is the parliamentary practice of Great Britain, that when a person has been wrongfully returned, the person who ought to have been returned is entitled to become the sitting member, and leave it to the opposite party to contest. The distinction is a plain one. In cases where the person returned comes rightfully by the certificate of election, there he ought to keep his seat, till it is shown that he is not entitled to it; but where the person comes wrongfully by the certificate, in such cases he is not entitled to it—it is the property of another—the seat belongs to another, and that other ought not to be kept out of it upon a mere supposition. The parliamentary rule of practice of Great Britain, would have very little weight or influence with me, should I be called upon to decide, except when founded on the immutable principles of justice. But if I am correct as to what their practice is, in this particular it is the practice of right, and so far it ought to be regarded as a practice fit to be adopted into a republican government. I would listen to the rules and practice of Great Britain, and adopt them if just and reasonable, and reject whatever might be the offspring of injustice and oppression.

The present case is, perhaps, a novel one—a case, without a parallel and without a precedent. It is not a case like that of Isaac Williams and Isaac Williams, junior, or Charles Turner and Charles Turner, junior. In these two cases, the decision of the question of fact, as to the votes being given for one and the same person, decided the whole contest; and had the question there been
made, Who ought to have been returned? the result would have been the same. The question. Who ought to be the sitting member? could not be decided, without determining in the same instant, which was entitled to the seat. And in the case of Kelly* and Harris, it does not appear, from the record of proceedings, that the point was made.

The case under consideration, is altogether of a different character. It is a *Territorial* case, not likely to occur or happen under any government where public opinion has its proper influence; which will always correct the evil and enforce the remedy.

The question here, Who ought to have been returned? is a separate and distinct question—one that can be decided without determining or touching the main question. It is one which will, as nearly as can be expected, give the remedy. It is a question, if the returning officer erred, What ought the House of Representatives to do? Will not the immediate representatives of a free, independent, and enlightened people, whose laws, maxims, and practice, are founded on the universal and unchangeable principles of justice, correct the error, and place the party in the situation he ought to have been placed under the law? It is, simply, a question to be decided from the abstracts of votes returned into the executive office according to law."

The committee being of opinion that the application of the petitioner ought not to be granted,

* In this case, it is probable, the error in casting up the votes did not appear to the Governor, or was not to be discovered upon the face of the abstracts certified to him; so, Harris came rightfully by the certificate.
proceeded in the investigation. The sitting delegate objected against the poll in the township of Maniteau, in the county of Howard, because the votes were given *viva voce*. This objection was not supported by evidence, and is not apparent from an inspection of the poll. In the township of St. Charles, in the county of St. Charles, he objected:

1. That the votes were not cast up and arranged, by the judges of the election, as the law directs.

2. That the votes were not counted.

3. That the same magistrates acted as judges of the election and as assistants to the clerk in making his return.

The first and second objections were altogether unsupported by evidence, and the third was overruled by the committee. The election law does not prohibit judges of the election acting as assistants to the clerk in making his returns to the governor.

In the townships of Saline and Big River, in the county of St. Genevieve, he objected against the returns. In the first, because the return appears blank, as neither the judges nor clerk signed it; because it is otherwise informal, and because it appears to have been only a poll-book, stating "Easton, 19. Scott, 14," without designating for delegate to Congress. In Big River township, because it is not certified that the clerks were sworn; that the only evidence showing when the election was held is to be inferred from the date of the qualification of the judges. The only evidence in support of these objections was, an extra-official note or memorandum thereof made by the clerk of the county of St. Genevieve, on the abstracts sent by him to the governor. The committee consider-
ed this evidence altogether insufficient to establish the objections. If the facts existed as alleged by the sitting delegate they might have been proved by the official copies of the poll-books on file in the office of the clerk. He further objected against the poll in the township of St. Michael, in the same county, because it was closed at 2 instead of 6 o'clock P.M. No proof was adduced in support of this objection.

In the township of Bellevue, in the county of Washington, he objected against the poll, because the votes were given \textit{viva voce}; and because one of the judges of the election administered the oath of office to himself. Neither of these objections were proved to the satisfaction of the committee.

In the township of Concord, in the same county, he objected against the poll, because the votes were not written or extended at length in the return of the judges of the election; but were set down informally; and because the votes were given \textit{viva voce}. These objections were, in the opinion of the committee, altogether unsupported by the evidence.

The committee then proceeded to consider the objections made by the petitioner. In the township of Cinque Hommes, in the county of St. Genevieve, the petitioner objected against the poll—

1. Because William Tucker was appointed a judge of the election by Barnabas Burns, a justice of the peace, or by the other two judges, whereas, by law, it was the duty of the justice himself, being present, to act in that capacity.

2d. Because the votes were not cast up and set down \textit{in writing} as the law directs, but stated in figures only.

Both these objections were overruled by the committee. As to the first, for aught that appears
Mr. Justice Burns may not have been present at the opening of the election, or if present, he may have refused to serve as a judge, although he had the power of acting in that capacity;—Tucker having been appointed a judge by nomination, the committee presumed that in the words of the law "there was no person present to act as a judge."

The second objection is satisfactorily proved. By an official copy of the original poll-book, certified by the county Clerk, it appears that the return is stated in figures "for Rufus Easton 16—For John Scott 107." In the election law it is enacted that "the number of votes given to each person shall be set down in writing at the foot of the poll-book." In this particular the words of the act were not literally complied with, but the variance relates only to form—no ambiguity is produced thereby, and, as far as the committee can discover, no injury is done to either party.

In the township of Breton, in the county of Washington, the petitioner objected against the poll, because John Rice Jones, one of the judges, was appointed by the other two judges, when the place ought to have been filled by John Brickey, a justice of the peace, who was present at the election. This objection was overruled for the reasons stated in relation to the first objection made to the poll in the township of Cinque Hommes.

In the township of German, in the county of Cape Girardeau the petitioner objected to the return—

1st. Because the clerks of the election were not sworn.

2d. Because there is no certificate of the clerk's being sworn prefixed to the poll-book, as required by law.

The first objection was not supported by any
affirmative evidence; the second was overruled by the committee—Although the certificate is not made according to the letter of the law, yet a majority of the committee being of opinion, from inspecting a certified copy of the original poll, that the clerks were in fact sworn, decided against rejecting the return.

The committee having thus disposed of the objections above mentioned, an application was made by the sitting delegate for further time to procure copies of the poll-books, from the several townships in the counties of St. Genevieve, Cape Girardeau, New-Madrid, Lawrence, and Arkansas, for the purpose of proving that the polls in the several townships, in which majorities had been given for the petitioner, had been kept in an irregular manner—that the judges in the township of Tywapple had closed the polls before 6 o'clock, and that, in many instances, the returns were defective upon the face of them.

The election was held throughout the Territory of Missouri on the 5th day of August last; the governor having granted to the sitting Delegate a certificate of his election, the petitioner, on the 24th of September last, served upon him a notice of his intention of contesting his election. On the 28th of the same month the sitting delegate notified the petitioner of the times and places at which he proposed taking depositions to support his election: commencing on the 12th of October last, and ending on the 4th of February next. Five months have nearly elapsed since the election in the said Territory, and more than three since the sitting Delegate was notified by the petitioner that his election would be contested. The committee were of opinion that sufficient time had been allowed to procure copies of the poll-books from every town-
ship in the Territory; and that the application of
the sitting Delegate, for further time, ought not to be
granted. Thereupon, it was contended by the
sitting Delegate that by rejecting the votes in the
township of Cote Sans Dessein, the candidate would
become entitled to a seat who had not a majority
of voices in his favour; and, therefore, the election
should be set aside, and a new one ordered. The
committee did not concur in this opinion.

Upon a view of the whole premises, the com-
mittee respectfully submit the following resolu-
tions:

Resolved, That John Scott is not entitled to a
seat in this House as Delegate from the Territory
of Missouri.

Resolved, That Rufus Easton is entitled to a
seat in this House as Delegate from the said Ter-
ritory.