

**THE DISFRANCHISEMENT
OF PAUPERS:
EXAMINATION OF THE
LAW OF MASSACHUSETTS**

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The Disfranchisement of Paupers: Examination of the Law of Massachusetts by Jr. Russell

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JR. RUSSELL

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With Regards of Chas Theo. Russell Jr.

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MASSACHUSETTS.

BY

CHARLES THEO. RUSSELL, JR.

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1878.

THE DISFRANCHISEMENT OF PAUPERS.

DURING the last few years, owing to the depression in business and "hard times," thousands of persons have been thrown out of employment, and become more or less dependent upon public and private charity. This fact has called closer attention to the provisions of the State Constitution regarding the qualifications of voters, and to the exception to the right of voting contained in it, — of "paupers and persons under guardianship." The question has been raised, and is yet unsettled, how far such persons by the receipt of such public assistance have brought themselves within this exception, and disqualified themselves as voters. This question has been much discussed in political circles, perhaps with more warmth than accuracy, while earnest and repeated requests have been made to boards of mayor and aldermen and selectmen in many of the cities and towns, to omit from the voting-lists the names of all persons, who have within one year received aid and assistance from the city or town authorities.

At the last session of the Legislature, a nearly successful attempt was made to enact some such provision, and oblige or authorize the boards of registration to take such action. The Judiciary Committee of the House reported a bill, providing that the overseers of

the poor should annually, before the election, return to the mayor and aldermen or selectmen of each city or town, a list of all male persons over twenty-one years of age, who have within the year received public aid and assistance in said city or town: "And the said mayor and aldermen and selectmen shall thereupon give notice to the persons whose names are so returned, and fix a reasonable time and place (prior to the election) at which they may show cause why they should not be included in the exception as to voters in Section 1 of Chapter 376 of Acts of 1874 (paupers and persons under guardianship); and if they are found not to come within said exception, their names shall be entered upon the list of voters of the respective towns in which they dwell, if otherwise qualified to vote."

After a long debate this bill passed its third reading by the casting vote of the speaker, but was afterwards (the question of its constitutionality being raised) re-committed. The committee reported a modified bill, entitled, "An Act requiring the Overseers of the Poor to make certain Returns"; which merely provided that such overseers should make return of names of the persons as provided in the previous bill, simply adding that "nothing herein shall be construed to take away the right to vote of any person entitled thereto." This latter bill, except in so far as it could be taken as a legislative *hint* and authority to the proper officers of registration to act upon such returns, and omit from the voting-lists the names so returned, was harmless and unnecessary.

The bill passed the House in this form, and was rejected by the Senate, upon an adverse report of the Senate Judiciary Committee. The subject, being open, has again come before the Legislature.

Before any measure of this kind — which is intended, and will operate, to disfranchise, at least *prima facie*, a large class of persons in the community — is enacted into law, the matter should be carefully considered, and both the constitutionality and expediency of the act clearly established.

Without examining the wider question of the need or expediency of such legislative action, it may be well to inquire generally, without regard to any specific measure, how far, under the Constitution, the Legislature can deprive or authorize others to deprive of the right of suffrage, persons who within any given period have been the recipients of public aid and charity.

The constitutional history of the Commonwealth shows how carefully the State has always guarded the qualifications of voters, — never, since the Royal Charter of 1691, leaving those qualifications to be fixed or altered by annually changing legislative bodies, which are always liable to be controlled by temporary and political influences.

The old Colony Charter of 1628 provided that, “On the last Wednesday in Easter term yearly, the governor and all other officers of the company shall be in the general court or assembly to be held for that day or time, newly chosen for the year ensuing, by such greater part of the said company, for the time being then and there present,” the general court having power to appoint “such and so many others as they shall see fit, and shall be willing to accept the same, to be free of the said company and body, and them into the same to admit.”

Under this charter the general court, in 1641, declared it “to be the constant liberty of the freemen of this jurisdiction to choose yearly at the court of elec-

tion, out of the freemen, all the general officers of this jurisdiction," having previously (1631) provided that "no man shall be admitted to the freedom of this Commonwealth but such as are members of some of the churches within the limits of this jurisdiction." In 1663, "all persons, Quakers or others, which refuse to attend upon the public worship of God here established," were disfranchised, "during their obstinate persisting in such wicked ways and courses, and until certificate be given of their reformation." In 1665, in unwilling response to the demands of the King, that church membership should no longer be a requisite to admission as freemen, the general court made some changes in the law, providing that all Englishmen presenting certificates of the ministers of the places where they dwell, that "they are orthodox in religion, and not vicious in their lives," may, if they possess a certain amount of property, "be propounded and put to vote in the general court for acceptance to the freedom of the body politick."

The Royal Charter for the Province, granted in 1691, expressly defined and limited the qualifications of voters:—

"No freeholder or other person shall have a vote in the election of members to serve in any great and general court, who, at the time of such election, shall not have an estate of freehold in land within our said province or territory, to the value of forty shillings per annum at the least, or other estate to the value of forty pounds sterling."

And it will be found that in all acts relating to elections in the Province,—passed after the granting of this charter, care was taken to leave unchanged the qualifications named,—the right of suffrage being always reserved "to those qualified by charter to vote."

In 1780 the present Constitution was adopted. The provision in regard to electors (changed in 1820) was as follows:—

“Every male inhabitant of twenty-one years of age and upwards, having a freehold estate within this Commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for Senators. To remove all doubt concerning the meaning of the word ‘inhabitant’ in this Constitution, every person shall be considered as an inhabitant for the purpose of electing or being elected into any office or place within the State, in that town, district, or plantation, where he dwelleth or hath his home.”

It is evident that the framers of this clause, by so carefully defining the word “inhabitant,” did not mean any term used should require future construction either by Court or Legislature.

The Constitution required the same qualifications of voters for Representatives,—except the words, “resident in the town for one year preceding the election,” were used in place of the word, “inhabitant.” Those qualified to vote for Senators and Representatives could vote for the other State officers.

These provisions remained the fundamental law of Massachusetts until 1820, when the Convention on the revision of the Constitution, after a long debate and by a close vote, abolished the property qualification, and agreed to the present third amendment, which was ratified by the people:—

“Every male citizen of twenty-one years of age and upwards (excepting paupers and persons under guardianship), who shall have resided within the Commonwealth one year, and within the town or district in which he may claim a right to vote six calendar months, next preceding any election of Governor, Lieutenant-Governor, Senators, or Representatives, and

who shall have paid by himself, or his parent, master, or guardian, any State or County tax, which shall, within two years next preceding such election, have been assessed upon him, in any town or district of this Commonwealth;— and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote in such election of Governor, Lieutenant-Governor, Senators, and Representatives;— and no other person shall be entitled to vote in such elections.”*

In 1857, a further amendment (Art. XX.) was adopted:—

“No person shall have the right to vote, or be eligible to office, under the Constitution of this Commonwealth, who shall not be able to read the Constitution in the English language and write his name;—*provided however* that the provisions of this amendment shall not apply to any person prevented by a physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age or upwards at the time this amendment shall take effect.”

These are the qualifications now required of all electors in this Commonwealth.†

It will be seen that all the qualifications for voters are definitely fixed and limited by the Constitution itself. They are clear and precise;— all of them must

* In the draft of a new Constitution adopted by the Convention of 1853, the requirement of the payment of a tax was, after a long debate, abolished. The Constitution was rejected by the popular vote.

† In but few of the States are paupers, as such, excluded from the right of suffrage. In Maine and Massachusetts, “paupers and persons under guardianship” are excepted; in New Jersey, “no pauper, idiot, insane person”; in Delaware, “no idiot, insane person, or pauper”; in West Virginia, “no person who is a minor, or of unsound mind, or a pauper”; in South Carolina, “no person while kept in an almshouse,” can vote. These are the only States in whose constitutions the word “pauper” is used as a word of disqualification. In Rhode Island and Connecticut a property qualification is required.