

STRAFFORD.

FELKER v. CHESLEY.

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An arithmetical error in the count and declaration of votes for senator in town-meeting may be corrected by the moderator in a supplementary public declaration before the close of the meeting, but not by the clerk in his record and return without such correctional action taken by the moderator.

PETITION for a mandamus, filed at the trial term, where a case was reserved on facts found by the court. The plaintiff was a candidate for the office of senator in the Somersworth district (No. 12) at the election in November, 1890, and the defendant is town-clerk of Rochester. The prayer of the petition is for a writ requiring the defendant to make a correct record of the moderator's declaration of the votes given for senator in Rochester at that election, and to make due return thereof to the secretary of state. The selectmen counted the votes, entered the numbers in columns on a paper previously prepared, added them, wrote the result at the foot of the columns, as follows,—for Parshley 861, for the plaintiff 856, for Bean 34,—and handed the paper to the moderator, who declared the votes according to that addition, and handed the paper to the town-clerk, who had no doubt that the votes were declared by the moderator from and according to the footings. Some time afterwards, a week or more, when the defendant was making his returns to the secretary of state, on adding the column of whole number of votes for senator he found there were ten more than the sum of the footings for Parshley, Felker, and Bean, and on adding the columns of Bean's votes, he found the sum to be 44 instead of 34. This was the first knowledge any one had of that error. Acting upon legal advice, the defendant made the following record, and sent an attested copy of it to the secretary of state:

“FOR SENATOR FROM DISTRICT NO. 12.

“Before making such public declaration of the vote given in for senator, the number of votes for each person voted for for senator was written down in the presence of the selectmen, clerk, and moderator as follows:

	Augustine S. Parshley.	Samuel D. Felker.	Frank R. Bean.
179	129	50	
5	3	1	1
175	62	113	
9	6	2	1
174	77	97	
17	9	4	4
223	78	145	
23	6	8	9

	Augustine S. Parshley.	Samuel D. Felker.	Frank R. Bean.
269	133	136	
40	27	7	6
274	150	124	
56	27	19	10
208	101	107	
42	20	13	9
45	21	24	
13	8	2	3
9	4	4	1
	<hr/> 861	<hr/> 856	<hr/> 34

“From said paper thus written down the moderator made his declaration aforesaid, and the paper was then handed to the clerk by the moderator for the purpose of enabling him to make a record of the declaration aforesaid. From this hereinbefore set forth, it appears that the whole number of tickets given for Augustine S. Parshley was 861, and the whole number of tickets given in for Samuel D. Felker was 856, and the whole number of tickets given in for Frank R. Bean was 44, but in adding up the column containing the whole number of tickets given in for Frank R. Bean an error appears whereby the footing of said column is made to read 34 instead of 44, which is the correct footing of said column, and whether the moderator, in making his declaration aforesaid declared the number of votes given in for Frank R. Bean to be 34 or 44 the clerk is unable to state from memory, and therefore makes this record of the fact a part of his record prescribed by law.”

J. G. Hall, for the plaintiff.

J. H. Worcester and *W. L. Foster*, for the defendant.

SMITH, J. The defendant's duty is not an open question. The arithmetical error could have been corrected by the moderator in a supplementary public declaration before the close of the meeting, but could not be corrected by the clerk in his record and return without such correctional action taken by the moderator. *Bell v. Pike*, 53 N. H. 473, 481; *Opinion of the Justices*, 53 N. H. 640, 643; *Hill v. Goodwin*, 56 N. H. 441.

Petition granted.

DOE, C. J., and BINGHAM, J., did not sit: the others concurred.

BINGHAM & *a.* *v.* JEWETT.

The house of representatives is sole judge of the returns, elections, and qualifications of its members. The court is not authorized to make an official roll that will determine the question of membership either finally or provisionally, or to render a judgment on that question.

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