

do in the ordinary way by reason of his absence from home. A company used in the technical sense here insisted on as an integral part of a regiment is required to consist of a prescribed number of men, not less than sixty-four, nor more than eighty-two privates, with a specified number of commissioned and non-commissioned officers. It is hardly to be presumed that the convention, in framing this section, had in view any such precise or professional idea of the word *company*; on the contrary, I think they certainly used it in its ordinary acceptation, as any civilian would be most likely to do, and as signifying any organized military association less than a battalion or regiment; and if a detachment, whether made up of a part of one or more companies, technically so called, was, on the day of election, in an organized condition, acting under the command of a company officer, as was the case of all the detachments whose votes have been received, I think it came within the meaning of the term *company*, as used in said section, and the voters belonging to it were authorized to vote at the quarters of its commanding officer.

Another objection is made to the vote of these detachments, where they are stationed within the State, upon the ground that by the 12th section of the same article in the constitution provision is made for their votes by allowing them to vote at the nearest election polls. My construction of that section is that it was designed only for *individual* cases, in hospitals or elsewhere on duty in the State, and did not apply to organized companies stationed within the State whose members were absent from their usual place of residence. The terms of the section expressly limit the privilege therein given of voting at the nearest polls (which I understand to mean the nearest district polls) to those qualified voters in the service and absent from home, who are "not with their company;" and, if I am right in the views previously presented, that a detachment under command of an officer is a company within the meaning of that term as used in the constitution, then the proper place of voting for that detachment is the quarters of its commanding officer, and not the nearest district polls.

Objections are made to the returns in some three or four cases upon the ground of irregularity in showing, as in one case they do, that three non-commissioned officers acted as judges, when only two could properly be elected for that purpose, and again in another case that only one acted; that in one case a commissioned officer was united with a non-commissioned officer as the judges, and in another case with a private, and that these were improper conjunctions and vitiated the election. These may have been irregularities, but according to the authorities on the subject, they were not, I think, of such a character as to require a rejection of the vote; at all events,

in the absence of anything going to show that any one has lost his vote thereby, or voted when he was not entitled. If in any of these cases complaints existed of frauds or unfairness practiced at the polls where these judges presided, the imputed irregularities of the kind noted might be entitled to some weight, but the leading principle in such cases is, says Mr. Cushing, in his work on Legislative Assemblies, "sanctioned both by law and common sense, that where the provisions of law, whatever they may be, are imperative and peremptory, any neglect of the returning officers to observe them will render their proceedings void; but that where the law is *merely directory*, no neglect or mistake, or even improper conduct or irregularity on their part will be fatal, if in other respects *there has been a substantial or good election.*"

And again, he says, "that whether a neglect of the requisitions of a directory statute will be fatal or not to the proceedings, does not depend so much upon the nature of the neglect as upon its influence in producing the result of the election."

It would certainly be very difficult to suggest any reason for believing that the irregularities herein referred to could have exerted any influence upon the vote of the particular companies in which they occurred. The same author cites a variety of cases of irregularity upon the part of the returning judges of election, apparently far more important than those here suggested, which, however, were held not to invalidate the election. In one case the clerks of the election "were not sworn till after the election" or "not sworn at all;" in another, "the poll was not kept open each day the number of hours required by law;" in another, the ballot-box, which was required by law to be locked, "was only tied with a tape, and was also placed in the custody of a person not authorized to have charge of it."

In all these cases (says the author) there being a substantial and good election, notwithstanding the irregularities complained of, the proceedings were not invalidated.—(*Cushing on Legislative Assemblies*, 74-5.)

Other objections have been taken to the sufficiency of these returns upon the ground that where the commissioned officers do not act as judges, it should appear affirmatively upon the face of the returns that they were not present, and that the voters present elected others in their places, who must also be certified to be qualified voters, and therefore various returns are said to be defective, because in different cases without making these averments the returns commence by saying, "We, the sergeants of company A;" or, "we, the judges of company E;" or, "we, the lawfully appointed judges of company F;" or, "we, being two voters of company G;" or, "we, enlisted members of company B," &c., &c.; but in every one of these cases the cer-