

BOSTON PUBLIC LIBRARY



3 9999 06660 787 8

6351.2

City Document—No. 2.

REPORT

OF

THE COMMITTEE

ON THE

REMONSTRANCE OF WM. R. HUSTON,

RELATIVE TO THE

MUNICIPAL ELECTION OF WARD 3.



ROXBURY:

JOHN M. HEWES, PRINTER.

1858.

City of Roxbury.

IN COMMON COUNCIL, JAN. 4, 1858.

Remonstrance read, and referred to a Special Committee of five, consisting of Messrs. Nichols, Tower, Bumstead, Brewer, and Batchelder.

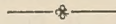
FRANKLIN WILLIAMS, *Clerk.*

IN COMMON COUNCIL, JAN. 11, 1858.

Ordered, That the Committee on the Remonstrance of William R. Huston be authorized to submit their report in print.

FRANKLIN WILLIAMS, *Clerk.*

City of Roxbury.



IN COMMON COUNCIL, JANUARY 14, 1858.

The Committee to whom was referred, on the 4th inst., the Memorial of William R. Huston, Warden *pro tem.* of Ward Three, respecting alleged informalities and errors in the returns of the last election in that Ward, have given the subject a patient and careful consideration, and submit the following

REPORT.

The Memorialist alleges that the certificates were signed in blank by the Ward Officers, and filled up incorrectly by the Clerk, and sent away without the knowledge or consent of the Warden, before the Inspectors had examined the votes, or the vote was declared in an official manner; that an inspection of the Clerk's figures showed errors; that on a statement to this effect being made to the Clerk, that officer said he did not know what business the Warden had to do with his (the Clerk's) figures; and that the Clerk's figures, on examination by the other officers, were so imperfect that they could not be recognized even by the Clerk himself.

Your Committee held a meeting at the City Hall, on Wednesday evening the 6th inst., at which the Warden, Inspectors and Clerk were present, and were examined as to the transactions in the Ward Room of Ward Three on the occasion of the last election. The City Solicitor was also present, and at the request of the Committee acted as its Clerk. It may be proper here to state that, although the witnesses were not sworn for this special purpose, they all, with one exception, that of Mr. Curtis, who is not an officer of the city, were asked, previous to giving their tes-

timony, if they considered themselves under oath, to which each one replied for himself that he considered that his evidence was to be given as a sworn officer, and that it was as such to be taken, and was a part of his duty.

It appears that the Ward Meeting was regularly opened; that the Warden being absent, an election was held, and William R. Huston was elected Warden *pro tem.*, was qualified and performed duty as such for that day. The balloting for City Officers, as was required by law and according to the legal notification to the inhabitants, was then commenced and continued until the polls were closed. That during the day and while the balloting was in progress, some of the Inspectors signed blank returns or certificates of election, and that other blanks, of a similar nature, were signed after the polls were closed, all of which were given to the Clerk, were by him filled up, and sent out for distribution, before the votes given in had been properly counted, and before the returns were verified by the Warden and Inspectors. That no Record Book was kept at the meeting, as is required by law, but that the Clerk kept a memorandum on a sheet of paper, which was so blotted and disfigured and so carelessly written, that it was impossible for any of the Ward Officers, including himself, to decipher or understand it.

Your Committee append to this Report an abstract of the testimony taken by them, to which they invite your particular attention, as exhibiting a gross dereliction of duty as well as unpardonable carelessness, not only on the part of the Clerk, but of the Warden *pro tem.* and all the Inspectors. The whole conduct of the former appears to have been marked by a wilful disregard of the State laws and the City Charter, attended by incivility to his brother officers.

Your Committee, in this connection, do not think it beyond the limits of their duty to call the attention of the Council to the statute of the Commonwealth, imposing a penalty on Town and City Officers for neglect of certain duties, which was approved by the Governor May 2, 1848, and is printed in the Municipal Register for 1857. By this statute one at least of the Ward Officers of Ward Three is, in our opinion, liable to a heavy penalty, on his own confession, independent of the evidence of others. It appears

that the law requiring all votes given in at election shall be declared and registered in open Ward Meeting, was totally disregarded ;—no such declaration having ever been made, and the registration, if made at all, having been made three days after the meeting, in private, at the house or office of the Clerk.

The certificates of election, having been signed before the result of the balloting was or could be known, were filled up by the Clerk, having, as it now appears, false statements, in less than an hour after the polls were closed, and were sent as official notices by the proper officer. No blame, however, is attributed to the Constable, Mr. Ford, as he only acted in the line of his duty.

That the whole proceedings respecting the election were known to all the Ward Officers to be irregular, is shown in the fact that the Warden *pro tem.* made several statements to the meeting respecting the results of the balloting, remarking at the same time that no one of the Officers would make oath to their correctness. Such statements can in no way be considered the declarations in open Ward Meeting which are required by law, and all the Officers state that they are unable to give the names of the persons elected.

The Clerk's conduct throughout the day appears to have been in no respect in consonance with a sense of official propriety. His answers, when called upon for explanation, he confesses were intentionally evasive, and in one instance he denied the right of the Warden *pro tem.* to call in question or examine his figures. He acknowledges, too, that he found, three days after the election, and corrected several errors in the addition of figures on his original memorandum, some of which were in reference to the votes for members of the Common Council ; and he says, but will not swear, that no one error made a difference of three or four, perhaps seven votes ; while, according to his returns, the Councilmen were elected by the small plurality of from ten to twenty votes, and one by eight votes. This original memorandum he has destroyed, and there is now no possible means of verifying his statements.

In closing this Report, your Committee would remark upon the great importance, on all occasions, of requiring at the hands of the Officers charged with the duty of attending at

the polls, and supervising every, even the most inconsiderable elections, the strictest accountability, and intrusting them only to competent persons. The latter is beyond the control of the Council, as the choice of Ward Officers belongs to the voters of the different Wards, who are amply able to take care of their own interests. But in regard to the former, the City Council has a responsibility, as its two branches are judges of all returns made to them, and may, as they ought to do, examine into all returns made to them. If such practices as we have detailed are allowed to exist once without rebuke and correction, they may, and possibly will be repeated; and in a closely contested election for member of Congress, might deprive the lawful person of his seat, or raise a question in the National Legislature which would occupy its attention for a long period, to the detriment of public and private business, involving much expense to the government and to individuals.

In this instance, the wrong person is known to have received an official certificate that he is Clerk of the Ward, and another that he is a member of the School Committee, while the person actually chosen Clerk is unjustly deprived of the pleasure and honor of serving his constituents.

Under the circumstances, your Committee report that, in their opinion, the certificates of election issued to the Common Councilmen, and all the Ward Officers of Ward Three, on the second Monday of December, 1857, are illegal; that the election held on that day was not conducted according to law; and that the said offices should be all declared vacant. And your Committee recommend the passage of the accompanying order.

All of which is respectfully submitted.

ROBERT C. NICHOLS,	} <i>Committee.</i>
EBEN'R W. BUMSTEAD,	
ALBERT BREWER,	
ALBERT BATCHELDER,	

[ORDER.]

City of Roxbury.

—◆—
IN COMMON COUNCIL, JAN. 14, 1858.

Ordered, That the Mayor and Aldermen be forthwith notified, that the recent election of members of the Common Council from Ward Three has been declared void by this Board; and that four vacancies exist in this Board from said Ward; and that the Mayor and Aldermen be requested to order a new election for the purpose of filling said vacancies.

TESTIMONY BEFORE THE COMMITTEE.



Before a Special Committee of the Common Council, to whom was referred the Protest from William R. Huston, in relation to the last City election in Ward 3. The following is a condensed statement of the testimony of Nelson Curtis and the Ward Officers.

TESTIMONY OF NELSON CURTIS.

Was not present when the result of the voting was declared. When I entered, the Clerk had left the room and taken the account with him ; one of the Inspectors was also absent. On their return, one of the Inspectors took the Clerk's account and called off the figures, and another Inspector cast them up. Their examination varied the result from that of the Clerk. The Clerk had the result of the election on a sheet of paper which purported to be his record. The Clerk stated that it was difficult for him to understand his own figures. The discrepancy related to Councilmen, School Committee and Ward Officers. My impression is, that the Clerk could not carry out the figures correctly. At this time the meeting was not adjourned.

TESTIMONY OF WILLIAM R. HUSTON.

I was sworn in as Warden, pro tem. of Ward 3, on the day of the last election. After the balloting was over, Mr. Gragg requested me to sign certificates. I examined them and think some names were written in. I hesitated at first, and he said it was the usual custom. I then signed some ten certificates, when some one told me that he did not believe the Clerk competent. I run up one column of his figures, and I did not make them come out as he did. I told the Clerk so, and he replied that his count was right. I cast up the figures and found them wrong. The Clerk then said, "this is my private document ; if you have any doubt, you can count the votes." He said he knew some of the votes had been carried away. After the return of the Clerk and the absent Inspector, they went over the figures and made most of them out. The figures were so blotted and so imperfectly made, as to make it impossible to add them correctly, and the Clerk

said, after we got through, that he could not tell whether the figures were correct or not. I declared the result from a piece of paper handed to me by one of the Inspectors, (Mr. Wiggin,) and at the same time stated to the meeting, that the Clerk and Inspectors would not swear to the result. I did not consider this an official declaration. No official declaration of the votes for Councilmen and Ward Officers have been made. The Clerk filled up the certificates and sent them away without my knowledge or consent. This was done before the Inspectors had examined the Clerk's record. I did not see the Clerk have any book. I was not aware that the charter required a record book.

TESTIMONY OF J. N. PENNOCK, THE CLERK OF THE WARD.

I was sworn in as Clerk of Ward 3, on the day of the last election. I have not been able to get any book. I kept the records on a sheet of paper. I took the figures from Mr. Gragg and Mr. Harmon. Seventeen of the supposed errors, as made out by the Inspectors, I found were not errors. I could correctly read my own figures. There were not any blots on my record. I discovered no errors myself that evening. Had no doubt, in my own mind, in regard to my figures. Some two or three days after the election, I made a copy of the record. I found some errors, which I corrected; some of them were against the Councilmen. The errors consisted of three or four, perhaps seven. I will not swear they did not exceed seven. The highest plurality received by Councilmen, about twenty odd, and the lowest about ten. The election on that day was very close. Some of the Councilmen may not have received more than five plurality, but cannot swear to it. When asked by the officers to define my figures, I gave evasive answers; this was my reason for refusing to sign or swear to their figures. I destroyed the original record. I will swear the copy is a correct result of the ballot, as the Inspector called them off. The Inspectors did not examine the returns before I filled up the certificates. The officer took them. I sent a certificate to Dr. Streeter, when it belonged to Dr. Nute; this was done by accident, owing to the confusion in the room. When Mr. Gragg asked me to define my figures, I evaded his questions, and did not answer in accordance with the responsibility of my office.

TESTIMONY OF MOSES GRAGG, INSPECTOR.

Mr. Harmon and myself assorted and counted. Mr. Wiggin attended the check-list. I gave the Clerk the result of all the votes. I signed certificates about two o'clock. After the balloting closed I asked the Warden to sign certificates. He said, is this right? I said we had been in the habit of so doing, and I presumed it would be all correct. The Warden said "I am not satisfied; here is an error in my own name of nine votes." The Clerk said, "Count the ballots." Mr. Harmon said some of the ballots had

been taken away. Mr. Harmon took the check-list and called off the figures; added up Mr. Hall's column and found it correct. On the next column Mr. Harmon hesitated. I asked the Clerk to explain, and he hesitated a minute or two. Mr. Huston asked the Clerk to explain his figures, and the Clerk said "I don't know that this is any of your business." The Clerk then took his Minutes and left. The Clerk was sent for and returned. We concluded to revise the list. I took the Clerk's list and called them off, and when I was unable to make out his figures I applied to the Clerk. The Inspectors made up the result. Mr. Huston asked them if they thought it correct, and one of them said not. The Clerk said he should not sign their adding up. The Clerk said he should not consider the last adding up as correct as the first. I saw no record books. We used to have a ward book. There was an error in Mr. Way's name of four more votes in the last adding up. There was an error in Dr. Streeter's vote; he got over 200 votes by the first count, and about 180 by the last. The three Inspectors had 310 votes by the first count, but the last count gave two Inspectors 208 votes. The paper was not much blotted; the figures were imperfectly made and pointed. In my opinion, by the last adding up the Councilmen were elected. I am confident the Clerk was not elected. The certificates were called for by the Warden, and it was stated that they were gone. Mr. Harmon stated that a number of the ballots were taken away by the boys.

TESTIMONY OF JOHN M. HARMON, INSPECTOR.

I signed certificates about 2 o'clock. After the polls closed Mr. Wiggin signed. The Clerk read off the votes to Mr. Wiggin. Mr. Huston looked over a column and said he was not confident they were correct, and wanted to look over and count again. The Clerk told him he might count the votes. I told him he could not do that as a portion of the ballots were missing. Mr. Gragg read the Clerk's figures, and the first column proved correct. On the second column the Clerk was asked about two figures,—if they meant eleven or two ones. The Clerk looked and hesitated, and told him he did not know he had any thing to do with it. When Mr. Gragg came to figures he did not understand he applied to the Clerk, and Mr. Pennock answered, "I guess so," but gave no decided answer to the questions. Mr. Huston asked me if I would give my signature to the count, and I told him I would not. I should be unwilling to swear from my own knowledge of the balloting, or from examining the Clerk's record, who the gentlemen are that were elected to the several Ward Offices.

TESTIMONY OF GEORGE WIGGIN, INSPECTOR.

After the polls closed I signed the certificates. The Clerk gave me off his figures. There was a question as regards twenty-one, or if it meant two and a one. I did not consider Mr. Pennock's answers definite. I did not

place reliance enough upon the record to indorse it. I never saw the certificates after they were filled out. No declaration of the balloting has yet been made. We gave the result as nearly as we could. I did not consider the Clerk's manner, in deciding on his own figures, was proper for a person in deciding on such important matters. I cannot swear from my knowledge of the balloting, or on examination of the Clerk's record, what are the names of the gentlemen who were elected to the various Ward Offices. I found, on going over the Clerk's figures, that Mr. Swift had sixty more votes for Clerk than was given him by Mr. Pennock.

TESTIMONY OF HENRY L. FORD, CONSTABLE AT WARD 3, AT LAST ELECTION.

After the polls closed a large crowd of people were in the Hall. At a quarter before 7 o'clock I asked the Clerk if the returns were ready. He said they were. There were other envelopes; I supposed certificates were inclosed in them; they were directed to Messrs. Little, Rogers, Mayall, Way, Dr. Cummings, and Dr. Streeter. I delivered most of them that night. I was requested to go to the City Clerk's office and obtain the return for Mayor, Aldermen and School Committee at large. I did so, and the Warden declared the vote; I then carried it back. The Warden told me to go and bring the Clerk back. I told him I could not arrest him. I do not consider that there has been any official declaration made of the balloting. I examined the figures of the Clerk, and found his reckoning against all the names incorrect except two. I found an error of eighty votes in favor of Dr. Streeter that belonged to Dr. Nute. I found Mr. Swift was elected Clerk instead of Mr. Killian.

OPINION OF THE CITY SOLICITOR.



City of Roxbury.

JANUARY 12, 1858.

In compliance with the request of the Special Committee of the Common Council, to whom was referred the communication of Mr. William R. Huston, in regard to the recent election in Ward Three, I respectfully submit the following opinion, on that part of the election which relates to members of the Common Council.

The 6th section of the City Charter, requires all votes given to be “assorted, counted, declared and registered in open Ward meeting, by causing the names of persons voted for, and the number of votes given for each, to be written in the Ward Records in words at length.”

While it is the obvious duty of all officers, acting at elections, scrupulously to observe all the forms prescribed by law, and while they cannot disregard any of them consistently with their oaths of office, yet a literal compliance with all of them has not been regarded as absolutely essential to the validity of an election. There are many instances, in which elections have been held valid, in which there have been some departures from these rules; but I know of no case, worthy of being regarded as authority, in which an election, or an alleged election, has been held valid, in which there existed any reasonable doubts as to what candidates received the majority or plurality of the votes cast, or in which there existed any uncertainty as to the result of the balloting. The law does not sanction elections which rest upon probabilities or conjectures. If the election has been so conducted, that the Warden and Inspectors, (whose duty it is to receive, sort and count the votes,) are unable to state, with accuracy, the result of the balloting, the election is void. If the Committee believe, from the

testimony which has been presented, that any uncertainty exists on this point, I am of opinion that they should not hesitate to report that the election is void.

I am of opinion, that the form in which the declaration of the vote was made, would not, of itself, be sufficient to vacate the election.

I am of opinion, (guided by a precedent,) that the failure of the Clerk to register the votes in open Ward meeting, in the manner required by the City Charter, will not, of itself, vacate the election. But if the meeting was so irregularly and loosely conducted, that the Clerk was unable, subsequently, to make an accurate record of the balloting and the proceedings at the meeting, the election, for reasons before stated, is void.

There was testimony presented to the Committee, that the certificates of election were irregularly issued.

A certificate is simply the evidence of an election. It forms no part of the election itself. A correct certificate must, from its nature, be subsequent to the election. Persons duly elected may be admitted to seats without any certificates, if they furnish other satisfactory evidence of their election. The improper issuing of the certificates may render them valueless as evidence, but will not, in my opinion, vacate the election.

WILLIAM GASTON.



