

New York (city) - Assistant aldermen, Board of

**BOARD OF ASSISTANTS,**

JULY 18, 1831.

*The Report of the Special Committee in relation to the Fifth Ward election, having been read, was laid on the table, and ordered to be printed.*

B. CRANE, Clerk.

THE Committee to whom was referred the Petition of Francis Kain and others, for a Special Election in the Fifth Ward,

**RESPECTFULLY REPORT,**

That they have had the same under consideration, and in order to put the Board in possession of all the facts connected with this important subject, they have examined the witnesses produced by the respective parties. The testimony of those witnesses is fully detailed in the depositions herewith submitted, as a part of this their report.

The grounds on which the petitioners claim a new election, are set forth in the three charges specified in said petition. The first specification charges George W. Arnold, one of the Inspectors, with attempting to influence John Thompson, an elector of said ward, to vote for Gen. Lamb, by offering to extend to him patronage in the line of his business. This charge, if true, cannot affect the legality of the election, but will only subject Mr. Arnold to a criminal prosecution. The charge, however, although sworn to by Mr. Thompson was denied by the Inspector.

The second charge assumes a more important aspect, and calls for the attentive and dispassionate consideration of this Board. It is alleged and fully proved, that the Inspectors did, on two occasions, open the ballot box—once to put in a large ballot presented to the said Inspectors by John B. Schmelzel, one of the electors of said ward, and once to press down the ballots in the box, after it was nearly full. The only apologies offered by the two Inspectors, who appeared before your Committee, are, that the hole in the lid of the box would not admit the ballot of Mr. Schmelzel, and that the box would not contain all the ballots unless they were pressed down. The boxes now used by the Inspectors of the different wards, are the same that were procured some years since, when the number of votes given was much less than it is at present. The fourth section of the amended Charter declares, that all the provisions of the law now in force, in regard to the notification, duration and conduct of Elections for Members of Assembly, shall apply to the annual election for Charter Officers. That law declares, that the Inspectors shall provide a box, and that an opening shall be made in the lid thereof, not larger than shall be sufficient for a single closed ballot to be inserted therein, at one time, through which each ballot shall be inserted; and that the same shall not be opened during the Election, except for the purpose of placing the poll list therein, at each adjournment of the poll. The Committee believe that the Inspectors acted in perfect good faith in opening the box, and that no evil consequences did actually result from it. The fact that the number of ballots agreed precisely with the poll list is strong evidence that no ballots were abstracted. It does not appear from the testimony before your committee, nor is it pretended by the petitioners, that the opening of the box was productive of any injury to Gen. Arcularius and Mr. Hone, or tended to vary or change the result of the election. If every irregularity committed by the Inspectors, when no fraud is alleged or proved, shall be a sufficient cause for rendering an election void, then almost every election can be set aside. The provisions of the law, requiring

the aperture in the lid of each ballot box to be not larger, than shall be sufficient for a single closed ballot to be inserted therein, is as imperative on the Inspectors as that, which declares that the box shall not be opened. No one will, however, pretend that the holes in the lids of all the ballot boxes are of that precise dimension, and if they are not, that it would render an election void. It may be asked why a violation of the provisions above referred to, will not vitiate an election, as well as an infraction of that provision, which declares that the Inspectors shall hold the election on the day and at the place specified in the notice posted up by them? The answer is easy and the reason manifest. If the election should be held on a day or at a place other than that specified in the notice, the electors would be misled and thereby be prevented from exercising the right of franchise. In the present instance, the electors have had an opportunity of exercising that invaluable privilege, and there is no evidence that the will of the majority has been defeated by the conduct of the Inspectors.

If precedents are wanted to sustain the views entertained by the Committee on this subject, they would refer this Board to a decision made by the Common Council, December 14th, 1829, on the late election law, which provided that the poll should be opened at or before 10 o'clock in the morning, and should be kept open until the setting of the sun. The charge brought against the Inspectors of the Tenth Ward in that case, was, that on each of the days of the election they adjourned the poll for one hour for the purpose of dining. That proceeding of the Inspectors was in violation of the letter of the law, and was a much stronger case for a new election, than the one now under consideration. But as it was productive of no evil consequences, the election was sustained by a vote of twenty-six to two.

The Committee will also refer the Board to a decision of the Supreme Court of this State, on the law regulating the manner of drawing Jurors for the trial of causes. The statute declares, that the name of every juror shall be writ-

ten on distinct pieces of paper or parchment, as near as may be of equal size, and that all shall be rolled up as near as may be in one and the same manner. The court, however, decided that if the pieces of paper were not folded up, it was not a sufficient cause for setting aside a verdict. That the statute was merely directory, and as no abuse or injury was pretended the proceedings would be sustained.

The last charge is that Cyrus Bedell and Henry R. Shanklin, the candidates for the office of Constable, handled the ballots and assisted the Inspectors in canvassing the votes. This allegation, so far as relates to Mr. Bedell, has not been substantiated. But the testimony was very clear, that Mr. Shanklin opened some of the ballots, and passed them to the Inspectors. He did not, however, touch a single ballot until they had all been twice counted by the Inspectors and compared with the poll list. It may be proper to remark, that Mr. Shanklin could have no motive to abstract or change the ballots, as there was no opposition to him, and he received nearly an unanimous vote.

The petitioners, however, do not pretend that Mr. Shanklin abstracted any ballots, nor that he did any act which tended to change the result of the election. The canvass was made by the Inspectors according to the provisions of the election law, and the opening of the ballots by Mr. Shanklin was done under the immediate superintendance of said Inspectors, and in the presence of a large concourse of electors who felt a deep interest in the final result, and some of whom were appointed by the friends of the different candidates, to attend at the canvass to see that it was impartially done.

The Committee therefore recommend the adoption of the following resolution as expressive of their opinion:—

*Resolved,* That there is no sufficient cause for ordering a special election in the Fifth Ward.

WM. VAN WYCK,  
J. R. RHINELANDER,  
M. M. QUACKENBOS.

**SEPARATE REPORT OF  
MR. RHINELANDER.**

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The question occurs, upon what grounds can an election be set aside? can it be done by a violation of the letter of the law? If it can, then the consideration must be an abstract question, stripped entirely of extrinsic bearings. It is not necessary then, that the electors should be parties; but a separate and independent authority exists which is imperative to any rights they may have. The Statute prescribes the mode of holding the election, the time, the form of the ballot box, and yet it will not be contended that any slight deviation would invalidate it; for if this be the case it would be in the power of a majority of the Inspectors who were in league with the minority of the electors, to defeat the will of the majority. The law prescribes these forms as strong guards to prevent any frauds practised by the electors themselves, but it does not prevent the exercise of a discretion which would not interfere with the rights of any elector. The letter of the law must be preserved then only in connexion with these rights. Due caution must however be taken that irregularities do not take place which shall establish precedents that will have an absorbing power upon the statute.

Can any act of the Inspectors invalidate an election?

No act which would not diminish or increase the number of votes. But when it extended to collusion, the election would be void. No separate act involving informality would avail. These appear to be the two questions which are embraced by the complainants. The difficulty which presents itself in the most urgent manner will be found in the discretionary

power which may be lodged with the inspectors. The law certainly never contemplated any aids but those for which it has provided under oath. There certainly was great looseness in the management of this election in permitting interested parties to interfere. It was a singular negligence if not culpable indifference to the established usage, and one which should carry a severe censure upon the Inspectors. If the Election can be set aside, it must be upon the grounds of interference by those who were not under oath ; but as the will of the people has been expressed, notwithstanding these irregularities, I am opposed to a new election.

J. R. RHINELANDER.

## TESTIMONY.

Thomas Cleary being sworn, saith that the deposition annexed to the petition of Francis Kain and others, which was subscribed and sworn to by witness, on the 10th day of May last, is true. That he was in the store of Mr. Arnold, at the time he held the conversation mentioned in said deposition—Mr. Arnold informed witness that the ballot box was opened to press down the ballots, because the box was too small.

Samuel James Lowe being sworn, saith that the deposition annexed to said petition, which was subscribed and sworn to by witness, on the 9th day of May last, is true. That he, witness, made a bet on the late charter election of the Fifth Ward, which witness sold out before the canvass, and has no interest now; that he was present at the canvass on the first evening. The three Inspectors and Mr. Shanklin, one of the candidates for Constable, were engaged in canvassing the votes; cannot say positively, whether Mr. Shanklin handled the ballots before or after the Inspectors had counted them. After they had canvassed one thousand, and while they were on the eleventh hundred, Mr. Niven objected to Mr. Shanklin's touching the ballots. Mr. Bedell only put the ballots on a wire after they had been canvassed. He was very attentive to the canvass, but did not see Mr. Shanklin abstract any of the tickets, although he might have done it without being discovered by witness; the Inspectors ceased canvassing that evening after they had finished eleven hundred. The ticket headed with the name of Henry Arcularius was ahead at the close of the first evening's canvass between thirty and forty votes, say 34. There was no opposition to Mr. Shanklin, but there was to Mr. Bedell.

John Thompson being sworn, saith that the deposition hereunto annexed, which was subscribed and sworn to by witness, on the 12th day of July instant, is true. That he, witness, is not intimately acquainted with Mr. Arnold. His, witness's shop is in Canal-street.

William D. Hughes being sworn, saith that the deposition annexed to said petition, which was subscribed and sworn to by witness, on the 9th day of May last, is true. Further saith, that Bedell one of the candidates for Constable in the Fifth Ward, said in the presence of witness, that the opposition, (meaning the friends of General Arcularius) now knew that they had better let him, (witness) alone; that said Bedell handled the ballots before they were canvassed by the Inspectors; he thinks that Bedell opened some of the ballots and then passed them to the Inspectors; his attention was directed particularly to the manner in which the canvass was conducted; is not acquainted with any of the Inspectors except Mr. Arnold; was not present at the canvass on the evening the poll closed, but was on the following day.

Robert H. Morris being sworn, saith that he attended the canvassing of the votes taken at the recent Charter Election of the Fifth Ward, on the part of the Republicans of said Ward. The Inspectors reported that it appeared from the poll lists kept by the clerks, that 1973 votes had been given; but when the ballots were assorted in parcels of 100 each, there appeared to be only 1969; on that evening the Inspectors discovered that one bundle contained 101 ballots. Mr. Shanklin assisted in canvassing eleven hundred ballots, sometimes opening the tickets and bundles—Mr. Arcularius was ahead that evening. Mr. Shanklin left the room several times during the evening. Witness was placed there to attend to the mode of canvassing, and was not struck with the impropriety of Mr. Shanklin's handling the tickets; Mr. Niven first suggested that it was improper: Mr. Russell one of the Inspectors, remarked that the Inspectors could see all that was going on: Mr. Shank-



lin handled the ballots in the same manner that the Inspectors did; witness's impression is, that Mr. Niven did not make any objection until nearly the close of the evening; Shanklin continued to canvass for the remainder of the evening; he has no recollection that the Constables handled the tickets until they had all been counted by the Inspectors twice; Bedell did not touch any tickets before they were canvassed.

Dennis Brink being sworn, saith that he was present at the canvass of the first evening for a few moments, at about 9 o'clock; he saw the constables canvass; Mr. Shanklin opened the ballots and he thinks Mr. Bedell did also; he thinks that the Inspectors and Mr. Shanklin set by the side of each other—they were in such a situation that they might have abstracted tickets without his seeing it done; he, (witness) was near the table, but his view of it was not very perfect; he could see all the Inspectors at one view; they were seated by a square table; but cannot say what was their relative situation to each other.

James H. Hoffman, Jun. being sworn, saith that the deposition annexed to said petition, which was subscribed and sworn to by witness, on the 9th day of May last, is true. He saw the box opened only once during the election, and it was then opened to put in a ballot offered by Mr. Schmelzel, which could not be inserted through the aperture in the lid; does not think that other ballots could have been put in at that time; the ballot offered by Mr. Schmelzel was tied up very tight and put in the box as received from the hands of Mr. Schmelzel: is not certain which of the Inspectors put it in; but thinks Mr. Russell did; he was attentive at that time and thinks other ballots might have been put in the box and he not see it done; he stood in a situation where he could look directly in the box, which appeared to be about half full.

Arthur B. Hauptman being sworn, saith that the deposition annexed to said petition, and which was subscribed and sworn to by this deponent on the 9th day of May last is true. That the Inspectors counted all the ballots, and put them in bundles of one hundred each. It afterwards ap-

peared that 2 bundles contained 101 each ; he does not know that Mr. Bedell handled any of the ballots before they were canvassed by the Inspectors ; Mr. Shanklin opened some of the ballots and assisted in the canvass. It did not strike witness as improper that the Constables should assist in the canvass ; Mr. Bedell assisted in opening one hundred ballots.

John M. Lester being sworn saith, that he was present at the canvass on the first evening, and saw Shanklin and Bedell engaged with the Inspectors in the canvass.

George W. Arnold being sworn saith, that he was one of the Inspectors of the Fifth Ward—Mr. Russell opened the box to put in a ballot offered by Mr. Schmelzel ; it was tied up and could not be put in the box through the aperture in the lid. He, witness, kept the key of the box at night, Mr. Russel the seal, and Mr. Westervelt the box.

The ballot offered by Mr. Schmelzel was the 65th ; the box was opened only once to put in a ballot ; the bundle put in by Mr. Schmelzel contained only one ballot ; the box was opened once more, and that was on the second day, for the purpose of pressing down the ballots ; Mr. Russel pressed them down with a book. It was not opened again except to put in the pole list. They proceeded to canvass very soon after the poll was closed. The Inspectors sat by a round table. It appeared that the poll list and the number of ballots in the box did not agree by 2 or 3 ; they finally agreed precisely ; some of the bundles contained 101 instead of 100 ; two ballots being found together were destroyed. Messrs. Shanklin and Bedell were not near the table until all the tickets had been first twice counted by the Inspectors. Mr. Shanklin did not interfere with the ballots except to open them and lay them before the Inspectors. Mr. Bedell did not touch a single ticket until they had been canvassed. Whilst they were canvassing the eleventh hundred Mr. Niven objected to the Constables handling the ballots. Witness is not acquainted with Mr. Thompson ; never was in a blacksmith's shop in Canal-street in his life, and never held such a conversation as is set

forth in the affidavit of Mr. Thompson with said Thompson nor with any other person; that the affidavit of said Thompson is false so far as relates to witness. Witness does not now, nor has he for the last 20 years owned a horse. Witness did not know that he was to be an Inspector until the latter part of March, when he received a notice of his appointment from General Morton, which notice bears date the 22d day of March last. Shanklin frequently left the table to procure water and other things required by the Inspectors. Shanklin did not assist in the canvass after it was suggested by Mr. Niven to be improper; and when he did assist it was only to open the ballots for the Inspectors. Witness thinks that Shanklin supported Gen. Arcularius, who was ahead the first night of the canvass. Mr. Bedell did not touch a ticket to witness's knowledge until it had been canvassed.

Robert M. Russell being sworn saith, that he has heard the testimony of George W. Arnold, and that the same is true.

Cyrus Bedell being affirmed saith, that he did not touch any of the ballots until after they were canvassed.

Henry R. Shanklin being sworn saith, that he was hired to attend at the poll of the Fifth Ward as a peace officer; he was not in the room much until the ballots were tied up in bundles of 100 each; he opened some of the ballots while the Inspectors were canvassing, but does not think he handled more than one hundred.

Solomon Seixas being sworn saith, that he was a Clerk to the Inspectors of the Fifth Ward. It appeared by the poll list that 1973 votes had been taken; when the ballots were counted there appeared to be 1970. On the first night the Inspectors ascertained that one bundle contained 101 ballots; the next day they found two more bundles which contained 101 each, making the poll list agree precisely with the number of ballots in the box. Two ballots were found folded together which were destroyed according to the direction of the statute. Mr. Schmelzel put in the 65th vote on the first day.

*City and County of New-York, ss.*

John Thompson of said city, being duly sworn, doth depose and say, that he is an elector of the Fifth Ward of said city; that he is a Blacksmith engaged in an extensive business, and has many hands in his employ; that previous to the late Election for Charter Officers, George W. Arnold, one of the Inspectors of the Election, called at the shop of this deponent, and in a conversation with this deponent, spoke favourably of the Charter Ticket headed Anthony Lamb; and said in said conversation, that if he, this deponent, would vote for the ticket headed Anthony Lamb, that he, the said Arnold, would send his horses to this deponent to shoe; that horse shoeing is a considerable branch of this deponent's business; that said offer was not made as this deponent understood, in jest; but that it was made and intended, as this deponent verily believes, with the intention of influencing the electoral vote of this deponent by pecuniary means.

JOHN THOMPSON,

Sworn before me, this 12th day of July, 1831.

D. D. WILLIAMSON,

*Commissioner of Deeds.*

[Copy of the affidavit referred to in testimony of James H. Hoffman, Jun.]

*City and County of New-York, ss.*

James H. Hoffman, Junior, an elector of the Fifth Ward of the City and County of New-York, being duly sworn, doth depose and say, that on the twelfth day of April last, being the first day of the Annual Election for Charter Officers under the amended charter, this deponent attended the poll of the election held in and for the Fifth Ward of the said city—and this deponent further saith, that after the poll was opened, and after many of the electors had voted, and their ballots were in the box provided for that purpose, he, this deponent, saw one of the Inspectors, about the hour of twelve o'clock at noon of that day, while the poll of the election was open, unlock the ballot box, in which the votes of several of the electors had been previously put in as aforesaid; and while the said box was so unlocked, he, this deponent, saw a bundle of paper put into the said ballot box while the lid of the said box was hoisted and open; and that the said bundle so put in by one of the said Inspectors, was not put into any opening into the lid of the said box, nor was the said ballot box locked at that time; that the said bundle put in was offered by a person by the name of John B. Schmelzel, an elector of the said ward; and that whether such bundle so put in the box as aforesaid, contained or was connected with one or more ballots, this deponent cannot say.

JAMES H. HOFFMAN, JUN.

Sworn before me, this 9th day of May, 1831.

J. M. LESTER,

*Commissioner of Deeds.*

[Copy of the affidavit referred to in testimony of Arthur B. Hauptman.]

*City and County of New-York, ss.*

Arthur B. Hauptman, of the City of New-York, painter, being duly sworn, doth depose and say, that he is and was an elector of the Fifth Ward, for the last year past;

that this deponent was selected by his political friends, with the assent of the inspectors, to attend and inspect the mode and manner of canvassing the ballots for Charter Officers, given by the electors of the Fifth Ward at the late Election for Charter Officers. That he, this deponent did accordingly attend and inspect the mode and manner in which the ballots were canvassed. And this deponent further saith, the persons engaged in handling, counting, and assorting said ballots for Charter Officers, from the ballot box, were George W. Arnold, Robert M. Russell, and William Westervelt, Inspectors of said Election; and also Cyrus Bedell and Henry R. Shanklin; the two last named persons had been the Constables or officers assigned to attend the poll, but were neither inspectors nor check clerks, but that both the said persons were candidates at the said election for the office of Constable. That some of the electors standing by during the canvass, objected to the right assumed by the Inspectors, of permitting the said Cyrus Bedell or Henry R. Shanklin to handle, count, and assort said ballots; objecting that these men were not under oath, and that there was no provision by law by which they could be permitted to interfere with the canvass. Notwithstanding these objections, those persons were permitted by the said Inspectors to continue to count and assort and open said ballots.

ARTHUR B. HAUPTMAN.

Sworn before me, this 9th day of May, 1831.

J. M. LESTER,

*Commissioner of Deeds.*

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[Copy of the affidavit referred to in testimony of Thos. Cleary.]

*City and County of New-York, ss.*

Thomas Cleary, of the said city, Esquire, being duly sworn, doth depose and say, that he knows George W. Arnold, of the Fifth Ward, a dealer in lotteries. That said Arnold informed this deponent, that he was one of the Inspectors and presided as such at the late Election for Charter Officers in the said Fifth Ward. And the said Arnold further informed this deponent, in several different conversa-

tions, that the ballot box was unlocked by the Inspectors of the said Election, while the poll was open to receive the votes of the Electors of said Ward; and that while the said box was so unlocked, and the lid raised by the said Inspectors, a vote was put in the said box by the Inspectors, and that he knew it was contrary to law. And further, the said Arnold informed this deponent, in several different conversations, that while the said poll was opened for the purpose of receiving the votes of the Electors of the Ward, the said ballot box was opened several times, as the said Arnold observed, to press down the tickets. That said Arnold did not state whether any tickets were taken out or put in on such occasions last referred to.

THOMAS CLEARY.

Sworn to before me, this 5th day of May, 1831.

THOMAS O'CONNOR,

*Commissioner of Deeds.*

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[Copy of the affidavit referred to in testimony of Saml. J. Lowe.]  
*City and County of New-York, ss.*

Samuel J. Lowe, an Elector of the Fifth Ward of the city of New-York, being duly sworn, doth depose and say, that he, this deponent, is acquainted with John Thompson, a blacksmith, in Canal-street. Mr. Thompson is an elector of the Fifth Ward, who has in his employ a number of mechanics. Said Thompson is a highly respectable man, perfectly unimpeachable. And this deponent further saith, that said Thompson informed this deponent, and which from the high standing of Mr. Thompson, this deponent verily believes to be true—that George W. Arnold, one of the Inspectors at the late Election for Charter Officers, and who acted as Inspector on that occasion, called on the said John Thompson previous to that Election, at his blacksmith shop in Canal-street, and told the said Thompson, that if he would vote for the ticket headed Anthony Lamb, he the said Arnold, would give him, the said Thompson, his horse to shoe. And this deponent further saith, that the said Thompson at the same time informed this deponent, that he was willing to testify that such offer was made to him by

the said Arnold, when called upon. And this deponent further saith, that he is one of the ward committee of the Fifth Ward, regularly constituted. That in a conversation with said Arnold, he proposed, that if we, meaning the regular democratic party in the ward, would support Anthony Lamb for Alderman, that he, the said Arnold, would pledge himself to support, for the residue of the charter ticket, any candidate the party might name. And this deponent further saith, that the said George W. Arnold was a member of the Committee taking an active part that nominated Anthony Lamb for Alderman; and that said Arnold took an active part throughout the whole contest. SAM. J. LOWE.

Sworn before me, the 9th day of May, 1831.

J. M. LESTER,

*Commissioner of Deeds.*

[Copy of the affidavit referred to in testimony of Wm. D. Hughes.]  
*City and County of New-York, ss.*

William D. Hughes, of the City of New-York, being duly sworn, doth depose and say, that he is well acquainted with Cyrus Bedell one of the candidates for Constable at the late Election for Charter Officers in the Fifth Ward. Deponent heard said Bedell, in a conversation in the office of the Clerk of the 5th, 8th and 14th Wards Assistant Justices Court, state, that Henry Arcularius would have had from one hundred and fifty to two hundred votes majority, if they (meaning the friends of General Arcularius) had not attempted to run him out of the office of Constable; that in consequence of their putting up Welch, his friends had felt so indignant, that they made every exertion and caused the defeat of Henry Arcularius. Deponent further saith, that he hath heard said Bedell repeat the aforesaid conversation, and further state, that from the time said Welch was run as a candidate for Constable, every kind of exertion was made to defeat the Election of the ticket headed Henry Arcularius. And further deponent saith not.

WM. D. HUGHES,

Sworn before me, the 9th day of May, 1831.

J. M. LESTER,

*Commissioner of Deeds.*