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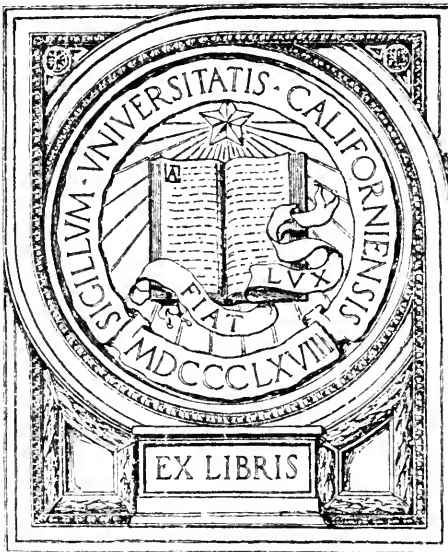


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THE AUSTRALIAN OR
SECRET BALLOT LAW

AS AMENDED

M. J. ...



STATE OF MAINE.

THE AUSTRALIAN

OR

SECRET BALLOT LAW,

AS AMENDED,

To which is Appended

OPINION OF S. J. COURT.

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AUGUSTA
KENNEBEC JOURNAL PRINT
1904

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1904

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NO. 1111
ANSON, I.A.

CHAPTER 102—PUBLIC LAWS OF 1891, AS
AMENDED BY CHAPTER 267, PUBLIC LAWS
OF 1893 AND CHAPTERS 6 AND 169 OF
PUBLIC LAWS OF 1903, ENTITLED

**An Act to provide for the Printing and Distributing Ballots at
the public expense and to regulate Voting for State and City
Elections.**

SECT. 1. All ballots cast in elections for national, state, district and county officers in cities, towns and plantations, and all ballots cast in municipal elections in cities, shall be printed and distributed at public expense as hereinafter provided. The printing of the ballots and cards of instructions to voters shall in municipal elections in cities be paid for by the several cities respectively, and in all other elections the printing of the ballots and cards of instruction, and the delivery of them to the several cities and towns, shall be paid for by the state. The distribution of the ballots to the voters shall be paid for by the cities, towns and plantations respectively.

The term state election, as used in this act, shall apply to any election held for the choice of a national, state, district or county officer, whether for a full term or for the filling of a vacancy, and the term state officer shall apply to any person to be chosen by the qualified voters at such an election. The term city election shall apply to any municipal election so held in a city, and the term city officer shall apply to any person to be chosen by the qualified voters at such an election.

SECT. 2. Any convention of delegates, and any caucus or meeting of qualified voters, as hereinafter defined, and individual voters, to the number and in the manner hereinafter specified,

may nominate candidates for public office, whose names shall be placed upon the ballots to be furnished as herein provided.

SECT. 3. Any convention of delegates representing a political party which, at the gubernatorial election next preceding, polled at least one per cent of the entire vote cast in the state for governor, or in the electoral district or division thereof for which the nomination is made, and any caucus held by such a political party in any such electoral district or division, may for the state, or for the district or division for which the convention or caucus is held, as the case may be, by causing a certificate of nomination to be duly filed, make one such nomination for each office therein to be filled at the election. Every such certificate of nomination shall state such facts as may be required as above for its acceptance, and as are required in section five of this chapter; shall be signed by the presiding officer or by the secretary of the convention or caucus, and shall be sworn by the party signing to be true, and a certificate of the oath shall be annexed to or made on the certificate of nomination.

SECT. 4. Nominations of candidates for any offices to be filled by the voters of the state at large may be made by nomination papers signed in the aggregate for each candidate by not less than one thousand qualified voters of the state. Nominations of candidates for electoral districts or divisions of the state, or for municipal or ward officers, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district or division not less in number than one for every one hundred persons who voted at the next preceding gubernatorial election in such district or division, but in no case less than twenty-five. In the case of a first election to be held in a plantation, town or ward newly established, the number of twenty-five shall be sufficient for the nomination of a candidate who is to be voted for only in such plantation, town or ward; and in the case of a first election in a district or division newly established, other than a plantation, town or ward, the number of twenty-five shall be sufficient. Each voter signing a nomination paper shall make his signature in person, and add to it his place of residence, and each voter may subscribe to one nomination for each office to be filled, and no more. The nomination papers shall before being filed be respectively submitted to the clerks of the cities, towns or plantations in which the signers

purport to be qualified voters, and each clerk to whom the same is submitted shall forthwith certify thereon what number of the signatures are names of qualified voters both in the city, town or plantation for which he is clerk and in the district or division for which the nomination is made; one of the signers to each such separate paper shall swear to the truth thereof, and the certificate of such oath shall be annexed to or made upon the nomination papers.

SECT. 5. All certificates of nomination and nomination papers shall, besides containing the names of candidates, specify as to each, first, the office for which he is nominated; second, the party or political principle which he represents, expressed in not more than three words; third, his place of residence. In the case of electors of president and vice-president of the United States, the names of the candidates for president and vice-president may be added to the party or political appellation.

SECT. 6. Certificates of nominations and nomination papers for the nomination of candidates for state and county officers and representatives to the legislature, shall be filed with the secretary of state on or before the tenth day of August of each year in which such election is held, and for candidates for electors of president and vice-president on or before the tenth day of October in each year when such election is held. Such certificates and papers for the nomination of candidates for the offices of mayor and all other offices in cities shall be filed with the city clerks of the respective cities at least seven days, exclusive of Sundays, previous to the day of such election. Such certificates and papers for the nomination of candidates to be voted for at any special election to be held for choice of representatives to congress or members of the legislature shall be filed with the Secretary of State at least seven days, exclusive of Sundays, previous to the day of election. With nomination papers and certificates shall also be filed the consent in writing of the person nominated.

SECT. 7. The certificates of nomination and nomination papers being filed, and being in apparent conformity with the provisions hereof, shall be deemed to be valid; and if not in apparent conformity, they may be seasonably amended under oath.

SECT. 8. In case a candidate who has been duly nominated under the provisions hereof shall die before the day of elec-

tion, or shall withdraw in writing, the vacancy may be supplied by the political party or other persons making the original nomination, in the manner herein provided for such nomination; or, if the time is insufficient therefor, then the vacancy may be supplied, if the nomination was made by a convention or caucus in such manner as the convention or caucus has previously provided for the purpose, or in case of no such previous provision, then by a regularly elected general or executive committee representing the political party or persons holding such convention or caucus. The certificates of nomination made for supplying such vacancy, shall state, in addition to the other facts required by this chapter the name of the original nominee, the facts causing the vacancy, and the measures taken in accordance with the above requirements for filling the vacancy; said certificate shall be accompanied by the withdrawal, if any, and shall be signed and sworn to by the presiding officer or secretary of the convention or caucus, or by the chairman or secretary of the duly authorized committee, as the case may be. The name so supplied for the vacancy shall, if the ballots have not been printed for the office already, be placed on the ballots, instead of the original nomination; or, if the ballots have been printed, new ballots containing the new nomination shall, whenever practicable, be furnished, or, slips containing the new nomination shall be printed under the direction of the Secretary of State, which may be pasted in proper place upon the ballots and thereafter shall become part and parcel of said ballots as if originally printed thereon.

SECT. 9. All certificates of nomination and nomination papers, when filed, shall forthwith be opened and kept open under proper regulations to public inspection, and the Secretary of State and the several city clerks shall preserve the same in their respective offices not less than one year.

SECT. 10. Every general ballot, or ballot intended for the use of all voters, which shall be printed in accordance with the provisions of this chapter, shall contain the names and residences, ward residences in city elections, of all candidates whose nominations for any office specified in the ballot have been duly made and not withdrawn in accordance herewith, and the office for which they have been severally nominated and shall contain no other names except that in case of electors of president and vice-president

of the United States, the names of the candidates for president and vice-president may be added to the party or political designation. The names of candidates nominated by any party shall be grouped together upon the ballot. Above each group shall be placed the name of the political party by which the candidates comprising such group were placed in nomination, or by the political designation as described in the certificate of nomination, or nomination papers under a square. If only one person be nominated by any party, or under any political designation, his name with the office for which he is a candidate shall be printed by itself under the name of such party or political designation. A blank space shall be left after the names of the candidates for each different office in which the voter may insert the name of any person, for whom he desires to vote as candidate for such office. Whenever the approval of a constitutional amendment or other question is submitted to the vote of the people, such question shall be printed upon the ballot after the list of candidates. The ballots shall be so printed as to leave a blank space, above such amendment or question so as to give to each voter a clear opportunity to designate by a cross mark (X) therein, his answers to the questions submitted and on the ballot may be printed such words as will aid the voter to do this as 'yes,' 'no,' and the like.

The ballot shall be not less than four inches in width and not less than six inches in length. Before distribution the ballots shall be so folded in marked creases that their width and length when folded shall be uniform. On the back and outside, when folded, shall be printed "Official Ballot for," followed by the designation of the polling place for which the ballot is prepared, the date of the election and a fac-simile of the signature of the Secretary of State or city clerk who has caused the ballot to be printed. Except as otherwise herein provided, ballots shall be printed upon clear white paper without any distinguishing mark or figure thereon.

SECT. 11. All ballots when printed shall be folded as hereinbefore provided, and fastened together in convenient numbers in packages, books or blocks, in such manner that each ballot may be detached and removed separately. A record of the number of ballots printed and furnished to each polling place shall be kept and preserved by the Secretary of State and the several city clerks for the term of one year.

SECT. 12. There shall be provided for each voting place at which an election is to be held, two sets of such general ballots, each of not less than sixty for every fifty and fraction of fifty votes cast in said voting place at the next preceding election, city, state or national, corresponding to the election for which said ballots are to be provided.

SECT. 13. The Secretary of State, in case of a state election, and the several city clerks, in case of city elections, shall prepare full instructions for the guidance of voters at such elections, as to obtaining ballots, as to the manner of marking them, and the method of gaining assistance, and as to obtaining new ballots in place of those accidentally spoiled, and they shall respectively cause the same, together with copies of sections twenty-nine, thirty, thirty-one and thirty-two of this chapter to be printed in large, clear type, on separate cards, to be called cards of instructions; and they shall respectively furnish the same and the ballots for use in each such election. They shall also cause to be printed on tinted paper, and without the fac-simile endorsements, ten or more copies of the form of the ballot provided for each voting place at each election therein, which shall be called specimen ballots, and shall be furnished with the other ballots provided for each such voting place.

SECT. 14. The Secretary of State shall, seven days at least previous to the day of any election of state or county officers, transmit to the clerks in each city, town and plantation in which such election is to be held, printed lists containing the names, residences, and party or political appellations of all candidates nominated as herein provided for such election and to be voted for in each voting place in each such city, town and plantation respectively, substantially in the form of the general ballot to be so used therein; and the clerks shall immediately cause the lists for each plantation, town or ward, as the case may be, to be conspicuously posted in one or more public places in such plantation, town or ward. The Secretary of State shall likewise cause to be published prior to the day of any such election, in at least two newspapers, if there be so many, printed in each county, representing, so far as practicable, the political parties which, at the preceding election, cast the largest and next largest number of votes, a list of all the nominations made as herein provided, and to be voted for in such county, so far as may be, in the form in

which they shall appear upon the general ballots. New nominations made or authorized shall be transmitted, posted and published promptly, and so far as practicable in the manner herein directed and communications transmitted as herein directed by the Secretary of State to any clerk, shall be duplicated on the succeeding day.

SECT. 15. The city clerk of each city shall four days at least prior to the day of any city election therein, cause to be conspicuously posted in one or more public places in each ward of such city a printed list containing the names, residences and party or political appellations of all candidates, nominated, as herein provided, and to be voted for in such ward, substantially in the form of the general ballot to be so used therein; and he shall likewise cause to be published, prior to the day of such election, in at least two newspapers, if there be so many, printed in such city, representing the political parties which cast at the preceding election the largest and next largest number of votes, a list of all the nominations made, as herein provided, and to be voted for in such city, so far as may be, in the form in which they shall appear upon the general ballots.

SECT. 16. The Secretary of State shall send, separately and at different times or by different methods, the two sets of general and special ballots, together with the specimen ballots, and cards of instruction printed by him; as herein provided, to the several city, town and plantation clerks, so as to be received by them, one set seventy-two hours at least, previous to the day of election, and the other set forty-eight hours at least previous thereto. The same shall be sent in sealed packages, with marks on the outside clearly designating the polling place for which they are intended, and the number of ballots of each kind enclosed; and the respective city, town and plantation clerks shall on delivery to them of such packages, return receipts therefor to the secretary. The secretary shall keep a record of the time when, and the manner in which the several packages are sent, and shall preserve for the period of one year the receipts of the city, town and plantation clerks.

SECT. 17. The two sets of ballots together with the specimen ballots and cards of instruction printed by the city clerks as herein provided, shall be packed by them in separate sealed packages, with marks on the outside clearly designating the polling

places for which they are intended, and the number of ballots of each kind enclosed.

SECT. 18. The several city, town and plantation clerks, or municipal officers, shall send to the presiding election officer or officers of such voting place before the opening of the polls on the day of election one set of ballots so prepared, sealed and marked for such voting place, and a receipt of such delivery shall be returned to them from the presiding election officer or officers present which receipt, with a record of the number of ballots sent, shall be kept in the clerk's office for one year. At the opening of the polls in each polling place the seals of the packages shall be publicly broken, and the packages shall be opened by the presiding election officer or officers, and the packages, books or blocks of ballots shall be delivered to the ballot clerks hereinafter provided for. The cards of instruction shall be immediately posted at or in each voting shelf or compartment provided in accordance with this chapter for the marking of the ballots, and not less than three such cards and not less than five specimen ballots shall be immediately posted in or about the polling rooms outside the guard rails. The second set of ballots shall be retained by the respective city, town and plantation clerks until they are called for or needed for the purposes of voting, and, upon the requisition in writing of the presiding election officer or officers of any voting place, the second set of ballots shall be furnished to such voting place in the manner above provided as to the first set.

SECT. 19. In case the ballots to be furnished to any city, town or plantation or voting place therein, in accordance with the provisions hereof, shall fail for any reason to be duly delivered, or in case after delivery they shall be destroyed, lost or stolen, it shall be the duty of the clerk or municipal officers of such city, town or plantation to cause other ballots to be prepared substantially in the form of the ballots so wanting and to be furnished; and upon receipt of other such ballots from him or them, accompanied by a statement under oath that the same have been so prepared and furnished by him, and that the original ballots have so failed to be received or have been so destroyed, lost or stolen, the election officers shall cause the ballots so substituted to be used in lieu of the ballots wanting as above.

SECT. 20. The municipal officers, sixty days before any election, may divide towns of more than four thousand inhabitants

and wards of cities into convenient polling districts, (a) which shall contain not less than three hundred voters in each, defining the limits thereof by a writing under their hands to be filed with and recorded by the city or town clerks; and attested copies thereof shall forthwith be posted by said clerks in not less than six public and conspicuous places in said town or ward, and the same shall be published in one or more of the newspapers, if any, printed in said city or town, thirty days at least before such election. They shall also ten days before any such election, appoint a warden and ward clerk for each polling place other than the one in which the warden duly elected for such ward shall preside, who shall perform the same duties at elections as presiding officers and clerks of towns and wards now perform. Any vacancy occurring after appointment may be filled by the voters of said polling district as similar vacancies are now filled. All such officers shall be sworn. The board of registration of voters for any city in which a ward has been so divided, and the municipal officers of any town which has been so divided, shall in the manner now provided for by law, prepare check lists of the qualified voters for each of said polling districts, in lieu of the check lists now provided by law for the entire town or ward, to be used as hereinafter provided, and all provisions of law applicable to check lists for towns and wards shall apply to check lists for such polling districts.

SECT. 21. The municipal officers of cities, towns and plantations voting in accordance with the provisions of this chapter, shall biennially in the month of May appoint clerks for each polling place; and such municipal officers shall appoint as such clerks such persons as shall be recommended for such appointment by the several political party committees of the several cities, towns or plantations, representing the two political parties which, at the gubernatorial election next preceding such appointment, cast the greatest number of votes. For each polling place in cities and towns of more than one thousand inhabitants four clerks, and for each polling place in plantations, and for each island ward of the city of Portland and for the island district of the town of Cumberland (b) and for every town of less than one thousand inhabitants, two clerks shall be appointed. Said clerks shall equally represent each of the political parties which cast the largest number of votes in the state election next preceding

their appointment. Each of said clerks shall be sworn to the faithful performance of his duties, and shall hold office for two years from the date of his appointment, and until a successor is appointed and qualified, or he vacates the office. Vacancies occurring in the office of election or ballot clerks shall be forthwith filled by the municipal officers in manner hereinbefore provided. Such election clerks shall attend at the times and places designated for meetings in their respective wards, towns or plantations for the election of any national, state, county, city or ward officers, and for the determination of any question submitted to the qualified voters of any city by lawful authority, shall be present at and witness the counting by the presiding election officer or officers of all votes cast in such meetings, and shall receive such reasonable compensation for each day's actual service as the municipal officers of their respective cities, towns and plantations may determine. No person shall be eligible to the position of election clerk in any ward, town or plantation where he is a candidate to be voted for. Two of the clerks in each polling place, one from each political party shall be detailed by the municipal officers to act as ballot clerks. The two ballot clerks thus detailed and appointed in each polling place shall have the charge of the ballots therein and shall furnish them to the voters in the manner hereinafter set forth. A duplicate list of the qualified voters in each ward, town or plantation shall be prepared for the use of the ballot clerks, and all the provisions of law relative to the preparation, furnishing and preservation of check lists shall apply to such duplicate lists. Provisions in the charter of any city for the election of two persons to assist the warden in receiving, sorting and counting the ballots, are not affected by the provisions hereof; but persons so elected shall be deemed election clerks for that purpose; they shall equally represent the two political parties which, at the state election next preceding, cast the greatest number of votes.

SECT. 22. The municipal officers in each city, town or plantation, as aforesaid, shall cause the polling places therein to be suitably provided with a sufficient number of voting shelves or compartments, at or in which voters may conveniently mark their ballots, so that in the marking thereof they shall be screened from the observation of others, and a guard rail shall be so constructed and placed that only such persons as are inside

said rail can approach within six feet of the ballot boxes, and of such voting shelves or compartments. The arrangement shall be such that neither the ballot boxes nor the voting shelves or compartments shall be hidden from the view of persons just outside the guard rail. The number of such voting shelves or compartments shall not be less than one for every one hundred voters qualified to vote at such polling place, and not less than three in any town, and not less than five in any ward of a city. No person other than the election officers, election clerks and voters admitted as hereinafter provided, shall be permitted within said rail, except by authority of the presiding election officer or officers for the purpose of keeping order and enforcing the law. Each voting shelf or compartment shall be kept provided with proper supplies and conveniences for marking the ballots.

SECT. 23. Any person desiring to vote shall give his name, and, if requested to do so, his residence, to one of the ballot clerks, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible, and if such name is found upon the check-list by the ballot clerk having charge thereof, he shall likewise repeat the said name, and the voter shall be allowed to enter the space enclosed by the guard rail, as above provided. The ballot clerk shall give him one, and only one ballot, and his name shall be immediately checked on said list.

Besides the election officers, and election clerks, not more than two voters in excess of the number of voting shelves or compartments provided, shall be allowed in said inclosed space at one time.

SECT. 24. On receipt of his ballot the voter shall forthwith, and without leaving the inclosed space, retire alone to one of the voting shelves or compartments so provided, and shall prepare his ballot by marking in the appropriate margin or place, a cross (X) as follows: He may place such mark within the square above the name of the party group or ticket, in which case he shall be deemed to have voted for all the persons named in the group under such party or designation. And if the voter shall desire to vote for any person or persons, whose name or names are not printed as candidates on the party group or ticket, he may erase any name or names which are printed on the group or party ticket, and under the name or names so erased he may fill in the name or names of the candidates of his choice. Or if the voter places

and sticks on and over the name or names of any candidate or candidates for any office or offices, a small strip or strips of paper, commonly known as a sticker or stickers, bearing thereon a name or names other than the name or names of the candidate or candidates so erased or covered up, the name or names of such candidate or candidates so covered shall be considered to be erased from the ballot, and the person or persons whose name or names shall so appear on such strip or strips of paper so placed and stuck on the ballot, shall be deemed to be voted for by the voter as candidate or candidates for such office or offices. Or if the voter does not desire to vote for a person or persons whose name or names are printed upon the party group or ticket, he may erase such name or names with the effect that the ballot shall not be counted for the candidate or candidates whose names are so erased. In case of a question submitted to the vote of the people he shall place such mark in the appropriate margin above the answer which he desires to give. Before leaving the voting shelf or compartment, the voter shall fold his ballot without displaying the marks thereon, in the same way it was folded when received by him, and he shall keep the same so folded until he has voted. He shall vote in the manner provided by law before leaving the enclosed space, and shall deposit his ballot in the box with the official endorsement uppermost. He shall mark and deposit his ballot without undue delay and shall quit said inclosed space as soon as he has voted. No such voter shall be allowed to occupy a voting shelf or compartment already occupied by another, or to remain within said inclosed space more than ten minutes, or to occupy a voting shelf or compartment for more than five minutes in case all of such shelves or compartments are in use, and other voters are waiting to occupy the same. No voter not an election officer or an election clerk, whose name has been checked on the list of the ballot clerks, shall be allowed to re-enter said enclosed space, during said election. The presiding election officer or officers, for the time being, shall secure the observance of the provisions of this section.

SECT. 25. No person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one. The ballots thus returned shall be immediately canceled, and together with

those not distributed to the voters, shall be preserved, and with the check lists used, which shall be certified by the ballot clerks, to be such, shall be secured, sealed and sent to the several city, town and plantation clerks, and by them be preserved for six months, as a public record. The ballots shall be sorted and counted in open town or ward meeting in such manner as to afford the electors ample opportunity to observe the sorting and counting; and when the ballots have been sorted and counted and the result declared and recorded, all the ballots shall, in open meeting, be sealed in a package which said package together with the check lists sealed in the same manner as the ballots, shall forthwith be returned to the city, town or plantation clerk, to be preserved by him as a public record, for six months, and any warden, ballot clerk, city or town clerk or other person who shall abstract from or in any manner tamper with said packages, or who shall in any manner abstract from or tamper with the unused ballots, shall be punished by a fine not less than two hundred nor more than one thousand dollars, or by imprisonment for not less than ninety days nor more than two years.

SECT. 26. Any voter who shall declare to the presiding election officer or officers that he cannot mark his ballot by reason of physical disability, or from inability to read the same, shall receive the assistance in the marking of his ballot, of two of the election clerks; such clerks shall not both represent one and the same political party, and they shall certify on the outside of such ballot that the same was marked by them, or by the voter with their assistance, and thereafter shall give no information concerning the same. The presiding election officer or officers may require every voter, who applies for such assistance, to make oath to his inability to mark his ballot, before such clerks shall be directed to assist as aforesaid, and such officer or officers are hereby qualified to administer such oath, and no clerk shall assist or offer to assist any voter in marking his ballot until directed so to do by the presiding election officer or officers.

SECT. 27. If a voter marks more names for any one office than there are persons to be elected to such office, or if for any reason it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office. No ballot without the official indorsement shall, except as herein otherwise provided, be allowed to be deposited in the ballot box,

and none but ballots provided in accordance with the provisions of this chapter shall be counted. Ballots not counted shall be marked defective on the back thereof, and shall be preserved, as required by section twenty-five.

SECT. 28. Meetings for the election of national, state, county and municipal officers may be opened as early as six o'clock in the forenoon, and in no case shall the polls be kept open later than five o'clock in the afternoon, and a notice of the time of opening and closing shall be given in the warrant calling the meeting.

SECT. 29. A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person with an apparent intention of letting it be known how he is about to vote or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere, or attempt to interfere with any voter when inside said inclosed space, or when marking his ballot, or who shall endeavor to induce any voter before voting to show how he marks or has marked his ballot, shall be punished by fine of not less than five, nor more than one hundred dollars; and election officers shall report any person so doing to a police officer or constable, whose duty it shall be to see that the offender is duly brought before the proper court.

SECT. 30. Any person who shall, prior to an election willfully deface or destroy any list of candidates posted in accordance with the provisions of this act, or who, during an election, shall willfully deface, tear down, remove or destroy any card of instructions or specimen ballot printed or posted for the instruction of voters, or who shall, during an election, willfully remove or destroy any of the supplies or conveniences furnished to enable a voter to prepare his ballot, or shall willfully hinder the voting of others, shall be punished by fine of not less than five nor more than one hundred dollars.

SECT. 31. Any person who shall falsely make or willfully deface or destroy any certificate of nomination or nomination paper, or any part thereof or any letter of withdrawal; or file any certificate of nomination or nomination paper, or letter of withdrawal, knowing the same or any part thereof to be falsely made; or suppress any certificate of nomination or nomination paper, or any part thereof which has been duly filed; or forge or falsely make the official indorsement on any ballot; or willfully destroy or deface any ballot, or willfully delay the delivery

of any ballots or shall take or remove any ballot outside of the inclosure provided for voting before the close of the polls, shall be punished by fine not exceeding one thousand dollars or by imprisonment in the jail not more than one year, or by both such fine and imprisonment.

SECT. 32. Any public officer upon whom a duty is imposed by sections one to twenty-eight, both inclusive, of this chapter, who shall willfully neglect to perform such duty, or who shall willfully perform it in such a way as to hinder the objects of this act, shall be punished by a fine of not less than five, nor more than one thousand dollars, or by imprisonment in jail for not more than one year, or by both such fine and imprisonment.

SECT. 33. Any election or ballot clerk who shall assist, or offer to assist any voter, before such clerk shall have been directed by the presiding officer or officers to so assist such voter, shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars or by imprisonment not exceeding sixty days for each offense, and thereafter shall be disqualified from holding the office of election or ballot clerk.

OPINION OF S. J. COURT.

PENOBSCOT COUNTY.

WILLIAM F. CURRAN vs. WILLIAM Z. CLAYTON.

Penobscot. Announced July 19, 1893. Opinion November 8, 1893.

Elections. Australian Ballot Law. Defective Ballots. Decision of Board of Aldermen.—when reviewable. R. S., c. 4; Stats. 1880, c. 193; 1891, c. 102; 1893, c. 260.

The elective franchise must be exercised under such regulations and restrictions as the legislature may deem reasonably necessary to maintain order at elections, prevent intimidation, bribery and fraud, preserve the purity of the ballot box and thus secure a genuine expression of public sentiment.

Statutes designed to secure complete and inviolable secrecy of ballots cast at public elections should be construed, under established rules with reference to the mischief to be remedied and the object to be accomplished; and interpreted, if practicable, so as to promote and not destroy the purpose of their enactments.

The enactment of the Stat. of 1891, c. 102, popularly known as the "Australian Ballot Law," was designed to inaugurate an important departure from the mode of voting which had existed in this State prior to its passage.

Its distinguishing feature is its careful provision for a secret ballot

Under this statute giving the voter a clear opportunity to designate by a cross mark (X) his choice of candidates, the place and method of marking the ballot being regulated and defined in the statute, *it was held* that ballots defectively and illegally marked as follows should be rejected:—

- (1.) Where the cross (X) was placed above the name of the candidate, and not in the appropriate place at the right of it;
- (2.) Where there was a cross (X) above and also one beneath a candidate's name, but none at the right of it;
- (3.) Where the cross (X) was placed at the left of the name of the candidate;

(4.) Where there was a cross (X) under the party name at the head of the ticket and one at the left of the defendant's name on another party ticket;

(5.) Where there was no cross (X) whatever, but a short, straight line drawn across the square at the right of the party name at the head of the ticket;

(6.) Where there was a cross (X) in the square at the right of the name of each candidate except that for Mayor, on one party ticket, and a cross (X) in the square at the right of the party name on another ticket.

The board of aldermen in the city of Bangor re-examined the ballots cast for alderman in ward seven, counted for defendant the six ballots above described, and declaring that there was no choice, ordered a new election to be held. The defendant securing a majority of the ballots then cast claimed to hold the office by virtue of the second election; that the subject matter was within the exclusive jurisdiction of the board of aldermen; and that the ballots alleged to be defective and irregular were properly counted for him. The plaintiff thereupon began his proceeding in equity under R. S., c. 4, and Stat. of 1893, c. 260, amendatory thereto, asking the court to take jurisdiction of the matter, and require the defendant to surrender the office to the plaintiff. *Held*; that the decision of the board of aldermen is subject to review by this court; that the city charter is to be construed as affording a cumulative or primary tribunal only, and not an exclusive one; that it does not preclude a contestant from resorting to the court for a revision of a question of law; and that the decision of the board of aldermen involved the determination of a question of law and not an issue of fact, or a matter of discretion.

FRANCIS KEEFE, Petitioner for Mandamus

vs.

FRANK E. DONNELL.

York. Opinion November 25, 1898.

*Elections, Ballots and Inspection. Town Clerk Mandamus. Stat. 1891,
c. 102, s. 25; 1893, c. 267; R. S. c. 102 s. 16.*

Emery J. By Act of 1891, c. 102, s. 25, as amended by Act of 1893, c. 267, being "An Act to provide for the printing and distributing ballots at the public expense, and to regulate voting for State and City elections" it is provided that after the election is over "when the ballots have been sorted and counted and the result declared and recorded, all the ballots shall in open meeting be sealed in a package which said package, together with the check lists sealed in the same manner as the ballots, shall be forthwith delivered to the city, town or plantation clerk to be preserved by him as a public record for six months." The clerk and all other persons are forbidden to "abstract from or in any manner to tamper with" said package.

At the State election of 1898 the petitioner's name was on the official ballots in the town of Kittery as a candidate for representative to the legislature. According to "the result declared and recorded" he failed of an election, but he believed that if the ballots had been properly sorted and counted he would appear to be elected. He desires to inspect the ballots used in that election and which were sealed in a package and returned to the town clerk of Kittery, and are now in his office still sealed up in that package, the six months not having expired. Has he any legal right to inspect them? It is argued that he can only inspect the exterior of the package, that it is the package sealed and to be kept sealed, and not its contents, which is to be "preserved by the clerk as a public record." Such a construction would leave the statutes without meaning or purpose.

The only use suggested in the argument for packages which are to be kept sealed is that they can be taken into the courts or legislature and there unsealed and sealed again. There is, however, no suggestion in the Act that the packages are to be taken from the clerk's office, or that an inspection of their contents can be had only by the court or legislature. The contents of the packages, the ballots, are the concern of the statutes. Its language must be applied to them. They are to be preserved. They are to be "the public record," and their place is in the custody of the town clerk. A record, however, is not public unless it can be inspected by any person interested in what it shows.

It is again urged that the clerk is forbidden to "in any manner tamper with" the package. Taken by itself this language might indicate that the clerk could not open the package, though the word "tamper" in a criminal statute at least, has the limited meaning of improper interference "as for the purpose of alteration; and to make objectionable or unauthorized changes." (Cent. Dist.) Taken in connection with the language of the statutes declaring the packages (in their contents) to be public records, it is evident that the clerk is not forbidden to open the packages to enable interested persons to inspect the ballots.

We think the petitioner has a legal right to inspect the ballots, a right which the town clerk must accord him, and that the mandamus must be made peremptory. It does not follow, however, that the petitioner or any one in his behalf can sort or count, or in any way handle or even touch the ballots. He can inspect them and they must be exposed to his inspection, but they are all the while in the custody of the clerk and he is responsible for them. The inspection must be in his presence, and he can make and insist on such regulations or restrictions consistent with the right of inspection, as will secure every ballot like any other record from loss, impairment or change in any respect. The clerk can afterwards re-seal the package for greater security until inspection is again required by some person interested.

THE
CITY OF
NEW YORK

TO THE COMMITTEES OF ALL PARTIES.

To meet the requirements of the law, considering the territorial limits of the State and the number of towns not too speedily reachable from Augusta, as mails and expresses run, *all* nominating conventions should be held early enough to admit of the the reception, at this office of *all* nomination certificates on or before the tenth day of August for the State election and the tenth day of October for the Presidential election.

Thirty days is none too much time in which to do the necessary work and *insure* reaching every voting precinct in Maine; to do which in many instances will require the shipment of ballots to begin at least five and perhaps seven days before the day of election.

Therefore, I respectfully urge that all county conventions be held as early as July 20th and all class district conventions as early as August 1st.

BYRON BOYD,
Secretary of State.

AUGUSTA, March 1, 1904.



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