

JUNE 6, 1929.

# POVICH IS SEATED AS ALDERMAN AND M'CABE IS OUSTED

## Aldermen Follow the Decree of Justice Pattangall

The seating of Samuel Povich as alderman from Ward one by the board of aldermen at their first meeting in the Davenport Memorial Wednesday night was an interesting ceremony witnessed by more spectators than usually attend meetings of the city council. While Mr. Povich's predecessor, Chester H. McCabe, who has been holding the seat since the organization of the city government on March 18, was unable to be present in as much as he left the city Saturday for Sugar Island, Lake Moosehead, this did not deter the seating of Mr. Povich under the decree of Associate Justice William R. Pattangall who has declared that Povich and not McCabe was elected alderman by three votes on March 4. Mayor Charles H. Cahill presided and aldermen present were Stanley M. Brown, Harry M. Huse, Harold L. Troop, E. Mason Wright and Charles T. Henderson.

Povich appeared among the spectators accompanied by his attorney, Edward W. Bridgham. Neither McCabe nor his attorney, Judge John J. Keegan, was present, and for this reason Alderman Brown asked that the entire matter be put over to the July meeting to allow them an opportunity to be present. Mayor Cahill replied that both had been notified of Wednesday's meeting and that responsibility for attendance or representation was upon them.

Alderman Troop felt that Ward one was without an alderman and that it had been ever since Justice Pattangall had issued his final decree which ordered McCabe to vacate his seat. To put the matter over for a month deprived the ward of representation in the board of aldermen, since McCabe had no further right there and Povich had not qualified.

The matter was opened by Mayor Cahill who passed to Clerk Gilmore a copy of Justice Pattangall's final decree and correspondence from Mr. McCabe in which he asked the aldermen not to qualify Povich without the appearance of his attorney, Judge Keegan. Mayor Cahill next called upon Mr. Povich's attorney, Mr. Bridgham, for a statement. Bridgham's statement with excerpts from specific cases was as follows:

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# POVICH SEATED AS ALDERMAN

(Continued from Page Five)

June 5, 1929.

Hon. Charles H. Cahill,  
Mayor of Bath, and  
Municipal Officers.

In Re: Povich vs. McCabe

In connection with the above mentioned matter, it has been called to my attention that Mr. McCabe claims that his appeal was filed in time and that there is some question in his mind as to the legality of the decree.

I attach to this communication a copy of the Revised Statutes of Maine covering the appeal, and showing that the Statute in connection with the appeal was not legally followed in at least four instances:

(1) The decree of Justice Pattangall was rendered April 11, 1929, the appeal was filed by the attorney for Mr. McCabe on April 22, 1929, which of course, is not within ten days.

Keegan did notify the Clerk of Courts on April 13, that he was going to take an appeal but that notice is of no effect or consequence, due to the fact that the Statute says, "That within ten days after the rendition of the judgment the appeal shall briefly set forth the reasons therefor," and the appeal signed by McCabe's attorney on April 13 did not set forth any reasons, consequently it was of no value and the appeal by him on April 22, is of no value because it wasn't filed within ten days of April 11.

(2) The next reason is, that the appeal was not legally perfected, for the reason that Mr. McCabe, through his attorney, should have caused an attested copy of said appeal served upon Mr. Povich or his attorney within ten days after the appeal had been filed or in other words, within twenty days from the time judgment was rendered, an attested copy of the appeal showing the reasons should have been served on Mr. Povich or his attorney, this has never been done.

(3) The Statute says that Mr. McCabe, through his attorney, should cause copies of the petition, pleadings, findings and testimony, upon which such judgment is rendered approved by the Justice before whom the hearing is had to be printed and transmitted to the Chief Justice within twenty days after such appeal is taken with written argument. This has

never been done.

(4) The Statute says that the copy of such argument shall within twenty days be served on Mr. Povich or his attorney and this has never been done.

As the decree was rendered by Justice Pattangall on April 11, and it is now June 5, the time for filing these various notices under the Statute elapsed, consequently there was nothing else to do but for Justice Pattangall to render his final decree, and after the final decree is rendered there is no action that Mr. McCabe can take in connection with this matter.

I might say in conclusion, that the questioned ballots in the election of Alderman in Ward One had been before the Law Court of this State before, and Justice Pattangall in his decision simply followed the case of Frothingham vs. Woodsde, 102 Maine, Page 531, which without question is a leading case on point under the new ballot law, and in following this decision there is no other alternative for Justice Pattangall to decide but to declare Mr. Povich elected to the office of Alderman in Ward One.

Mr. McCabe has addressed a communication to the Board of Aldermen relative to the fact that his attorney, Judge Keegan, is out of the city and that he desires to have the matter postponed until he returns. This communication is simply to delay the situation and to prevent Mr. Povich taking his seat as alderman because there is nothing Judge Keegan or any other attorney can do in the matter.

Further, under the decree, Mr. McCabe has no legal right to interfere with the office of alderman in any manner whatsoever, and his failure to follow the decree will have a tendency to cause him to be in contempt of Court, which is considered a serious offense.

I might add that where the Court has decided Mr. Povich is legally elected to this office, to say the least it shows poor sportsmanship on the part of Mr. McCabe to either by word or act interfere with the seating of Mr. Povich.

An attested copy of the Court's decree has been served on City Clerk, which decree is equivalent to a credential, which legally entitles Mr. Povich to be seated as an alderman from Ward One and who shall be entitled to the oath administered by the Mayor.

REVISED STATUTES OF MAINE  
CHAPTER 7 SECTION 89

Sec. 89. Appeal R. S. c. 6, 72.—

Either party may, within ten days after rendition of said judgment, enter an appeal therefrom in the office of the clerk in the county where said judgment is rendered, which appeal shall briefly set forth the reasons therefor, and an attested copy of said appeal shall be served upon the appellee or his attorney within ten days after the same has been filed, in such manner as the justice orders. The appellant shall cause copies of the petition, pleadings, findings and testimony upon which such judgment is rendered, approved by the justice before whom the hearing is had, to be printed and transmitted to the chief justice within twenty days after such appeal is taken, with written argument thereon. A copy of such argument shall, within twenty days, be served upon the adverse party, or his attorney, who may forward within ten days thereafter an argument in reply, and thereupon the justices of said court shall consider said cause immediately, and decide thereon and transmit their decision to the clerk of the county where the suit is pending, and final judgment shall be entered accordingly.

Sec. 90.—Court may issue order where final judgment has been rendered. R. S. c. 6, 73. Where final judgment has been rendered, any justice of said court may issue an order to the party unlawfully claiming or holding said office, commanding him to yield up to the officer who has been adjudged to be lawfully entitled thereto, said office, and all papers, records, moneys and property connected therewith or belonging thereto, and may enforce said order by fine or imprisonment, or both, and thereupon said party in whose favor such judgment is rendered, shall be qualified and enter upon the duties of such office, and hold the same until the expiration of the term for which he has been elected.

At the conclusion of Mr. Bridgham's,

statement the Board voted to seat Povich, those voting in the affirmative being Aldermen Huse, Troop, Wright and Henderson. Mr. Povich then appeared before Mayor Cahill who administered the oath and Povich now is the regularly accredited alderman from Ward One for the remainder of the municipal year.