

The Committee on Elections also, through its chairman, Mr. Markell, submitted the report in the matter of the contest of the election of Dr. Washington G. Tuck *vs.* Dr. George Wells:

The Committee on Elections to which was referred the returns and testimony taken in the contested election case of

Dr. Washington G. Tuck

vs.

Dr. George Wells.

In the matter of the contest of the election of said Wells to the office of Clerk of the Circuit Court for Anne Arundel county,

Respectfully report, that they have afforded the parties full opportunity to be heard by counsel, and after a full examination of the law and facts involved in the case and careful consideration of the testimony, they submit the resolutions hereto annexed as the result of their conclusions:

First. They are satisfied upon the examination of the law and the precedents in such cases, that the House of Delegates has no authority under the Constitution to legislate into office the successful contestant, but that it is the duty of the House of Delegates to order a new election in such cases as prescribed by section 12 of Article 4 of the Constitution, that section providing as follows: "If in any case of election for judges, clerks of the courts of law and registers of wills the opposing candidates shall have an equal number of votes, it shall be the duty of the Governor to order a new election; and in case of any contested elections the Governor shall send the returns to the House of Delegates which shall judge of election and qualification of the candidates at such election; and if the judgment shall be against the one who has been returned elected or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days."

The evidence in this case produced on behalf of the contestant, Dr. Washington G. Tuck, showed that the return judges of the election returned the ballot boxes and their contents duly sealed up and endorsed as re-

quired by law to the clerk of the Circuit Court for Anne Arundel county, and that the said ballots were safely kept until they were opened by the special examiner appointed by the Circuit Court for Anne Arundel county for the purpose of recounting the ballots in the case of the contested election of Dennis Claude *vs.* James R. Brashears in the matter of the contest of the election of the said Brashears to the office of State's Attorney for Anne Arundel county. A copy of the testimony taken in the said case of Claude *vs.* Brashears as to the safe custody of said ballot-boxes and their contents was also filed by the agreement of counsel in this case; and there was also filed in this case a certified copy of the result of the recount of the rejected ballots cast at the election of November 5, 1895, in Anne Arundel county, whereby it appeared that 176 ballots had been rejected and excluded from the count because the cross-mark of the voter was placed in the large square to the right of the Republican emblem at the head of the Independent column on the official ballot. We find that the official sample ballot sent down by the Secretary of State to the supervisors of election in the several counties of the State, including the supervisors of election in Anne Arundel county, was arranged with the Democratic ticket on the extreme left. To the right of the Democratic ticket was placed the Republican ticket, and to the right of the Republican ticket was placed the Prohibition ticket, and to the right of the Prohibition ticket was placed the People's Party ticket, and to the right of the People's Party ticket was placed a blank column reserved for independent voting. And on the said official sample ballot opposite each party emblem was a large square space indicating the proper place in which the voter should place his X. But we find that in Anne Arundel county the arrangement of the official ballot was altered and so transposed as to place the Prohibition ticket next to the Democratic ticket and the Republican ticket to the extreme right of the official ballot, with only a vacant column reserved for independent voting to the right of the Republican column. That opposite the respective party emblems at the head of the several columns were long, narrow parallelograms, instead of squares, in which the voter

was expected to put his X, except that opposite to the Republican emblem, as above stated, was a large vacant square at the head of the Independent column, and with a long, narrow parallelogram separating this square space from the Republican party emblem, which was so small as to hardly attract attention, and that at the head of the ballots above described was placed the following instructions: "An X placed in the large square space to the right of the party emblem at the head of party ticket means a vote for all the names in that column, and no other X is required." We find that intelligent persons, one Prof. W. W. Fay, for thirty years a professor at the Naval Academy; another, Lieut. Theodric Porter, of the United States Navy, and others, following this instruction, placed their X in the large square above indicated, and that 176 ballots marked in the way above described were voted in Anne Arundel county on the 5th of November last and were excluded from the count by the judges of election and rejected, and that these votes alone are more than the majority by which the contestee, Dr. George Wells, was returned elected.

We find that the supervisors of election in Anne Arundel county did not give to the Republican party in Anne Arundel county the officers of election, judges, ballot clerks and book clerks requested by them, but that in some instances they wholly refused to comply with their request, and in other instances appointed persons to these positions against the earnest protest of the Republican representatives. We find that the accredited representatives of the Republican party were not permitted to come inside the guard-rail in the voting houses to witness the count of the votes; that a member of this House of Delegates on the Republican ticket at the election of November 5 last, was violently expelled by force from the polling house in the Fourth election district of Anne Arundel county. That an attempt was made to bribe representatives appointed to witness the count in said district and that the official tally of the vote cast by the Republicans in said district and returned by the judges of election is considerably less than a tally kept of the Republican vote by the Republican ballot clerk and testified to in this case. That several recesses were

taken during the election had in said Fourth district and the polls closed to voters for a space of time, altogether occupying about two hours, according to one of the witnesses testifying in this case; and that altogether the conduct of the election in said Fourth district was of such a character as to wholly invalidate the election in said Fourth district and to so affect the general result in connection with other facts and circumstances hereinbefore set out as to render null and void the said election.

By reason, therefore, of the facts hereinbefore set out, and in vindication of the purity, freedom and secrecy of the ballot-box and the protection that should be extended to the voter in the expression of his choice between the respective candidates at the polls, your committee are satisfied that a new election should be ordered, and they recommend the adoption of the following resolutions:

Resolved, (1) by the House of Delegates of Maryland, That at an election held on the 5th day of November, 1895, for clerk of the Circuit Court for Anne Arundel county, in said county, Dr. George Wells was not duly and legally elected clerk of the Circuit Court for Anne Arundel county.

Resolved, (2) by the House of Delegates of Maryland, That an election for clerk of the Circuit Court for Anne Arundel county be, and the same is hereby, ordered to be held on the 21st day of April, 1896, in pursuance of section 12 of Article 4 of the Constitution.

C. F. MARKELL,

Chairman.

Mr. Hanway then presented the minority report. In the matter of the contested election case of Washington G. Tuck

vs.

George Wells, for the office of Clerk of the Circuit Court for Anne Arundel County.

To the Honorable

The House of Delegates of Maryland:

Being unable to agree with the conclusions reached by a majority of the Committee on elections in this

case I hereby beg leave to make the following minority report:

At the election held in Anne Arundel county on the 5th of November, 1895, George Wells was a candidate for the office of clerk of the Circuit Court upon the Democratic ticket, and Washington G. Tuck a candidate for the same office upon the Republican ticket.

When the ballots were counted George Wells was duly returned elected by a majority over the said Tuck of one hundred and fifty votes, and was thereupon duly commissioned by the Governor for a full term of six years, and has therefore bonded, qualified and entered upon the discharge of his duties.

I therefore agree with the conclusion reached by a majority of the committee that, if its judgment is against the validity of the election of the said Wells, that then all that this House can do is to order a new or special election, in accordance with the provisions of section 12, Article 4, of the Constitution of this State; but in my opinion a careful reading of the testimony filed in this case with an application of the law governing such cases will show to this House most conclusively that this election should be permitted to stand.

An examination of the election returns of Anne Arundel county at said election will show that a Republican Senator was elected by over two hundred majority, while Wells, the Democratic candidate for clerk was elected by one hundred and fifty majority. Candidates for the other offices on the ticket were elected from both parties, with majorities varying in every case. To one familiar with election returns and the cases where fraud has been proven, this fact alone is sufficient to disprove any wholesale fraud at said election.

From reading the testimony, one can easily see that the acts of the election officials of both parties at said election were in some cases irregular, and in some cases illegal, and in direct violation of the Australian ballot law.

Thus two of the Republican ballot clerks of the election, namely, William H. Shipley, of the Fourth election district, and Hezekiah Best, of the First pre-

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 precinct of the First election district of Anne Arundel county, admit, under oath, that they each marked the tickets of several hundred Republican voters without asking them any question as to their ability to read and write, or whether they were physically disabled from marking their ballots, and in the case of Best he avows, by his own testimony, that he knew the colored man on the outside of the polling place who was sending these voters to him, to thus have their tickets marked in utter violation of the law.

It is difficult to understand why a majority of the Committee on Elections should see fit to rebuke the Democratic ballot clerks of Calvert county for thus marking ballots, while they pass unnoticed the acts of ballot clerks in Anne Arundel county, who happen to be of the same political opinion as themselves.

The petition of the contestant charged, and the testimony attempted to prove, fraud at the voting precinct in the Fourth election district of Anne Arundel county, and also in the Second precinct of the Third election district of said county. As to this latter precinct the testimony utterly fails to show even an attempt at fraud, and in fact the attorney for the contestant admitted no proof of it, and that the Republican party was fully represented at said voting precinct.

In the Fourth election district the Republican ballot clerk, Wm. H. Shipley, above mentioned, who was so active in marking the ballots of the Republican voters, in direct violation of law, attempts to show fraud on the part of the other election officials, and that he marked more Republican ballots than were allowed in the count.

A careful examination of his testimony will show that his method of keeping a record of the ballots marked by him is not satisfactory, and his tally-sheet filed in the case is, to say the least, calculated to excite suspicion as to its correctness.

On the other hand, the testimony of Joseph A. Latchford, a lifelong Republican, and a delegate to the Republican convention that nominated Dr. Tuck, the contestant, and a representative of the Tuck faction at said convention, himself the book clerk at said

election, abundantly proves that the election in this district was fair and the true result ascertained. This gentleman had a full opportunity to examine the ballots voted in said district, and that he did actually examine. He further gives in detail an account of said election that must establish beyond a reasonable doubt the fact that the election in this district was fairly conducted.

But the committee reaches its conclusion that said election was null and void principally upon the ground that about 176 ballots voted at said election were not counted for either candidate, because they were marked in the large square at the head of the Independent column. It is claimed by the committee in its majority report that this square, in connection with the instructions at the head of the ticket prepared by the Secretary of State, perpetrated a fraud upon Republican voters, and induced the most intelligent voters to mark their tickets in this "large square," thereby intending to vote the Republican ticket. This instruction was "a X mark made in the large square at the right of the party emblem means a vote for all the candidates grouped within that column." How this instruction could be twisted to mean a vote for candidates not in that column but in another column and another group, is difficult to understand.

Reasons are given in detail in the testimony of the contestee for the position on the official ballot held by the Republican ticket and, in fact, it occupied the identical position that it has held at every county and State election since the passage of the Australian ballot law.

I desire it distinctly understood that I do not endorse this method of printing the ballot, but merely contend that the testimony utterly fails to show that this printing of the ballot changed the result of the election or injured the rights of the contestant.

The testimony shows, beyond a doubt, that there were Republican ballot clerks in every voting precinct of Anne Arundel county ready and willing to mark the ballots of every Republican voter at the polls, and if any Republican voters cast their ballots by thus marking a X in the large square at the head of the

Independent column, it was their own mistake and could easily have been prevented by the voter himself.

It is also proper for me to state that at the hearing of the contested election case of Dennis Claude vs. James R. Brashears, involving the right to the office of State's Attorney for Anne Arundel county, these identical ballots were before the Circuit Court for Anne Arundel county, and were unanimously rejected by the full bench.

While both parties at said election violated the spirit of the law in several respects, yet it has not been shown in a single instance that these irregularities affected the result as already ascertained, and to order a special election, entailing as it does an additional heavy burden upon the tax-payers of Anne Arundel county would, in my opinion, be a great hardship upon them, to say nothing of the outrage upon the rights of the successful candidate who has been duly returned elected, and whose election was, in my opinion, legal in every respect.

I therefore suggest to the House of Delegates the adoption of the following order.

Very respectfully submitted,

T. L. HANWAY,

Member of the Committee on Elections.

In the matter of the contested election of Washington G. Tuck vs. George Wells, for the office of clerk of the Circuit Court for Anne Arundel county.

After a hearing of this case, it is ordered by the House of Delegates that, in its judgment, at the election held on the 5th of November, 1895, George Wells was duly elected to the office of clerk of the Circuit Court for Anne Arundel county for the full term of six years, and that at said election Washington G. Tuck was not elected to said office.

T. L. HANWAY.

Whereupon, Mr. Lewis moved to substitute the minority for the majority report.

The motion was not agreed to. The motion recurred upon the adoption of the report by the majority of the committee.