Opinion of John Marbury in reference to the election held in Georgetown, D.C. Recorder Gould's opinion in reply. 1859.
OPINION OF JOHN MARBURY, ESQ.,

IN REFERENCE TO

THE ELECTION HELD IN GEORGETOWN, D. C.,

FEBRUARY 28, 1859.

RECODER OULD'S OPINION

IN REPLY TO

QUESTIONS ASKED BY JUDGES OF 2D PRECINCT.

SUPPLEMENTAL RETURN

MADE BY A

MAJORITY OF JUDGES OF THE 2D PRECINCT.

WASHINGTON:
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1859.
OPINION OF JOHN MARBURY ESQ.

My opinion has been asked in reply to the following questions having reference to the late election:

1st. What are the duties required by law of the clerk of the Corporation in relation to the returns made by the Judges of Election in the several precincts? 2nd. When said Judges have signed their returns, and filed them with the Clerk, can they, at any time, amend the same in order to correct mistakes therein? How should such corrections be made? With whom filed? And what the duty of the Clerk in respect thereto.

3rd. What measures can be taken and by whom, to ascertain the true result of the Election?

To the 1st enquiry I answer, that the law requires the Clerk to receive from the Judges of Election and keep safely the returns made by them, and further than this, nothing more is required of him expressly. He is not authorized to sum up the votes contained in the separate returns, and on to declare who has received the largest number and has been elected. But I think, by fair inference, it is his duty to send the returns which relate to the election of the members of the Board of Aldermen and Board of Common Council to those Boards respectively, in order that each may be enabled to judge of the Election of its own members. And those returns which relate to the election of the Mayor should be sent to the Convention formed by the meeting of the two Boards, that it may judge of the election of the person presenting himself and asking to be admitted to their presence, to take the oath prescribed to be taken by the person who has been elected to the office of Mayor.

The Charter contains no provision for ascertaining and declaring the result of the election, either of the members of the Boards, or of the Mayor, the returns of the Judges of Election, four in number, are to be lodged with the Clerk for safe keeping only, but as it is made the duty of each of the Boards to judge of the election of its own members, and of the two Boards in joint meeting or convention, to admit to their presence the person chosen to be the Mayor, that he may take his oath of office. They cannot act understandingly unless they have possession of the returns and be allowed to ascertain and decide who has been elected, and to deal with such person accordingly.

To the 2nd enquiry I answer, that the Judges of Election may at any time before their returns have been acted on, file a supplemental return in order to correct any mistake, error or omission which may occur in the original report, especially a mere clerical error or mistake in the computation of figures, such supplemental report or return should be signed by the Judges or a majority of them and lodged with the Clerk for safe keeping, and should be laid before the Board of Aldermen or Board of Common Council, or the convenor of the two Boards, as the case may require, when—

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W. L. Shoemaker
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ever he is called upon to produce the original report, that the whole subject matter may appear and be enquired into.

To the 3d inquiry I answer, that each Board is authorized to enquire into the Election of its own members and to admit them to seats or reject them, and cause a new election, or in case of a contested election, to decide between the contestants, and admit the one or the other as may be judged right after going into a full enquiry of all subjects connected with the Election.

So in case of a contested election of Mayor, I think the convention of the two Boards having the returns before them may, by a committee, examine all questions relating to them and ascertain the true result, and admit the person by them believed to have the greatest number of votes, to their presence, to take the oath of office, and deny that privilege to the person they believe not to have been elected.

The Mayor cannot be qualified except in the presence of the two Boards in convention met; as no other person or body is authorized to sum up the returns and declare the result of the Election, it must devolve on the Convention before whom the oath of office is to be taken, to do so: and to see that the person claiming to have been elected was, in fact, elected

JOHN MARBURY.

I should add, that the decision of the Convention of the two Boards, in relation to the election of the Mayor, would not be conclusive and finally binding on the person against whom such decision may be made—he would still be entitled to appeal, by a motion to the Judges of the Circuit Court, to decide the controversy.

J. M.

Recorder.

GEORGETOWN, March 7th, 1859.

Sir: You will please give us your opinion on this sheet, whether the Judges of Election in a precinct of this Corporation, have not the right to make a supplemental report before the original report has been submitted to the Corporation, and hand the same to the Clerk in correction of a clerical error which said Judges believe to have occurred, and claim of the Clerk, that the supplemental report shall be received by him as part of the Election returns and be transmitted to the Corporation.

JOHN H. WILSON,
R. A. EDMONSTON,

Judges of Election, 2d Precinct.

To R. Ould, Esq.,
Recorder.
My opinion is, that the Judges of the Election can send in what papers they please, provided they claim them as returns. They are judges of elections, and therefore what papers they send in to the Clerk purporting to be returns, must be received for what they are worth. The effect of such papers, and whether they are, properly, returns, are very different questions from the right of the Judges to file them. On those subjects I give no opinion. I allude only to the right of the judges to file a paper which they allege to be a return. Of the legal effect of that paper purporting to be a return, whether it would have the effect of correcting any former paper purporting to be a return, I say nothing. I have confined myself simply to answering the question, as to the right to send in the return. I feel myself bound to answer this question, it having been propounded to me by officers and agents of the Corporation.

ROBERT OULD,
Recorder.


GEORGETOWN, March 4th, 1859.

The subscribers, Judges of Election for the Second Precinct, make this supplemental report, in addition to that heretofore filed with the clerk, which we ask may be taken as part, and in correction, of the same. The Judges further reporting state, that since filing their original report of the election in the 2d Precinct, they have discovered by examining a duplicate tally of the votes taken in that Precinct, kept by Mr. Edmonston, one of the Judges, that for Mayor, (R. R. Crawford,) twenty tallies and three votes were extended, one hundred and twenty-three, whereas the same ought to have been extended, one hundred and three.

We therefore make this, our supplemental report, stating, that for Mayor, R. R. Crawford received but one hundred and three votes in the Second Precinct at the election held on Monday last, the 28th ult., and not one hundred and twenty-three as before reported, and beg leave to correct our first report filed with the clerk in that particular.

JNO. H. WILSON,
R. A. EDMONSTON,
Judges of Election 2d Precinct.