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Minority Report from the Committee on Privileges and Election upon the Contested Election from Robeson County.

To the Convention:

A minority of your Committee on Privileges and Elections beg leave to report, in regard to the contested election from the County of Robeson, as follows:

It appears that, at the election held in said county for delegates to this Convention, according to the returns of the judges of election for the several precincts of said county, the entire vote of the county was as follows:

R. M. Norment received		1,774
Neil McNeil	"	1,756
Duncan Sinclair	"	1,737
Calvin A. McEachin	"	1,718

This gives to the two first named candidates an average majority over their competitors of thirty eight votes.

Upon the coming in of the returns of the several precincts, after the election, to the Board of Commissioners, a majority of that body refused "to count the returns" from the Townships known as Burnt Swamp, Lumber Bridge, Blue Springs and Britts, upon the ground that the poll-books of said townships had not been "deposited with the Register of Deeds" as required by law.

These facts are apparent from the transcript of the record by said Board of Commissioners certified by their Clerk under the seal of the county which is appended hereto and marked "A," which is referred to, as a part of this report.

The result of the exclusion of these townships was to reduce the number of votes cast for the several candidates as follows: That of

R. M. Norment was reduced by		571
Neil McNeil,	" "	558
Duncan Sinclair,	" "	355
Calvin A. McEachin,	" "	344

these being the number of votes cast for the several candidates respectively in the four rejected townships.

In our opinion this action upon the part of the Board of Commissioners was unauthorized and unlawful for the following reasons:

I. We deem it undeniable, that the Board of Commissioners in canvassing the vote acted in a purely ministerial capacity, having no discretion to inquire as to the legality or illegality of any vote or the regularity or irregularity of the election at any precinct- but that, the limit of their authority was to determine whether the returns from the various precincts were formally sufficient and what was the entire number of votes cast for each candidate in the county according to such returns:—or in the words of the statute—"to add the number of votes returned." (Bat. Rev., ch. 52, sec. 21.)

II. That the poll-books of the various townships constituted no part of the return required by law to be made by the Judges of Election, of the results thereof, and the fact that they were, or were not "deposited with the Register of Deeds" at the time of the coming in of the returns from the various precincts, was a matter altogether foreign to the action or duty of the Commissioners, in regard to the returns. We are strengthened in this view by the language of the statute, (Bat. Rev. ch. 52, sections 11-21) which, it will be seen directs the same persons, to-wit: The Judges of Election to make "returns" to the Board of Commissioners and to "deposit" the poll-books with the Register of Deeds. By reference to the Constitution art. 8, sec. 2, it will be observed that the Register of Deeds is by no means an adjunct of the Board of Commissioners, but rather that the clerkship of said Board is merely an incident of his office. By making the poll-books a part of the records of his office and directing the returns to be made to the Commissioners, we take it the legislative mind intended to clearly distinguish between the two acts and to show their separate and independent character.

We are also of the opinion that the purpose of making this deposit of the poll-books set forth in section 11 of the act above referred to, clearly excludes the idea of their being used for any other purpose or considered as a part of the returns. Even had the poll-books been duly deposited, we think the Commissioners could not have regarded them for any purpose affecting the returns or even have had any official knowledge of the fact. Even if they had differed in many respects from the returns made, we think that officers acting in a ministerial capacity as the Commissioners undoubtedly were, could not have used them to impeach the returns. If the returns were sufficient in form, that is, if they set forth who were the judges, who were candidates, and how many votes each received at a named precinct, at a given election—the canvassers could not go behind such returns nor question in any manner, their validity.

We would call attention also, to the fact that the entry made by the Board of Commissioners as certified by their Clerk, in regard to this matter is clearly false in fact, as shown by the copies of the returns, and so inconsistent with itself as to force upon the mind of any thinking man the conclusion that their action was no mistake of their duty but a *deliberate and intentional fraud!* How honest men—or men willing to do their duty fairly, could have brought themselves to certify that "the Returns" from the four excluded precincts showed "that no votes had been cast in either of said precincts" passes our comprehension! To our minds, the language unmistakably shows a guilty consciousness engaged in a lame attempt to cover up a fraud of the most glaring and infamous character—a species of fraud fortunately very rare in our State heretofore, and an instance of such fraud rarely equalled in boldness and enority in the palmiest days of ballot-box stuffing in the Northern cities!

On the 10th of August, the persons claiming the seats of the sitting members served upon them a notice of contest under the provisions of the law regulating such contest for seats in the General Assembly.

No little diversity of opinion has arisen among the committee upon this subject. Without entering into a full discussion of this phase of the question submitted to us for consideration, we would beg leave to say:

I. That we do not consider this a case of "contest" coming under the provisions of the statute at all. As the Romans long believed parricide to be an impossible offence, so the Legislature of North Carolina seems never to have contemplated the possibility of such outrageous conduct upon the part of men occupying the responsible and honorable position of County Commissioners. The law contemplates but two grounds of contest, (Bat. Rev., ch. 52, sec. 42,) to-wit: "the rejection of legal votes" and "the reception of illegal votes." The contest makes it clear clear that this refers solely to the action of the Judges of Election. In this case it is not claimed that any legal votes were rejected or illegal ones received. The claimants set up no such facts, but assert instead that after said votes were duly cast and counted and returned, they were deprived of their proper force and effect by the fraudulent action of the Board. We think that in this case had there been no notice of contest whatever, it would have been the duty of the Convention to have considered the record submitted when they offered themselves to be qualified as delegates, and upon perceiving thereby the fraudulent character of the certificates they presented, to have vacated their seats and qualified in their stead those whom the record showed to have been in fact entitled to hold such certificates. We are of the opinion, therefore, that the law governing contested election cases in the General Assembly has no bearing upon this case.

We are greatly strengthened in this view by the distinction made in the British Parliament between controverted returns and contested elections. Says a high authority upon this subject—"where it appears without going into the merits of an election that the petitioner against a sitting member was apparently elected and ought to have been returned, the House of Commons will reverse the position of the parties by excluding the sitting members and putting the petitioner in his place as duly returned; leaving the election to be controverted and throwing the burden of doing so upon the party to whom it properly belongs."

If we are mistaken in this, then we submit, that the statute can only apply so far as the circumstances of the two bodies are analogous—in spirit not in letter.

It will occur at once that three courses only are possible in this matter:

1. To apply the law for contesting the seat of members of the General Assembly, strictly in regard to time.

2. To follow this law in all things so far as applicable, strictly, and in matters where the letter of the statute cannot, by reason of the manner in which this body is constituted, be strictly adhered to, to require such substantial compliance therewith as circumstances will allow.

3. To wait for the Convention to adopt a series of rules to govern and control proceedings in case of a contested election, and then, still further delay the determination of the question until those rules can be acted on by the claimants and contestants.

The statute which controls contests of this character in the General Assembly is embraced in the 42 section of chapter 52 of Battle's Revisal, which is in these words:

"No person shall be allowed to contest the seat of any member of the General Assembly, unless he shall have given to the member thirty days' notice thereof in writing, which must state the particular grounds of such contest. If the seat is contested on account of the reception of illegal votes, the notice must set forth the number of such votes, by whom given, and the supposed disqualifications; and if the same is contested on account of the rejection of legal votes, the notice must give the names of the persons whose votes were rejected. No evidence shall be admitted to show that the contestant received illegal votes, unless he shall also have been notified the same number of days, and in the same manner. The same notice of time and place required in taking depositions at law, shall be required and proved on the investigation."

Considering the three possible courses above suggested in connection with this statute, it becomes apparent that a strict compliance in regard to the length of notice required would in this case be impossible because of the proximity of the election to the day fixed for the sitting of the Convention. It would defeat all possible contest and leave the absolute control of the membership of the body in the hands of the County Commissioners or Sheriffs of the several counties, and utterly defeat the will of the people. An evil so flagrant that no mind can for a moment entertain a thought of its adoption by this Convention.

The third proposition is hardly less obviously open to the same objection. The delay which it would render imperative would be such as to preclude all hope of successful contest in any time which it might be reasonably expected that the Convention should sit.

The analogy between the organization of this Convention and the House of Representatives of the General Assembly, is very great. The act of authorization refers in every instance to the House in prescribing the machinery of the election, the qualifications of the delegates, the method of return, the manner of certifying the election—all are taken from the statute providing for the election and organization of the House not by transcription, but by reference merely, to said statute.

Can it be, that this close and striking analogy did not press itself on the minds of the sitting members when on the 10th of August they were notified of the intention of the contestants to claim their seats? Can it be, that they were not put upon the *qui vive* in regard to the defence of their rights? Can this Convention attribute to these gentlemen any disinclination to claim whatever legal right or technical advantage they may have had, or a modesty which would cause them to hesitate in regard to the course they should pursue?

It seems to us, that they should be held to have been fully informed as to the law and required to have exercised reasonable diligence in securing the rights they claim that they should have conformed their action in all respects possible with the statute referred to, and have come before the committee with such evidences of diligence and endeavor to comply with the essential requisites of the law as would have produced an unavoidable conviction and the Convention of the *bona fides* of their acts—and the verity of the contest they suggest.

It is evident that the length of notice required by the statute could not in this instance be given before the assembling of the Convention. We are of opinion that the only rule governing such cases in this body is the rule of sense and law—the rule of due diligence which would require that a contestant should give notice of his intention to contest as long before the assembling of the Convention, as he might reasonably do—and if the member holding a certificate desired to resist such claim, that he must within reasonable time give notice of his grounds of objection to the contestant's claim. It strikes us that any other view would be inconsistent with justice and fairness and utterly defeat the objects of such contest. What is the object of notice? Simply that the party having a hostile interest may be put on his guard as to the nature of the contestants claim, and have a sufficient opportunity to defend against the same. This is required of both claimants if they mean to defeat the hostile claim of the other.

Has that purpose been accomplished in this instance? The notice of the contestants hereto attached and marked "B," we think fully sets forth their claim, and was given at an early a day as could have been expected. In fact, under ordinary circumstances it would be deemed unusual promptness.

Upon the eleventh day of the session, when the matter had been a matter of daily discussion upon the floor of the Convention ever since its organization, and when the case had been before the committee for a week, the sitting members came before the committee and filed a statement by their counsel which they termed an answer—setting up certain grounds of resistance to the contestants' claim. Of this, it was not claimed that any notice had been given to either of the contestants previous to that time, and their counsel even stated that they had not fully completed their answer at that time. A copy of this paper is appended and marked "C." It was *thirty-seven days after the election* when notice of a contest of this character was given to the claimants.

We are of the opinion, that such neglect upon the part of the sitting members ought in reason, justice and common decency, to exclude them from any defence other than a direct denial of the grounds of contest set forth in the contestants notice.

We do not think they should be allowed to come in under any trickster's plea of not knowing what course to pursue, and in the middle of the session ask leave to consume the rest of the time the body may sit, in a vague search of something which may or may not exist. If they desired to impeach the votes received by the contestants, they should have given them notice at an early day, in order that this question might be adjudicated immediately upon the sitting of the Convention. To have done otherwise seems to us unpleasantly suggestive of an intention akin to that which marks so plainly the action of the Board of Commissioners.

Again, it should be noticed that the sitting members do not ask such opportunity upon any stated belief of the truth of the assertions contained in the paper filed as an answer.

They do not come upon affidavit setting forth their belief in these allegations. They are merely the empty pleas of employed counsel. They ask this favor without establishing even a presumption of the truth of the allegations in the document they file. They do not even state facts—which from their nature could hardly be known to them personally, upon information and belief. They were merely the technical language of the artificial pleader—they "aver."

Attention should also be given to the fact that the allegations of illegal votes do not specify the name of a single one of said voters. Do the sitting members want time now to go to Robeson county to hunt its swamps and beat up its thickets to see if perchance they may not be able to verify those wild surmises? The claim has in our opinion, none of the attributes entitling it to respectful consideration. It is not in apt time. It is void for uncertainty. It lacks every thing which constitutes an evidence of verity and *bona fides*.

As to the denial of the facts set forth in the contestants notice, we deem the transcript from the record of the Board of Commissioners conclusive as to their truth, especially in the absence of both direct denial and of all conflicting evidence.

As to the other ground of resistance to the contestants claim, viz: That the contestants when elected were, and still are, members of the General Assembly, we beg leave to say that we do not consider the right of such persons to hold seats in a Convention of the people of the State an open question in North Carolina, after the example of the Conventions of 1835, 1861 and 1865.

We therefore conclude, that in our opinion, the seats of the sitting members from the county of Robeson, Duncan Sinclair and Calvin A. McEachin, should be declared vacant, and that Richard M. Norment and Neil McNeil, having been duly elected delegates to this Convention from said county, be admitted to seats as such, upon taking the requisite oath—all of which is respectfully submitted.

J. W. BOWMAN,
J. L. CHAMBERLAIN,
J. O. WILCOX,
ALLEN JORDAN.

Exhibit "A."

Transcript of the Record of the board of commissioners given in the returns of Election in the eleven townships the votes of which were counted by the Board.

WHITE HOUSE TOWNSHIP.

Dr. Duncan Sinclair,	94
Calvin A. McEachin,	93
Dr. R. M. Norment,	84
Neill McNeill,	83

We the undersigned poll inspectors for White House Township, do certify that the above is a correct statement of the votes cast at the said township.

(Signed) Arch'd Thompson, F. F. Floyd, W. D. Nance, Henry Floyd.

WISHARTS.

STATE OF NORTH CAROLINA, }
Robeson County. }

At an election held at B. Stansils, in Wishart's Township, held this 5th day of August, 1875, the whole number of votes cast was 109, of which

Dr. Duncan Sinclair received,		88
Calvin A. McEachin	"	88
Dr. R. M. Norment	"	21
Neill McNeill	"	21

Given under our hands and seals.

(Signed) G. H. Todd, (seal) Randolph Pitman, (seal) E. P. Bullard, (seal) Henry Flowers, (seal) B. Stansel, J. P., Registrar.

THOMPSON TOWNSHIP.

Dr. D. Sinclair,	227
Calvin A. McEachin,	226
Neill McNeill,	169
R. M. Norment,	170

We certify that the foregoing is a true account of the votes polled in Thompson's Township, August 5th, 1875, for delegates to Convention.

(Signed) Wesley Thompson, J. J. Williams.

LUMBERTON TOWNSHIP.

At an election held in the Courthouse, in Lumberton, on the 5th day of August, 1875, for delegates to the Constitutional Convention, the following persons received the following votes:

Duncan Sinclair,	100
Calvin A. McEachin,	99
Richard M. Norment,	194
Neill McNeill,	189

We the undersigned Register and Judges do certify that the within returns are correct as counted by us and signed the 5th day of August, 1875.

(Signed) E. K. Proctor, Register; E. J. McQueen, Judge; W. P. Barnes, Judge.

ALFORDSVILLE TOWNSHIP.

STATE OF NORTH CAROLINA,
Robeson County, August 5th, 1875.

We the undersigned managers appointed to hold an election in Alfordsville Township, for delegates to State Convention, make the following report of same:

For C. A. McEachin,	146
For Duncan Sinclair,	146
For R. M. Norment,	103
For Neill McNeill.	103

We certify that the above is a just and true statement of the votes polled in Alfordsville Township.

(Signed) M. McRae, Randolph Watson, managers.

Sworn to and subscribed before John H. Morrison, J. P.

SMITH'S TOWNSHIP.

We certify that the foregoing is a true list of the names of those who voted at the Convention box for the following persons as delegates:

Dr. Duncan Sinclair received 128 votes.
Calvin A. McEachin " 127 "