

TWENTY-SIXTH DAY.

MONDAY, JAN. 9, 1860.

The House met pursuant to adjournment, and was called to order by the Speaker.

Prayer was offered by the Chaplain.

The roll was called, and the following members found absent:

Messrs. Abraham, Baldwin, Bixler, Cleveland, Hulett, Johnson, Mann, Mitsch, Olivier, Ozman, Renz, Robertson, Secombe, Shrewsbury and Stevens.

The Journal of Saturday was read and approved.

Mr. Austin asked and obtained leave of absence for Mr. Shrewsbury for four or five days, on account of sickness in his family.

Mr. Stoek, from the committee on Indians and Indian reservations, reported back H. F. No. 11, with sundry amendments, and recommended its passage.

Adopted.

H. F. No. 11. A bill for an act to prevent Indians from committing depredations on the white settlements in this State.

Was read the second time.

Mr. Letford from the Committee on Engrossment, reported as correctly engrossed,

H. F. No. 10. A bill for an act to locate a State road from Minneiska, Wabashaw county, to Beaver, Winona county.

H. F. No. 33. Joint resolution in regard to the appointment of a committee to report joint rules for both Houses,

H. F. No. 43. A bill for an act fixing and regulating the fees of Sheriffs

H. F. No. 45. A bill for an act entitled an act allowing a charge of venue in certain cases,

H. F. No. 47. A bill for an act to alter the location of the Territorial road from Winnebago to St. Joseph, Stearns county,

H. F. No. 49. A bill for an act to amend section 2 of an act, entitled an act to locate and establish a State road from St. Cloud to Breckenridge, approved February 8, 1858.

H. F. No. 52.

Mr. Butler, from the Committee on Elections presented the minority report on the case of Jefferson vs. Nettleton, as follows:

The Committee on Elections, to whom was referred the petition of Robert E. Jefferson, claiming a seat in the House of Representatives of the State of Minnesota, in the place of William Nettleton, now a member of said House, have had the same under consideration and report as follows:

The testimony of nine witnesses, residing in the district which Mr. Jefferson claims to represent, which was taken by Luke Marvin, Esq., a commissioner duly appointed for that purpose, was laid before your Committee, and is hereto appended, marked Schedule "A." The sitting member and the contestant were both examined before your Committee under oath, and their testimony

so given is hereto appended, marked Schedule "B." Their testimony is very explicit and positive, though in direct conflict each with the other. But as the sitting member is to be presumed to know best his own residence, and the depositions in evidence strongly sustains Mr. Nettleton's claim to a residence of some years in Minnesota, your Committee are unanimously of opinion that Mr. Jefferson has failed to make good his claim to a seat in this body.

Your Committee further report that under the advice of his counsel, that the irregularities and illegal voting complained of in his petition, would not even if admitted change the result of the election. Mr. Jefferson did not introduce any evidence before your Committee in regard to said alleged irregularities and frauds. But believing, as your Committee do, that Mr. Jefferson commenced the contest in the full belief that he was justly entitled to the seat, he claimed, that he was advised by his original counsel that his claim was in accordance with law and could be sustained, we see no reason for departing from the usual rule, that in such a contest per diem and mileage should be allowed the contestants up to the time of deciding the contest.

This rule is founded upon the principle that it is for the interest of the whole people that the candidate really elected should hold the office, and that consequently a *bona fide* contestant should not be compelled to carry on the contest at his own charge. Where the contest is frivolous and without apparent reason, of course the contestant should have no such allowance.

Your Committee therefore report the following resolution, with the recommendation that it do pass.

Resolved, That Robert E. Jefferson, petitioner to be admitted to a seat in this body in place of William Nettleton, have leave to withdraw his petition, and that said Jefferson be allowed per diem and mileage at the same rates with members of this House up to this date.

All of which is respectfully submitted.

A. H. BUTLER,
ORANGE WALKER,
Committee on Elections.

SCHEDULE "A."

DULUTH, ST. LOUIS CO., MINN.,
December 27, 1859.

William Ord, being duly sworn, answered as follows:
I reside at Oneota, St. Louis county, Minnesota; have resided in St. Louis county since the 2d day of March, 1857. I resided in Duluth from March '57 to the 10th of December, 1859. I am an engineer and surveyor by occupation. I am acquainted with William Nettleton, the sitting member of the Minnesota Legislature; have known him since the fall of 1856. I first knew him at Superior, Wisconsin. I came here the spring following, in March. I have seen him here occasionally; he used to come here on the boat sometimes, and probably remained over night sometimes. Could not say positively how long he did remain here during the year 1857. Do not know that his visits were very frequent. During the year 1858 it was nearly the same way. I saw him here occasionally. I think he was in Superior during the fall of 1858. During the winter of 1858 and '59 I think he was not here. I do not remember of seeing him around. During the summer of 1859, I do not, of my own knowledge, know where he was, but think he was in Duluth. During the year 1858 I think that I had good opportunities of knowing whether Mr. Nettleton resided in St. Louis county or not. It has been my impression that Mr. Nettleton's residence has been at Superior, while I have known him. I have reason to believe that Mr. Nettleton has been engaged in lumbering in St. Louis county, Minnesota, but Mr. Olver has been the agent of the company.

Cross-Examined.

I have heard that Mr. Nettleton has a pre-emption claim in St. Louis county, I do know where Mr. Nettleton claimed his residence. I do not know that he ever voted here. I have my opinion that Mr. Nettleton's residence has been at Superior on the grounds of his living there. I do not know that Mr. Nettleton was engaged in any business in Superior during the years 1858 and '59.

Direct Examination.

During the year 1857 I saw Mr. Nettleton at Superior engaged in taking care of horses; it is my impression that those horses were kept for hire. I think it has been customary for persons living in Wisconsin to hold a pre-emption claim in Minnesota.

WM. ORD.

Sworn and subscribed to before me, this 27th day of December, A. D. 1859,
L. MARVIN, Commissioner.

R. H. Barrett, being duly sworn, answered as follows:

I reside in St. Louis county, Min. I have resided here since 1855. I have been acquainted with Mr. Nettleton since that time. He has claimed his residence in St. Louis county since 1856. He was elected to the office of Judge of Probate for St. Louis county in the fall of 1856. I was Register of Deeds for St. Louis county at that time, and I issued his certificate of election as Judge of Probate. He has claimed his residence in St. Louis county since 1856, and has acted as a resident by voting here.

Cross Examined.

During the year of 1858 and '59 I do not know the amount of time that Mr. Nettleton resided in St. Louis county. I resided during that time near the Light House on Minnesota Point.

R. H. BARRETT.

Subscribed and sworn before me, this 27th day of December 1859.

L. MARVIN, Commissioner.

J. B. Culver, being duly sworn, answered as follows:

I reside in St. Louis county, Minnesota; have resided there since the 10th of October, 1856. I have been acquainted with Mr. Nettleton ever since I have resided here. Mr. Nettleton's residence; has been during that time a resident in this county. He claimed his residence here and voted here. He has always acted as a citizen of St. Louis county, Minnesota, ever since I have lived here. I do know of his holding a claim here under the pre-emption law, and his living upon it. I know of his holding office here; he was elected in the fall of 1856 Judge of Probate; he was elected as one of the town council of Duluth in the winter of 1857-1858, elected President, and has acted as such up to the present time. It is customary for the residents of the North Shore to do their business in Superior, Wisconsin. I should think that Wm. Nettleton had not been over to Superior more frequently than other persons,—not as often as I myself during the last (12) twelve months. Wm. Nettleton is an unmarried man and has no family. He has resided with me since last June. It was about the 10th of May. He left here for Ohio about the last boat in 1858; he left and expressed his intention to return and did return on the 10th of May, 1859, on the first boat.

There has never been any doubt in my mind that Wm. Nettleton was not a resident of St. Louis county, Minnesota. He made my house his home during 1859, except some few visits to Superior, which were not prolonged over a few days at a time. He was present in Minnesota at the time he was elected President of the town council of Duluth.

J. B. CULVER.

Subscribed and sworn to before me, this 27th day of December, 1859.

L. MARVIN, Commissioner.

John Whipple, being duly sworn, says:

I resided in St. Louis county, Minnesota. I have resided in St. Louis county since September, 1857. I am receiver of public moneys at the United States land office. I have known Wm. Nettleton since the winter of 1857 and 1858. Wm. Nettleton's residence since I have been acquainted with him has been in St. Louis county, Minnesota. He has been a pre-emptor in this county. Wm. Nettleton filed his declaratory statement on the 21st day of September, 1857, as a pre-emptor under the law of 1841, claiming the west half of the south-east quarter, of section twenty-two (22), and the north-east quarter of the north-west quarter, the north-west quarter of the north-east quarter, section twenty-seven (27), township fifty (50), north of range fourteen (14) west, alleging settlement on said land February 10th, 1855. He was the first man that filed his declaratory statement in this office after it was opened.

Mr. Nettleton perfected a claim to a portion of the said land above described. Wm. Nettleton proved up and obtained a certificate of location to all of the above described land, except the north-west quarter of the south-east quarter of section twenty-two (22), Township fifty (50), range fourteen (14), on the 10th day of August, 1858, by showing a continued residence since February 12th, 1855.—should have said 10th day of February, 1855,—and a full compliance with the pre-emption law of 1841. I have considered Mr. Nettleton a *bona fide* resident of St. Louis county, Minnesota, for the last two years.

JOHN WHIPPLE.

Sworn and subscribed before me, this 27th day of December 1859.

L. MARVIN, Commissioner.

William E. Wright, being duly sworn, says:

I reside in Oneota, St. Louis county, Minnesota. I am one of the Supervisors of St. Louis county. I have the poll books of the elections held in Duluth, St. Louis county, for the years 1856, 1857, 1858. Wm. Nettleton's name appears in the poll book used in Duluth in 1856.

[Witness here presents the poll book used at the election held at Duluth in 1856.]

Wm. Nettleton's name appears on the poll lists used in Duluth in the years 1856, 1857, and 1858, as having voted. It does not appear that in either of these poll lists that Wm. Nettleton was sworn. A portion of the returns of 1856 show that Robert E. Jefferson acted as judge at such election.

W. E. WRIGHT.

Subscribed and sworn to before me, this 27th day of December, A. D. 1859

L. MARVIN, Commissioner.

Henry T. Holcomb, being duly sworn, deposes and says:

I reside in Superior, Wisconsin. Have resided there since May 1855, I have known William Nettleton since May, 1855. During the time I have known him I have never known him to claim citizenship in Wisconsin. Since I have known him, he has always claimed his residence in St. Louis county, Minnesota. I do not know of his serving on any juries in Wisconsin. I know of his being empanelled on a grand jury; in 1856 or 1857 I was foreman of the grand jury of Douglas county; Mr. Nettleton was empanelled on that grand jury and declined to serve, stating to the Court, Judge Fuller presiding, that he was a resident of Minnesota; the Judge excused him on that account.

I do not know of Mr. Nettleton's having horses to hire in Superior in 1856, 1857. I know that Geo. E. Nettleton had, but do not that William Nettle-

ton had any interest in them. I do not know particularly of William Nettleton having anything to do with the business.

HENRY T. HOLCOMBE, Superior, Wis.

Subscribed and sworn to before me this 27th day of December, 1859.

L. MARVIN, Commissioner.

James D. Ray being duly sworn, deposes and says:

I reside in Superior, Wisconsin. Have resided there since July, 1855. I am Sheriff of Douglas county. I have been acquainted with William Nettleton since I have resided in Superior. His residence, I have understood, was in St. Louis county, Minnesota. I have never known him to do or perform any acts by which William Nettleton might have been considered a citizen of Wisconsin, during that time.

I think Mr. Nettleton owned during the winter 1856 a part of a team taken from the saw mill at Duluth, which completed a team by taking over that horse. I do not know of William Nettleton keeping horses to hire during 1856, 1859. I know that Geo. E. Nettleton was the horse man. I do not know that William Nettleton kept teams to hire. I always settled my bill for teaming, which amounted to several hundred dollars, with Geo. E. Nettleton.

Re-direct Examination.

During the past eighteen months William Nettleton has not been engaged in the horse, or any other business, in Superior, Wisconsin.

J. D. RAY.

Subscribed and sworn to before me, this 27th day of December, 1859.

L. MARVIN, Commissioner.

Elias C. Martin, being duly sworn deposes and says:

I reside in St. Louis county, Minnesota. Have been here since about the 15th of June, 1856. I am government surveyor. I surveyed township fifty (50), range (14). I think it was in December, 1856 when the survey was completed. I was engaged with Mr. Bust. I understood that William Nettleton was at that time claiming land in that township, as a pre-emptor. I saw improvements said to be his. I have always considered Wm. Nettleton to be a resident of St. Louis county, Minnesota.

E. C. MARTIN.

Subscribed and sworn to before me, this 27th day of December, 1859.

L. MARVIN, Commissioner.

E. H. Bly, being duly sworn, deposes and says:

I reside in Douglas county, Wisconsin. Have done so for three or four years. Am acquainted with Wm. Nettleton, the sitting member for this district in the House of Representatives. Have known him about three years. He has been engaged in the lumbering business since I have known him. I cannot say where he has resided since I have known him. I cannot say where he resided in 1856 or 1857. In 1858 I think he resided about two months in Superior in all. He stopped with me while in Superior. In 1858 he was in Minnesota, while not in Superior, until September when he went below. I think he went to Ohio on leaving this country. He returned in the forepart of June, 1859. I know of no business in which he was engaged in Superior. On his return from below he stopped first at Duluth for a day or two, he then came to Superior and stayed there for about a week. I think he never stopped in Superior more than two or three days at a time, and frequently would only be over long enough to take one meal. He has not, I think been engaged in the lumbering business in Duluth for the past year. On his leaving in 1858 he told me he should return on the first boat in the spring, and he did so return. I am not able to state precisely how long he

stayed in Superior during the year 1859, but think about four or five weeks.

Cross-Examined.

I have known of Mr. Nettleton's holding a claim in Minnesota, under the pre-emption law, for the last two years. I have considered his residence to be in Minnesota for the last two years. He has not kept his baggage at my house, nor have I considered him a regular boarder at my house for the last two years. I know of his boarding at no other house in Superior during that time. J. S. Watrous also boards with me when in Superior, he is register of the land office in Minnesota, and has stopped with me a longer time during the last year than Mr. Nettleton.

Direct Examination resumed.

I do not know whether Mr. Nettleton has resided on, or cultivated his claim during the last two years. He stated to me in the spring of 1859 that he was going to improve his claim.

Sworn to before me, this 27th day of December, 1859.

L. MARVIN, Commissioner.

I hereby certify that the above evidence was taken before me, as commissioner, appointed by the House of Representatives, Dec. 21st, 1859. "to take the testimony of such witnesses as may appear before him on the part of either party, in the matter of the contesting of the seat of William Nettleton," in the House of Representatives. I further certify that the above testimony was taken in Duluth, St. Louis county, Minnesota, on the 27th day of December, 1859, and that the above was all the testimony taken under said commission.

L. MARVIN, Commissioner.

SCHEDULE "B."

Before Committee on Elections.

JANUARY 4, 1860, P. M.

Depositions read on part of contestant.

Wm. Nettleton sworn.

I am sitting member. I stopped in Superior, Wisconsin in winter of 1854. Then I became a resident on the other side of the river,—St. Louis county, Minnesota, on town 50, range 14 west, on a claim that I subsequently entered. I went there in the fall of 1854. Built a shanty and cleared some timber land. Moved into the shanty. Had in shanty, bed, table, chairs and stove. Slept there between that and spring, perhaps twenty, perhaps thirty nights. I can't say how many I think likely I did as many as thirty. Sometimes I staid at Duluth, only a quarter of a mile distant. Sometimes I staid some nights in that time at Superior. I think not so much as on the claim. A half breed named Peter Gardin and his wife lived in the shanty at that time. I furnished the provisions and hired and paid them for cooking. He helped me build the shanty. I hired him by the month to help me build the shanty and clear the land. I never built any other building on that claim. I think there was snow on the land, but it was not as late as 1855, when I begun this shanty. I did this before the ratification of the treaty by which the United States acquired the land from the Indians. I dated my declaration of intention to pre-empt from February, 1855. I think I spent a quarter part of my time on that claim, from the time I built the shanty to opening of navigation 1855. My business that winter was chopping and clearing land on that claim. The following summer I was building a mill and working on that claim. I am not certain that I built the mill before 1856. My business in the summer of 1855 was cleaning up the land, getting in crops and taking care of them. Peter Gardin and his wife left that shanty

in summer of 1855. After they left I got my meals and slept there until I proved up on that claim in winter of 1857-8. I think I slept in that shanty half the nights from the time Gardin and wife left until I proved up. I received from the land officers my certificate of pre-emption immediately upon proving up in winter of 1857-8. During that time I kept my trunk and clothes in that shanty. I think I spent a quarter of that time in Superior, Wisconsin.

Mr. Jefferson, at that time, had a house down in Duluth, a mile or a mile and a half from mine. Since that time he has lived nearer. His new house is not over a half a mile from mine. Going down to the point from my shanty, I would pass by his house. Going down or up the Lake or back into country, I would not.

After pre-empting that land, I have slept most of the time at Mr. Culver's, in Duluth. Culver moved there from Superior in 1855, I think. Not sure as he did before 1856.

I spent the winter of 1858-9 in Ohio. During that time I left stove, table and chairs in shanty. I left for Ohio in September or October, 1858. Had not changed my residence then. Went on a visit with intent to return in first boat, did so and stopped at Duluth. Since I returned last spring, I have slept the greater part of the nights in Minnesota. My business the last summer was electioneering in Minnesota and Wisconsin. Made my head quarters at land office where they had plenty of whiskey, and was called one of the land office *clique*. Boarded at Culver's. Had no team in Superior. While living in this shanty, I did most of my washing myself. I should think likely I removed the bedding from that shanty soon after I pre-empted. Part of it was stolen, part I removed. Don't think I have slept there regularly since I pre-empted. When I have done so I took my blankets with me.

Robert E. Jefferson sworn.

In the winter of 1854-5 I went to the Lake. Mr. Nettleton then boarded (spring of 1855) in Superior Wisconsin. He was then hauling wood from Steel's, in Superior, to the docks. He then was residing at Mr. Hall's,—from February to May—perhaps June—1855. Then I knew him boarding in Superior, Wisconsin, at his brother George's. I resided in Superior to February, (I think) 1856,—late in winter any way. I then went over on to Minnesota Point to live. Mr. Nettleton continued living in Superior. I was aware that he had a claim in Minnesota, but knew at some time he did not reside on it. The claim was within a half a mile of my house. I was frequently on it. The shanty was not habitable. Never saw him on the claim, but always saw him when I was at Superior. In summer of 1856, Mr. Nettleton was in company with Mr. Dean in clothing business at Superior. In 1857, he had a team with which he did teaming in Superior.

The shanty was of logs, probably 12x14. In 1856 it had a window. In latter part of that fall this was knocked out, and has never been replaced. The house was invariably locked with a padlock when I would go by. Mr. Nettleton could not have lived there without my knowing it. He was in Superior up to the time of leaving for Ohio in 1858. Took steamer from Superior to land office to pre-empt. He never has resided on the Minnesota side of the river since I went to the lake, until his return from Ohio last summer.

Never saw sitting member in the clothing store. Saw the advertisement in paper "Nettleton & Dean." Saw notice of dissolution in paper signed Wm. Nettleton and Dennis Dean.

I have voted at Duluth. Saw sitting member vote there. Objected to more claim-holders voting there, and was overruled by the other judges. It

is customary for men married and single, living in Superior, Wisconsin, to prove up on claims in Minnesota. I can mention a dozen such.

Mr. Shultis presented the majority report from the Committee on Elections in the case of Jefferson vs. Nettleton, as follows:

The majority of the Committee on Elections, to whom was referred the petition of Robert E. Jefferson, claiming a seat in the House of Representatives in the place of William Nettleton, now a member of said House, having had the same under consideration, report as follows:

That they concur in the first section of the report as submitted by A. H. Butler, chairman of said committee, and are therefore of the opinion that Mr. Jefferson has failed to make good his claim to a seat in this House.

Your committee would further report, that Mr. Jefferson did not attempt to prove that irregularities or frauds were committed at said election, as set forth in his petition, and that having utterly failed to make good his case, having failed to introduce any testimony bearing upon the points in issue, we see no reason to believe that he entered upon the contest in good faith. And believing as we do, that in case per diem and mileage should be allowed him, it would but encourage others to enter into contests that are frivolous and without good cause. Therefore, your committee would report the following resolution, with the recommendation that it pass:

Resolved, That in the matter of the contested election case, wherein Robert E. Jefferson is contestant, and William Nettleton sitting member, the usual rule be departed from, and that the said Jefferson be not allowed per diem and mileage, as is done in the case of a bona fide contestant.

All of which is respectfully submitted,

ALLEN SHULTIS,
PETER WILKINS,
JOHN B. OLIVIER,
Committee on Elections.

Mr. Brooks moved that the majority report be adopted.

Carried.

Mr. Greene, of Steele, moved to reconsider the vote by which the majority report was adopted.

Lost.

Mr. Stearns, from the special committee to whom was referred H. F. No. 63, reported that further action thereon be indefinitely postponed.

Carried.

Mr. Sawyer presented a report from the committee to whom was referred the claim of J. H. Felch, for seals, as follows:

Your committee to whom was referred the report of the committee on claims, in reference to the claim of J. H. Felch, for official seals, beg leave to report that they have given the matter such attention as it seemed to demand, and with the following results:

The contract under which the seals were furnished, was made on the first day of September, 1858. The correspondence in reference thereto commenced in June previous, particularly urging the establishment of a business for engraving in the city of Saint Paul, and setting forth State patronage as an inducement thereunto.

Mr. Felch was at that time established in a flourishing business at Columbus, in the State of Ohio, and enjoyed the patronage of that State, which he was unwilling to leave, except under rare inducements.