

SATURDAY

MILWAUKEE, JUNE 12, 1897.

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FIRST COLORED VOTER

The Historic Incident in Which
Booth and Gillespie Were
Leading Figures.

A LAW SEVENTEEN YEARS INERT

Mr. Booth's Contribution for Human
Rights—Byron Paine's Work—
Judge Downer's Opinion.

On the 31st of October, 1865, two men walked to the place of registration on "the flats" in the Seventh ward who were making history. One of them was a white man, short of stature, with strongly marked features and a patriarchal beard—Sherman M. Booth. Making history was a function not new to him, for he had been engaged in it since the 40's when, as a student at Yale College he delivered Abolitionist speeches, and chose the pregnant theme of "Slavery" for his graduating address. His companion was a tall, thin, serious, bespectacled, mulatto—Ezekiel Gillespie. Mr. Gillespie was then and for many years thereafter, until his death, a trusted employe in the office of the Chicago, Milwaukee & St. Paul Railway company. The two proceeded to the registry place, where Mr. Booth asked that Mr. Gillespie's name be placed upon the list of voters. The request was refused; but on the following election day Mr. Gilles-

pie, accompanied by Mr. Booth, went to the polls and attempted to vote. The inspectors of election for the ward, H. L. Palmer, William H. Williams and Andrew H. McCormick, refused to accept his ballot. Mr. Booth, who had been prepared for this, asked Mr. Palmer to certify on the back of Mr. Gillespie's ballot that he had tendered it and the inspectors had refused to receive it, and with this request Mr. Palmer complied. Thus closed the first stage of preparations for a test case projected by Mr. Booth to demonstrate the legal right of colored men to vote in Wisconsin.

In 1849—seventeen years before—the people of this state had voted on a proposition to amend the constitution of the state by permitting colored suffrage. The number of votes cast in favor of the amendment was 5285, and the number of votes against it 4075. As is frequently the case with constitutional amendments, it was ignored by the majority of the citizens who visited the polls to exercise their glorious privilege as rulers of the destinies of a great republic. Thirty thousand votes were cast at that election for different candidates for the office of governor, but the total number of votes for and against the suffrage amendment was less than one-third of the amount. The language of the legislative act submitting the suffrage amendment was that if at the election at which it was to be submitted to the people "a majority of all the votes cast at such election" should be in favor of equal suffrage to colored persons, then the suffrage amendment should become a law. For seventeen years the people of the state had assumed that not enough votes had been cast on the subject of colored suffrage to secure the enactment of the law.

Mr. Booth, however, had always contended that the suffrage amendment had been adopted as the result of the vote, and was the law of the state. He laid all the circumstances before the members of the law firm of Byron & Herbert E. Paine. The two differed, but Byron Paine expressed confidence that Mr. Booth was right in his belief that the popular vote of 1849 had clothed the negroes of Wisconsin with the right of suffrage. Byron Paine agreed to take the Gillespie case through the courts for \$100, and Mr. Booth agreed to pay the amount. Mr. Booth's first step was to bring suit against the board of election inspectors in the circuit court for Milwaukee county. D. G. Hooker appeared for the defendants, and demurred to the complaint, setting up the claim that it did not state facts sufficient to constitute a cause of action. By stipulation, notice of trial was waived, and the case was put on the calendar and submitted without argument, judgment being rendered pro forma sustaining the demurrer. The object of this was to bring the matter without delay before the state Supreme court, to which Mr. Gillespie's attorney at once took an appeal. The justices of the Supreme court at that time were three in number. Luther S. Dixon was chief justice, and Jason Downer and Orsamus Cole were his associates. The main opinion in this case, overruling the order of the circuit court, was written by Justice Downer. With reference to the meaning of the phrase, "Approved by a majority of all the votes cast at such election," he said:

"Three different constructions of this clause were suggested on the argument: 1st. That it required that the extension of suffrage should be approved by a majority of all the votes, on all subjects and for all officers, cast at such election. 2d. That it should be approved by a majority of all the voters voting at such election. 3d. That it should be approved by a majority of all the votes on that subject cast at such election. * * * If the first construction, requiring a majority of all the votes on all subjects and for all offices, cast at such election, in favor of the extension of suffrage, before it can be adopted, is the true construction, then the same voter might cast one vote in favor of the extension, and in voting for the candidates for the different offices cast ten votes which would be counted against the very measure he voted for. The absurdity inclusive against it. To adopt the second construction would be to say that the word 'votes,' in the clause in question, meant the same as the word 'voters.' * * * If, however, we concede that the clause in question could be construed to mean, or was equivalent to, 'approved by a majority of all the voters voting at such election,' it would not follow that it had reference to a majority of voters voting any other measure than the one mentioned in the proviso; or that the number of votes cast at such election for the candidates for any office should determine whether the suffrage was extended or not. * * * Under the provisions of our constitution, as well as of other constitutions, persons are elected to a particular office who have a majority of the votes cast—not for the candidates for some other office, but for

the candidates for that office. * * * To declare a measure or law adopted or defeated—not by the number of votes cast directly for or against it, but by the number of votes cast for and against some other measure, or for the candidates for some office or offices, not connected with the measure itself, would not only be out of the ordinary course of legislation, but, so far as we know, a thing unknown in constitutional law. * * *

According to section 1, article 12, of the constitution, the Legislature may propose amendments to it, and if they are approved by a majority of the voters voting thereon at the time prescribed by the Legislature, the amendments become a part of the constitution. The right of suffrage by such amendment could be given to colored persons. Is it probable that the framers of our constitution required more votes to extend the right of suffrage in one way than in another? * * * We see no reason for such a conclusion."

The decision upholding the law was concurred in by the full bench.

The portrait of Ezekiel Gillespie which the Wisconsin presents herewith was made from a photograph in the possession of his family, who now live in Chicago.



EZEKIEL GILLESPIE.