

Nessel, Andrew  
Kidder, J. P.

1861

JOURNAL  
OF THE  
HOUSE OF REPRESENTATIVES.

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FIRST DAY.

TUESDAY, January 8th, 1861.

Agreeably to the provisions of the Constitution and Laws of the State of Minnesota, designating the first Tuesday after the first Monday of the month of January, as the time for the meeting of the Legislature, the House of Representatives assembled at the Capitol in St. Paul, on Tuesday, the eighth day of January, in the year of our Lord one thousand eight hundred and sixty-one.

The hour of twelve o'clock M. having arrived, Hon. JARED BENSON, Clerk of the last House, called the body to order, and having designated Hon. E. E. PAULDING, member elect from Nicollet, as Clerk *pro tem.*, proceeded to call the names of the members elect, who came forward and were sworn by Attorney General G. E. COLE, as follows :

→ *First District.*—Henry Acker and J. P. Kidder.

*Second District.*—H. L. Thomas, E. D. Whiting and Emil Munch.

*Third District.*—Thomas Cathcart, Levi Wheeler, and P. L. Gregory.

*Fourth District.*—Jared Benson and G. V. Mayhew.

*Fifth District.*—F. R. E. Cornell and W. Hayden.

*Sixth District.*—V. P. Kennedy, T. D. Smith, and Wm. R. Baxter.

*Seventh District.*—H. G. O. Morrison and M. A. Chamblin.

*Eighth District.*—J. D. Hoskins and Charles Wood.

*Ninth District.*—J. E. Chapman and C. R. White.

*Tenth District.*—N. S. Tefft.

Nessel,  
Andrew  
Kidder, J.P.

# House of Representatives 1861

## REPORT

### OF THE

### COMMITTEE ON ELECTIONS.

—o—

Your Committee, to whom was referred the petition of Andrew Nessel, claiming a seat in the House of Representatives of the State of Minnesota, in the place of Jefferson P. Kidder, now a member of said House, together with the evidence taken in said matter before G. E. Winters and Fleet F. Strather, Justices, have had the same under consideration, and the majority of said Committee beg leave to report as follows:

That the whole number of votes certified and returned to the Board of County Canvassers by the Judges of the precincts of First Ward, Second Ward, Mound View, White Bear, and McLean, amounted to 1260—630 being cast for Jefferson P. Kidder and 630 for Andrew Nessel.

That the Judges of the precinct of New Canada returned to the said County Board 49 votes as cast for said Kidder, and 47 votes as cast for said Nessel.

That said County Board thereupon certified to the Secretary of the State of Minnesota that the said Kidder had received two more votes than said Nessel.

That on the 24th day of November said Nessel gave said Kidder notice that he contested the right of said Kidder to the certificate of election awarded him by the said County Board, and also the right of said Kidder to a seat in the House of Representatives, on the following grounds, to wit:

That the Judges of election for the Precinct of New Canada duly canvassed the votes given at said election and that by the canvass thereof said Kidder received 44 votes, and no more, and that the said Nessel received at said election 47 votes.

That the said Judges and Canvassers through a clerical error returned that said Kidder received 49 votes instead of only 44 votes, as was actually the case.

That James F. Fosteven, George Hammond, and Horace J. Brainard, who were the Judges of Election of said precinct, were all duly sworn at said examination, and said that the returns were made out by Mr. Melancthon, one of the Clerks of said election, and were signed by them without any examination by any or either of them, and they also each severally testify that, to their positive knowledge there were 44 votes, and no more, cast for said Kidder.

That J. P. Melancthon and Walter B. Boyd, who were the Clerks of said election, were duly sworn at said examination, and said that, to their positive knowledge, there were 44 votes. and no more, cast for said Kidder.

That said Melancthon, at said examination, identified the paper marked "Exhibit A" as the tally-list made out by him, giving said Kidder 44 votes, and no more; and that said Boyd, at said examination, identified the paper marked "Exhibit B" as the tally-list made out by him at said election, giving said Kidder 44 votes, and no more.

That by the correction of said clerical error in the return of the Judges and Canvassers of the Precinct of New Canada, there would be left to said Nessell a majority of three of all the votes returned to said County Board, in said First District.

Your Committee further beg leave to report:

That Jefferson P. Kidder, on the 4th day of December, 1860, gave notice to Andrew Nessell that he claimed to have been duly elected and to have a right to said certificate of election and to a seat in the House of Representatives, on the following grounds, to wit:

That the returns of the Judges of Election of the following precincts were incorrect, viz: First Ward, Second Ward, and New Canada; and also, that the votes of ten persons "not legally qualified to vote in said District" were canvassed for said Nessell.

In support of the allegation that the returns were incorrect, the said Kidder, at said examination, offered as evidence the ballots contained in the ballot boxes of the following precincts, with the following results:

	NESSSELL.	KIDDER.
First Ward, - - - - -	356,	295.
Second Ward, - - - - -	232,	257.
New Canada, - - - - -	47,	43.
	<hr/>	<hr/>
	635,	595.
Other precincts not contested, - - -	41,	80.
	<hr/>	<hr/>
	676,	675.

So that even if your Committee could allow such counting of ballots as evidence it would, on said Kidder's own showing, still leave said Nessell a majority of one in all the votes cast, and work no practical advantage to said Kidder.

That the said Kidder, at said examination, by his own acts fully and freely participated in said examination; but that he entirely failed to adduce any evidence that the vote or votes of any person or persons, not legally entitled to vote in said District, were canvassed for said Nessell, as stated in his notice to said

Nessell, thereby failing to comply with the provisions of Section 35, Chapter 18, of the Laws of Minnesota for 1860, which provides that the time fixed for such depositions shall not exceed thirty days from the day of election.

That the said Kidder having given due notice, in accordance with such law, having freely participated in said examination in compliance with said law, and having had ample opportunity then and there to offer evidence of the allegation made in his notice, yet not having then adduced such evidence, your Committee have felt unable to receive further evidence, because they cannot now receive it as prescribed by said law.

That since the said Kidder acted under said law and failed to introduce his evidence at said examination before said Justices, as prescribed by said law, your Committee feel that there will be no harshness in refusing to admit further evidence.

They also believe that it would be a dangerous precedent to open the case for new evidence at this stage of the proceedings; that such a precedent would thwart the very object contemplated by said law, and produce prolonged and expensive litigation.

Therefore your Committee have felt themselves obliged to reject further evidence, for the admission of which they can find no good reason in law, in justice, or in sound policy.

The majority of your Committee, therefore, beg leave to report the following resolution, with the recommendation that it be adopted:

*Resolved*, That Andrew Nessell be and hereby is declared elected to and a member of this House, and that Jefferson P. Kidder be and hereby is declared to be not a member of this House.

All of which is respectfully submitted.

N. S. TEFFT, Chairman,  
ASA CHEADLE.

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## Minority Report

OF THE.

## COMMITTEE ON ELECTIONS.

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The undersigned, of the Committee on Elections, to whom

was referred the petition of Andrew Nessell praying for a seat upon the floor of this House in place of Jefferson P. Kidder, the sitting member, together with the testimony in said case, having fully considered the facts in relation thereto, as established by said testimony, cannot conscientiously agree with the majority of said Committee in relation to the matter and things stated in their report to this House; and do therefore respectfully but earnestly protest against the action of said Committee in receiving and considering all the testimony taken in behalf said Nessell, to contradict and impeach the official returns of the Judges and Clerks of Election from the precinct of New Canada, and excluding the sitting member from taking further and other testimony to sustain the correctness of such returns, and to show that divers votes cast for him at said election, in said precinct, on the tickets headed with Breckenridge Electors, were not put upon the tally-list kept by the Clerks of said election, but were by said Clerks included in the returns from said precinct; and that mistakes were also made in the other precincts, against him, and in favor of said Nessell, and divers illegal votes were cast in said District at said election, for said Nessell and against him—as being without precedent, and unjust, against the spirit of our laws, and an insult to the honesty and integrity of the people of the State, and also subversive of the rights, not only of the sitting member, but of the people of his District, and to repel with just indignation any unjust insinuations, statements or attacks made by either of the Majority Committee while in session, or upon the floor of the House, that the Minority Committee was the representative of the sitting member, or any other party on said Committee, and to place such facts before the House as will enable them to do equal and exact justice to each of said parties. The undersigned submit the following minority report:

The whole number of votes canvassed, certified and returned to the Board of County Canvassers in the several elective precincts in said District, by the returning officers of said precincts, was 1356, of which number 679 were canvassed, certified and returned as having been voted for Jefferson P. Kidder, and 677 for Andrew Nessell, giving Mr. Kidder a majority of two votes over all the votes returned in said District.

The returning officers in the precinct of New Canada certified and returned that J. P. Kidder received 49 votes for the said office of Representative, and that Andrew Nessell received 47 votes, and the testimony taken before Justices Winters and Strather to impeach said returns, by showing that Mr. Kidder received but 44 votes in said precinct, in the opinion of the minority of said Committee, is not sufficient for that purpose.

The testimony of Mr. Fosteven and Mr. Hammond shows that they were Judges of Election in said precinct, and signed the returns made by Mr. Melancthon, one of the Clerks of said Elec-

tion, without reading it; but neither of the gentlemen state that they had anything to do in the canvassing of said votes. Mr. Brainard, the other Judge of said Election, testified that he assisted in counting the votes; that he discovered the mistake on the tally-list kept by one of the Clerks, and had it corrected at the time. He also testified that while Mr. Melancthon was making out the returns, he spoke of the mistake. He also testified that after the election was over he carried said tally-list to Concert Hall, and that "Dr. E. A. Boyd read that night in the Concert Hall that Kidder had 49 votes. It was there corrected to 44. I left said tally-list in Dr. Thomas Foster's hands," (vide Brainard testimony, pages 20 and 21). Mr. Brainard further testified that "he had stated in the presence of Mr. E. C. Lambert, Mr. Wells and Mr. James Smith, Jr., that he looked over Mr. Melancthon's shoulders at the time the returns were made, and that they were correct, unless they had been altered since that time," (vide page 19). He also states that, after examining the returns, that they had not been altered since they left his hands, (vide page 20).

Mr. Melancthon, the principal Clerk and business member of the Board, as appears from the testimony in the case, testified that in making out the returns to the County Board, he used his tally-list, and he believes that Mr. Brainard looked over the returns and compared them with the tally-list, to see if they were correct, (vide page 9). He also testified as follows: "The Breckenridge votes were kept upon a separate list. There were from three to six, I think. Said Breckenridge tickets were straight Democratic upon county officers, I think—I cannot tell positively. Those Breckenridge votes were not counted upon the tally-list, but were included in my return. The votes for State officers upon the Breckenridge ticket were not put upon the tally-list; none of the names on the Breckenridge tickets were placed upon said tally-list, unless for some of the small offices. By 'small offices' I don't mean members of the Legislature," (vide pages 10 and 11).

The testimony of Mr. Melancthon, showing that the returns were made out by him from his tally-list, and that none of the officers voted for upon the Breckenridge ticket were placed upon said tally-list, embraces all the testimony before the Committee upon that subject. And Mr. Boyd, the other Clerk, and all the Judges of Election, being present at the examination, and neglecting to testify in relation thereto, this Committee is of the opinion that Mr. Kidder received at said election 49 votes, as returned by said officers, and that the votes upon the Breckenridge tickets, which were not put upon the tally-list, were included in the returns, as testified by Mr. Melancthon, which accounts for the fact that five more votes were included in the returns, as received by Mr. Kidder, than were put upon the tally-list by

said Clerks, and to the minority of your Committee is conclusive of the fact that in the official returns from New Canada precinct there is no mistake, inadvertence, or clerical error, as stated in the petition and notice of Mr. Nessell, and reiterated in the majority report of your Committee. And to corroborate and sustain the testimony of Mr. Melancthon, in this respect, I would refer the House to Exhibits 'A' and 'B', which are the tally-lists kept by said Clerks, neither of which has thereon the name of any candidate voted for at said election on the Breckenriege ticket. That Democratic votes were cast for State, County, and Legislative officers, is shown conclusively by the testimony of Mr. Melancthon, which testimony is not impeached, or controverted, or attempted to have been impeached or controverted, by the other Clerk, or either of the three Judges, and is fully corroborated by both of said tally-lists.

And as neither of the Judges pretend or claim that they read the returns, or knew how many votes were canvassed and counted for Mr. Kidder, or any other candidate, except so far as it appeared upon the tally-list, which they inspected, and from which they derived their information of the number of votes which the respective candidates received at said election, it is but reasonable to suppose, and is undoubtedly the fact, that they, and each of them, were mislead in relation to the number of votes canvassed for the respective candidates, by said tally-list, upon which neither of the Clerks placed the Breckenridge votes. But Mr. Malancthon, the Clerk, upon whom they each relied, when he made up the returns included the vote cast upon the Breckenridge ticket, as it was his duty to do, and as stated explicitly by him in his testimony taken on the part of Mr. Nessell.

And your Committee after thus crrefully examining and considering all the testimony presnted on the part of Mr. Nessell, cannot come to any determination of the way and manner the honorable gentlemen who compose the majority of the Committee arrived at the facts and conclusions submitted in their report, or how they could arrive at any other conclusion than the onde herein stated, except from influences which do not appear in the case, from the testimony and papers presented to your Committee.

And your Committee herein believe that to impeach and contradict the returns of the Judges and Clerks of Election in the New Canada precinct, which were made upon their oath of office, by such uncertain and doubtful testimony as is before your Committee, would be against the precedents of this or any other State in the Union, and a burlesque and mockery upon Judicial and Legislative proceedings, and for which the citizens of our State may justly feel indignant.

Your Committee, in examining and considering the testimony taken before said Justices, under the notice of Mr. Kidder,

to sustain the correctness of the returns of the Judges and Clerks of the New Canada precinct, by re-counting the ballots voted at said election, is not satisfied from the testimony of the Clerks that all of the ballots, after they were counted, were put into the box and nailed up by the Judges. The witness says that "he saw the Judges put the ballots into the boxes, but whether they put them all in he could not say, as he did not count them with the Judges," (vide page 1, Mr. Melancthon's testimony).

But it appears that upon a re-count of said ballots before the said Justices, Mr. Kidder received one vote less than the number conceded him by the contestant, and Mr. Nessell had the same number returned by the Judges and Clerks of said precinct.

Your Committee therefore is of the opinion that the testimony taken on the part of Mr. Kidder, in relation to the re-counting of the ballots in said precinct, does not in the least corroborate or impeach the official return from said precinct, and will have little or no weight before this House in determining the right of the respective parties in this contest.

Upon a re-count of the ballots being had before said Justices, under the notice of Mr. Kidder, in the election precinct comprising the Second Ward of the city of St. Paul, your Committee finds, from the testimony of H. P. Grant, one of the Judges of said election, that "after the ballots were counted they were by him (said Grtnt) deposited in the box which the witness presented before said Justices; that the box was sealed on the top and locked up by the witness; that he took the box to his store and put the key of it in his safe, where it remained until he brought it before said Justices; that he counted the votes at the time of the canvass, the Clerks keeping the tally, and that upon a re-count of said ballots before said Justices, said Justices keeping the tally, he found 257 votes for J. P. Kidder, and 232 for Andrew Nessell, for the office of Representative; by which re-count of ballots in said Second Ward Mr. Kidder received three votes more than was given him in the official return from said precinct, and Mr. Nessell one vote less than was given him in said return.

And upon a re-count of the ballots voted at said election in the First Ward of said city of St. Paul, it was found that J. P. Kidder received 295 votes for Representative, and Andrew Nessell 356, by which re-count Mr. Kidder received one vote less than the number given him in the official returns from said precinct, and Mr. Nessell the same number given him in said returns, and in the re-count of votes in said First Ward, it was admitted by the parties that the ballots marked "Exhibits F, G, and H" were counted for Andrew Nessell for Representative, as a part of the 356 votes returned for him.

Exhibit 'E' was counted for J. P. Kidder, and your Committee, after a careful examination of said exhibits 'F' 'G' and 'H',



is of the opinion that the same were improperly counted for Mr. Nessell; that said Nessell's name, if upon said ballots at all, is so unintelligible that a person not knowing who the candidates were for said office of Representative, would hardly suspect that the name of Andrew Nessell was written on either of said ballots, and all of your Committee were unanimous in the opinion above expressed upon this matter.

Your Committee therefore is of the opinion, and believes that he is fully sustained from the testimony submitted in the case, that there were actually voted for Mr. Kidder at said election 681 votes for said office of Representative, and for Mr. Nessell 673, giving Mr. Kidder a majority of eight votes over all the votes cast in said District.

But if in the opinion of the House exhibits 'F', 'G' and 'H' were properly counted for Mr. Nessell, then Mr. Kidder would have a majority of five votes over the contestant, and if in the opinion of this House Mr. Kidder did not receive but 44 votes in New Canada, then, upon the re-count in the First and Second Wards, Mr. Kidder has the same number of votes as Mr. Nessell.

And your Committee, by the request of the sitting member, in this case, and in further corroboration of the facts stated by the witness, Melancthon, appends to this report the depositions of John B. Demars, Deminic Demars, J. B. Demars, Jr., William Crooks, Arthur Curren, and Martin Dowling, all of which were taken *ex parte*, by request of said sitting member, which depositions are respectively marked "Exhibits 1, 2, 3, and 4," which testimony, or testimony of a like nature, the majority of the Committee refused to admit; but your Committee, not agreeing with said majority, entertained the same, and annexed them to this report for the consideration of this House, and from which it most clearly appears there were voted for Mr. Kidder, in said New Canada precinct, five votes, upon tickets headed with Breckenridge Electors, and showing *most conclusively* that the returns of the Judges and Clerks, as made and certified by them, were strictly correct, and that Mr. Kidder actually received 44 votes, which were counted on said tally-list, and five votes on the Breckenridge ticket, not on said tally-list, but put in the return by Mr. Melancthon, as testified by him before said Justices.

Your Committee therefore reports the following resolution, and recommends its adoption by the House:

*Resolved*, That Jefferson P. Kidder is entitled to a seat upon the floor of this House as a legally elected member thereof.

All of which is respectfully submitted.

J. B. LE BLOND.

## EXHIBIT 1.

STATE OF MINNESOTA, }  
*County of Ramsey.* } ss John B. Demers, Dominic Demers, John B. Demers, Jr., being duly sworn, depose and say, that at the last election held in the precinct of New Canada for members of the Legislature of Minnesota, that they voted (severally) the so-called Breckenridge ticket for electors of President and Vice-President, and which ticket contained and had on the names of J. P. Kidder and John S. Prince for Representatives, and that we cast our votes knowingly for the aforesaid J. P. Kidder and John S. Prince, as the Democratic candidates for Representatives in the Legislature now sitting, and received our tickets at the aforesaid election from William Crooks, and that the tickets polled by us severally were as handed us by said Crooks entirely, and were not erased or changed in any way.

J. B. DEMERS,  
 D. DEMERS,  
 J. B. DEMERS, Jr.

Subscribed and sworn to by the above named persons before me, at New Canada, Ramsey County, Minnesota, this 21st day of January, A. D. 1861.

G. W. FEW.  
 Justice of the Peace.

## EXHIBIT 2.

STATE OF MINNESOTA, }  
*County of Ramsey.* } ss William Crooks being duly sworn deposes and says, that at the late election held for electors for President and Vice-President, State officers, members of the Legislature, and for other elective officers, that he voted at said election in the precinct of New Canada, of which precinct he was then and is now a resident; that he voted the so-called Breckenridge ticket for Electors and State officers, as nominated by the State Breckenridge Convention, and that for members of the Legislature he voted the ticket as nominated by the Democratic District Convention, and that for county officers he voted the ticket put in nomination by the Democratic County Convention, and that the names of the nominees of all aforesaid Conventions were accurately printed on one ticket, and that said ticket was the regular Breckenridge ticket as afore described, and that the names of J. P. Kidder and John S. Prince were upon that said ticket as the candidates for the present sitting House of Representatives; that at the aforesaid election he, deponent, at the request of John B. Demers, gave to said Demers three (3) of the aforesaid Breckenridge tickets, to be polled by himself, the said

Demers, and by his two (2) sons, Dominic and J. B. Demers, Jr., all residents of said precinct, and deponent fully believes that said three (3) ballots or tickets were polled by said parties without any change or erasure whatsoever.

And deponent further states, that at the said election, at the request of a person whose name he cannot now recall, he gave to said person such a ticket or ballot, as deponent voted himself, and which is hereinbefore described, and deponent fully believes that this fifth (5th) ticket or ballot was polled free from any change or erasure whatsoever—and further deponent says not.

WM. CROOKS.

Subscribed by the aforesaid William Crooks, and sworn to by him, before me at my office in the city of St. Paul, on this twenty-second (22d) day of January, A. D. 1861.

JOHN H. DODGE,  
City Clerk.

### EXHIBIT 3.

I, Martin Dowling, of lawful age, being duly sworn, depose and say, that at the election held in the precinct of New Canada, on the 6th day of November, 1860, I was present and voted at said election. Col. Wm. Crooks gave me a ticket on which were the names of J. P. Kidder and John S. Prince for Representatives. I think it was a Breckenridge electoral ticket. I handed the same ticket to Arthur Curren, and saw Mr. Curren vote the same ticket.

MARTIN DOWLING.

STATE OF MINNESOTA, }  
Ramsey County. } ss Martin Dowling personally appeared and made oath that the foregoing, by him subscribed, is true, as therein stated. Done at St. Paul this 22nd day of January, A. D. 1861.

Before

S. M. FLINT,  
Notary Public, Minnesota.

### EXHIBIT 4.

I, Arthur Curren, of lawful age, being duly sworn, on oath depose and say, that at an election held on the sixth day of November, A. D. 1860, in the precinct of New Canada, I was a voter in said precinct, and voted for J. P. Kidder and John S. Prince for Representatives, and the ticket on which were the names of said Kidder and Prince was handed me by Martin

Dowling; that I voted said ticket as it was originally printed. To the best of my knowledge it was a Breckenridge ticket.

ARTHUR CURREN.

STATE OF MINNESOTA, }  
     *Ramsey County.* } ss. Personally appeared Arthur  
 Curren and made oath to the truth of the foregoing deposition  
 by him subscribed. Done this 22d day of January, A. D. 1861.  
     Before S. M. FLINT,  
                     Notary Public, Minnesota.

## Minority Report.

*The undersigned, of the Committee to whom were referred several petitions asking for the enactment of a prohibitory liquor law, respectfully begs leave to submit the following report, dissenting from the majority of your Committee thereon :*

The philanthropic spirit actuating the petitioners to take iniatory steps to bring the attention of the law-making power to adopt some legislation to prevent intemperance and the pauperism and crime consequent upon it, cannot be otherwise than commendable, and as such meets with my unqualified approval.

But in treating upon the matter, the first and preliminary question arises, is the subject a proper one asking for the intervention of the Legislature, and if so, how far can that intervention be exercised consistent with the spirit and genius of our institutions under which we perpetually boast of having the greatest latitude of independent free will and action.

Those who are in favor of this legislation, assume to act upon the theory that the vending of liquors is productive to some of misery and crime, and therefore is an injury to the State and the individuals composing it, and by reason thereof becomes a rightful subject of the veto of the sovereign power. Even upon such a theory, correct as a generality, the positive forbidding is not justifiable, though injury, crime and misery accrues in a multitude of cases. Many articles of food are, in themselves, without reference to quantity or times when used, positively unwholesome, producing in their consumption, disease and death, and with disease poverty and crime, although the latter in a limited degree.

All articles used as food by men, when taken in excessive