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Contested election -- New Mexico

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CONTESTED ELECTION—NEW MEXICO.

FEBRUARY 24, 1854.—Ordered to be printed.

Mr. R. H. STANTON, from the Committee of Elections, made the following

REPORT.

The Committee of Elections, to whom was referred the memorial of William Carr Lane, contesting the right of José Manuel Gallegos to a seat in the House of Representatives as delegate from the Territory of New Mexico, report:

That the said contestant urges, as the ground of his right to the seat, that "in conducting the election illegal practices were allowed in some of the counties, and gross frauds committed, by which means a majority of votes was obtained" for his opponent; and, also, that "after the returns had been made to the office of the secretary of said Territory according to law, the legal votes were miscounted by admitting votes for his opponent which ought to have been rejected, and by rejecting votes for him which ought to have been received, thereby giving a majority to his opponent which ought to have been assigned to him." These are substantially the grounds upon which the contestant rests his claim.

He maintains that when the returns are properly purged of all illegal votes, the result will be as follows:

County of Santa Fé, Gallegos	380	Lane.....	252
San Miguel ..do.....	476	do.....	64
Rio Ariba....do.....	496	do.....	128
Taos.....do.....	634	do.....	886
Bernalillodo.....	751	do.....	953
Valencia....do.....	422	do.....	933
Socorodo.....	270	do.....	586
Santa Ana...do.....	278	do.....	143
Don Ana....do.....	...	do.....	288
	<hr/>		
	3,717		4,233
			<hr/>
			3,717

Majority for Lane..... 516

In the county of Taos an offer was made to vote some 60 Indian votes, and refused by the judges, which the contestant claims were legal and should be added to the foregoing enumeration. He also maintains that 113 Mexican citizens cast their votes for Señor Gallegos

in Rio Arriba county, and 29 in Santa Fé county, which, deducted from the aggregate above, leaves the majority of the contestant 726.

The committee have with very great care examined all the poll-books, duplicate copies of which were furnished by the secretary of the Territory, and such testimony of witnesses as was furnished by the parties, but have not been able to concur with the contestant in the correctness of the result to which he arrives. That there was very great irregularity in the returns is fully admitted; but not more so than might be reasonably expected under all the circumstances. The government of the Territory of New Mexico has been but recently organized; the people are not accustomed to the precision and accuracy of our election forms; they do not understand our language or our system of laws. Allowance may, therefore, very properly be made for the want of strict compliance, in every minute particular, with the complex requirements of the territorial election forms; especially in the absence of all proof that the election was fraudulently conducted, or that the returns were not made in the most perfect good faith. It does not appear, from any part of the proof exhibited, that in any single instance fraud was committed or attempted, or that any single return from any one of the numerous precincts was corruptly made. With the exception of the 60 Indian votes, which the contestant alleges were improperly refused in the county of Taos, the claim of the contestant rests upon the exclusion of votes in several of the counties, for want of due form in the returns; not, in the unanimous opinion of the committee, affecting in the least the substantial requirements of the law. The Indian voters, claimed by the contestant, were very properly, in the opinion of the committee, denied the right to vote. They are excluded by the laws of the Territory; they retain their tribal characteristics, form a distinct community from the whites, make their own local and separate laws, are governed by their own chiefs, and do not differ essentially from other savage tribes. For the same reason 202 Indian votes, cast by the Pueblos at Laguina precinct, in the county of Valencia, and enumerated in the vote of the contestant above, were rejected by the committee and deemed illegal. These Indians, at their own pueblo, without authority from the probate judge, as provided by law in all other cases, organized the election, appointed their own chiefs to conduct it, and made the returns to the secretary. All the votes cast were for the contestant. The law of the Territory makes it the duty of the probate judge of the county, eight days before the election, to select the place of holding it, and appoint three judges to preside. In this instance the judge performed no such duty, and, no doubt, for the reason that the Indians were regarded by him as not being entitled, under the law, to the right of suffrage.

The proof, in the opinion of the committee, does not sufficiently establish the fact that Mexican citizens were allowed to vote at any of the precincts; and, should the whole number of votes of that character alleged by the contestant to have been cast be excluded, it would not change the result.

From several of the precincts in San Miguel county, the judge of probate, whose duty it is to make returns to the secretary of the Territory, sent to that officer the abstract of the votes polled, as required

by law, but omitted at that time to furnish the poll-books. Subsequently, and within the time limited by law, lists of voters in the said precincts were furnished to the secretary, and certified by him to have been received from the "judge of probate of the county of San Miguel." The abstract was properly authenticated, and sufficiently showed the number of votes cast for each individual; and the list of voters had opposite to each name the number as required by law, so that by reference to the tickets kept in the office of the probate judge, the person for whom each man voted could be readily ascertained. These returns, the contestant maintains, should all be rejected, because, as he supposes, the returns were not made according to law, the probate judge having no authority to correct his error, after having returned the abstract, by supplying the list of voters. If the abstract and list of voters had been returned at the same time, and authenticated in the same manner as they were, there would have been no departure from the strict provisions of the law. But provision is made in the 29th section of the Territorial law regulating elections for the failure of the secretary "to receive any return within fifteen days after the election," by requiring him "to send a special messenger to the county failing to make the returns with orders to bring them." The presumption is, that the secretary acted in obedience to this requirement of the law; and as the additional returns were received within the time allowed for correcting the votes, the committee can see no valid objection to considering them in their calculation of the result.

Neither in these precincts of San Miguel, nor in those of any other county from which the returns are alleged by the contestant to be informal and contrary to law, have the committee been able to perceive so substantial a defect as to justify their total exclusion. In the absence of all attempt at fraud on the part of the voters, it would be manifestly unjust to deprive them of the effect of their suffrages for a slight failure upon the part of the officers conducting the election fully to comply with all the forms of law when enough is clearly shown to determine the wishes of the people.

Excluding only the vote of Laguna precinct, in the county of Valencia, which was entirely given by the Pueblo Indians, and the parties are rightfully entitled to the following votes:

County of Santa Fé, Gallegos.....	382	Lane.....	251
Don Ana.....do.....	...	do.....	288
Bernalillo.....do.....	751	do.....	953
San Miguel.....do.....	1,397	do.....	262
Taos.....do.....	634	do.....	886
Socoro.....do.....	270	do.....	586
Rio Ariba.....do.....	826	do.....	128
Santa Ana.....do.....	531	do.....	401
Valencia.....do.....	452	do.....	780
	<hr/>		<hr/>
	5,243		4,535
	4,535		
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Majority for Gallegos.....	708		

The committee, therefore, after a full examination of all the facts, are unanimously of the opinion that the Hon. José Manuel Gallegos is rightfully entitled to his seat as delegate from the Territory of New Mexico, and report the following resolution :

Resolved, That the Hon. José Manuel Gallegos is entitled to the seat as delegate from the Territory of New Mexico for the 33d Congress.