

# THE CITY RECORD.

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LEGISLATIVE DEPARTMENT.

STATED SESSION.

BOARD OF  
ASSISTANT ALDERMEN.

No. 16 CITY HALL,  
MONDAY, November 13, 1873,  
1 1/2 o'clock P. M.

The Board met, pursuant to adjournment, in their chamber, No. 16 City Hall.

Present—WILLIAM WADE, Esq., President, in the chair, and the following members:

|                      |                      |
|----------------------|----------------------|
| Charles M. Clancy,   | William S. Kreps,    |
| John C. Keating,     | John J. Kehoe,       |
| Henry Wisser,        | Edward Brucks,       |
| Michael Healy,       | Stephen N. Simonson, |
| Thomas L. Thornell,  | Philip Cumisky,      |
| John Theiss,         | Henry A. Linden,     |
| George F. Codington, | Isaac Sommers,       |
| Joseph P. Strack,    | Benjamin Beyea.      |

Minutes of last meeting were read and approved.

MOTIONS AND RESOLUTIONS.

By Assistant Alderman Clancy—

Whereas, By reason of the panic now existing in the financial corporations of our City, many of the factories employing thousands of workmen are wholly or in part suspended, and the public works of the different departments of our municipal government are compelled, from exhaustion of funds appropriated, to discontinue, and whereas, unless some speedy resumption of employment occurs, either on the part of private parties, or our departments, a deplorable and heartrending state of affairs will exist among our poorer classes; therefore be it

Resolved, That the Board of Apportionment be, and they are hereby requested to convene at as early as day as possible, and appropriate a sufficient amount of money to carry on the various improvements during the coming winter which are now unfinished in the Department of Public Works and the Department of Parks.

Resolved, That the Comptroller be and is hereby requested to furnish the Department of Docks, under the resolution of the Commissioners of the Sinking Fund, the balance of the appropriation made in accordance with the provisions of law.

Resolved, That the heads of departments immediately send in estimates and requisitions to continue their unfinished work.

Which was adopted by the following vote:

Affirmative—Assistant Aldermen Clancy, Keating, Wisser, Healy, Thornell, Theiss, Codington, Strack, Kreps, the President, Kehoe, Brucks, Simonson, Cumisky, Linden, Sommers, Beyea—17.

Assistant Alderman Clancy moved that the Clerk be instructed to send a copy of the preamble and resolution to His Honor the Mayor, and to the Comptroller after the adjournment of the Board.

Which was carried.

G. O. 233.

By Assistant Alderman Keating—

Resolved, That One hundred and Thirty-first street, from Tenth avenue to Boulevard, be regulated and graded so as to conform to the grade of Tenth avenue and Boulevard, the curb and gutter stones set and the sidewalks flagged where not already done, under the direction of the Commissioner of Public Works and that the accompanying ordinance therefor be adopted.

Which was laid over.

By Assistant Alderman Healy—

Whereas, The appropriation made by the Board of Apportionment for the completion of the different improvements now being made under the supervision of the Commissioner of Public Works is nearly exhausted, and, whereas it is highly necessary that employment should be given to the laboring class of men to enable them to live through the winter months; be it therefore

Resolved, That the Board of Apportionment be and they are hereby respectfully requested, to appropriate the sum of two hundred and fifty thousand dollars for the completion of the different public improvements that are under the supervision and direction of the Commissioner of Public Works.

Which was laid on the table.

By Assistant Alderman Simonson—  
Resolved, That the Special Committee appointed November 3d, to which was referred the resolution authorizing a loan of \$2,500,000 on the part of the city to the Industrial Exhibition Company, be and the same is hereby directed and empowered to send for persons and papers in all matters pertaining to the said Industrial Exhibition Company, with the usual powers.

Assistant Alderman Simonson moved that the resolution be adopted. Which was lost by the following vote:

Affirmative—Assistant Aldermen Wisser, Thornell, Codington, Strack, Kreps, the President, Simonson, Linden—8.

Negative—Assistant Aldermen Clancy, Keating, Healy, Theiss, Kehoe, Brucks, Cumisky, Sommers, Beyea—9.

G. O. 234.

By Assistant Alderman Beyea—

Resolved, That the sidewalk on the south side of One Hundred and Twenty-fifth street, between First and Second avenue, from 312 to 326, be flagged full width, were not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

Which was laid over.

By the same—

Resolved, That permission be and the same is hereby given to Gregory and Smith to place two ornamental lamp post and lamps in front of premises No. 927 Broadway, the lamp post and lamps not to exceed in size of the ordinary street lamps and lamp posts; the gas to be supplied from their own private meter, and the work to be done under the direction of the Commissioner of Public Works, and such permission to remain only during the pleasure of the Common Council.

Which was referred to the Committee on Lamps and Gas.

REPORTS.

G. O. 235.

The Committee on Lamps and Gas of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance in favor of laying gas mains, &c., in One Hundred and Thirty-first street, from Fourth to Fifth avenues, and One Hundred and Eleventh, One Hundred and Twelfth and One Hundred and Thirteenth streets, from First avenue to Harlem River, respectfully

REPORT:

That having carefully examined the subject, they are in favor of the proposed improvement, believing the work to be necessary, and no objection having been made thereto. Accordingly, your Committee recommend that said resolution and ordinance be adopted.

Resolved, That gas mains be laid, and street lamps lighted, in One hundred and Thirty-first street, from Fourth to Fifth avenue, and One hundred and Eleventh, One hundred and Twelfth and One hundred and Thirteenth streets, from First avenue to Harlem River, by the Harlem Gas Company, under the direction of the Commissioner of Public Works.

WM. S. KREPS,

Committee on Lamps and Gas.

Which was laid over.

G. O. 236.

The Committee on Lamps and Gas of the Board of Assistant Aldermen, to whom was referred the annexed resolution in favor of placing gas lamps in Garden Row, respectfully

REPORT:

That having carefully examined the subject, they are in favor of the proposed improvement, believing the work to be necessary, and no objection having been made thereto. Accordingly, your Committee recommend that said resolution be adopted.

Resolved, That a public gas lamp be placed and the same lighted at the westerly end of Garden Row, being in West Eleventh street, near Sixth avenue, the same to be done under the direction of the Commissioner of Public Works.

WM. S. KREPS,

Committee on Lamps and Gas.

Which was laid over.

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution from the Board of Aldermen, in favor of permitting Thaddeus Hyatt to flag sidewalk in front of the premises No. 25 Waverly Place, respectfully

REPORT:

That, having carefully examined the subject, they believe the proposed improvement to be proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution, and accordingly respectfully recommend that such action be had thereon by this Board.

Resolved, That permission be and the same is hereby granted to Thaddeus Hyatt, to flag the sidewalk in front of the premises No. 25 Waverly Place, on both the Greene street and Waverly Place sides, with his patent fire-proof Burnitized Wood side Walk.

Explanation.—This sidewalk of Mr. Hyatt is made of spruce timber, 8 inches thick, rendered fire-proof and proof against decay by being placed in an exhausted receiver, and then having the pores filled with a solution of chloride of

zinc, under a pressure forced into it of 150 deg. to the square inch. The timbers are bolted together in sections of 6 feet wide. This sidewalk does not split and disintegrate under the action of fire, as is the case with granite.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Assistant Alderman Strack moved that the resolution lay upon the table, which was lost.

Assistant Alderman Kehoe moved that the same be laid over, which was carried.

Assistant Alderman Healy moved that the vote just taken be reconsidered, which was carried.

Assistant Alderman Healy moved that this Board concur in the action of the Board of Aldermen.

Which was decided in the affirmative by the following vote:

Affirmative—Assistant Aldermen Keating, Healy, Thornell, Theiss, Codington, Strack, Kreps, the President, Kehoe, Simonson, Cumisky, Beyea—12.

Negative—Assistant Aldermen Clancy, Brucks, Linden, Sommers—4.

Assistant Alderman Clancy moved to reconsider the vote just taken.

Which was lost by the following vote:

Affirmative—Assistant Aldermen Clancy, Wisser, Theiss, Kehoe, Brucks, Linden, Sommers—7.

Negative—Assistant Aldermen Keating, Healy, Thornell, Codington, Strack, Kreps, the President, Simonson, Cumisky, Beyea—10.

G. O. 237.

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance from the Board of Aldermen, in favor of curbing, guttering and flagging full width both sides of One Hundred and thirty-first street, from Fourth to Fifth avenues, respectfully

REPORT:

That, having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly respectfully recommend that such action be had thereon by this Board.

Resolved, That on both sides of One Hundred and Thirty-first street, from Fourth to Fifth avenues, curb and gutter stones be set, and the sidewalks be flagged and reflagged full width, where not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Which was laid over.

G. O. 238.

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance from the Board of Aldermen, in favor of regulating, grading, &c., Ninety-fifth street, from First to Fifth avenue, respectfully

REPORT:

That having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly recommend that such action be had thereon by this Board.

Resolved, That Ninety-fifth street, from First to Fifth avenues, be regulated and graded, the curb and gutter stones set, and the sidewalks flagged where not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Which was laid over.

G. O. 239.

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance from the Board of Aldermen, in favor of regulating, grading, &c., Avenue A, from One hundred and Sixth to One hundred and Sixteenth streets, respectfully

REPORT:

That, having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly respectfully recommend that such action be had thereon by this Board.

Resolved, That Avenue A, from One Hundred and Sixth to One Hundred and Sixteenth street, be regulated and graded, the curb and gutter stones set, and the sidewalks flagged, where not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Which was laid over.

G. O. 240.

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance from the Board of Aldermen, in favor of regulating, grading, &c., Ninety-fourth street, from First to Third avenues, respectfully

REPORT:

That, having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly respectfully recommend that such action be had thereon by this Board.

Resolved, That Ninety-fourth street, from First to Third avenues, be regulated and graded, the curb and gutter stones set, and the sidewalks flagged where not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Which was laid over.

G. G. 241.

The Committee on Streets of the Board of Assistant Aldermen, to whom was reported the annexed resolution and ordinance in favor of regulating, grading, &c., One Hundred and Forty-second street, from Bloomingdale road to the Grand Boulevard, respectfully

REPORT:

That, having carefully examined the subject, they are in favor of the proposed improvement, believing the work to be necessary, and no objection having been made thereto. Accordingly, your Committee recommend that said resolution and ordinance be adopted.

Resolved, That One Hundred and Forty-second street, from Bloomingdale to Grand Boulevard, be regulated and graded, the curb and gutter stones set, and the sidewalks flagged where not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Which was laid over.

G. O. 242.

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance from the Board of Aldermen, in favor of regulating, grading, &c., Seventieth street, between Third avenue and East river, respectfully

REPORT:

That, having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly respectfully recommend that such action be had thereon by this Board.

Resolved, That Seventieth street, between Third avenue and the East river, be regulated and graded, the curb and gutter stones set, and the sidewalks flagged where not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Which was laid over.

G. O. 243.

The Committee on Streets of the Board of Assistant Aldermen, to whom was referred the annexed resolution and ordinance from the Board of Aldermen, in favor of regulating, grading, &c., Ninety-seventh street from First to Fifth avenue, respectfully

REPORT:

That, having carefully examined the subject, they believe the proposed improvement to be necessary and proper. They are, therefore, in favor of concurring with the Board of Aldermen in adopting said resolution and ordinance, and accordingly respectfully recommend that such action be had thereon by this Board.

Resolved, That Ninety-seventh street, from First to Fifth avenue, be regulated and graded, the curb and gutter stones set, and the sidewalks flagged where not already done, under the direction of the Commissioner of Public Works, and that the accompanying ordinance therefor be adopted.

BENJAMIN BEYEA,  
HENRY A. LINDEN,  
Committee on Streets.

Which was laid over.

COMMUNICATIONS.

Being a communication as follows:

NEW YORK, November 13th, 1873.

To the Honorable the Board of Assistant Aldermen:

GENTLEMEN:—The Workingmen's Central Council, respectfully invite your Honorable Body to occupy seats on the platform at the mass meeting in Tammany Hall, on Saturday evening, November 15th, at 7 o'clock. The object of this meeting is, to furnish work for the unem-

ployed, hoping to have your presence on that occasion.

I remain respectfully yours,  
JAMES CONNOLLY,

Chairman Committee of Arrangements.

Which was received and ordered on file.

Assistant Alderman Strack moved that we do now adjourn.

Which was lost.

Assistant Alderman Clancy moved that the clerk be requested to withhold the resolution giving permission to Thaddeus Hyatt to lay sidewalk at 25 Waverly Place.

Which was decided in the affirmative by the following vote:

Affirmative—Assistant Aldermen Clancy, Wisser, Theiss, Strack, Kreps, Kehoe, Cumisky, Linden, Sommers, Beyea—10.

Negative—Assistant Aldermen Keating, Healy, Thornell, Codington, the President, Brucks, Simonson—7.

Assistant Alderman Strack moved that this Board do now adjourn.

Which was carried.

And the President announced that the Board stood adjourned until Monday next, the 17th instant, at 2 o'clock P. M.

CONSTANTINE DONOHO,  
Clerk.

## LAW DEPARTMENT.

### OPINIONS OF THE COUNSEL TO THE CORPORATION.

The Police Board, convened to try members of the force upon charges preferred to procure their removal and degradation for official malfeasance, sits as a judicial tribunal.

The proceedings must be "according to law," and the Supreme Court, upon a writ of *certiorari*, may inquire into their legality.

The established rules of evidence as applied in the criminal courts of the country, must be substantially adhered to in trials of this character; although it seems, that here, as in a court martial, testimony may be taken in a form less technical than that prevailing in ordinary tribunals.

An unpardoned convict, having served in this State a term of imprisonment for an infamous crime, repaired to Europe, committed forgeries on the Bank of England, and escaped to this country, where he was arrested and returned under the treaty of extradition, and subsequently, while lying in London under sentence to penal servitude, made in writing an *ex parte* unsworn statement, acknowledged in the form used to procure the recording of deeds, in which two members of the Police Force in New York, who had participated in the arrest of the culprit on his arrival in New York, were charged with malfeasance. HELD, that the statement could not be received in evidence on a trial by the Board of the inculpatated officers.

It is not competent to produce in evidence a document which has been read to and in the presence of accused parties in order to prove as admissions their statements or their silence when the reading took place.

The Board of Police Commissioners, sitting in the trial of accused officers, may require the opinion of the Counsel to the Corporation upon a question of law or evidence arising in the case.

#### LAW DEPARTMENT,

OFFICE OF THE COUNSEL TO THE CORPORATION,  
NEW YORK, November 6, 1873.

The Honorable the Board of Police Commissioners of the City of New York,

GENTLEMEN:—Under the laws of the state of New York, the Counsel to the Corporation of this city is made the legal adviser of your honorable body. It is therefore proper that I should advise you upon any question of law which in your discretion you may deem proper to submit to my consideration. And when you sit as a tribunal for the trial of accused members of the police force, my advice may be sought under the official relation which exists between us; or I may be called on, in some sort, as *amicus curia*.

You inform me that you are now engaged in the trial of James Irving and Philip Farley, two officers of the Police Department of this city, upon charges preferred by the counsel in this city of the Bank of England. A stenographic report of the proceedings so far taken by you in the case has been laid before me, and I have carefully examined it.

It appears that one Macdonnell, after committing in this country various infamous crimes, for some of which he was tried, convicted, sentenced and imprisoned at Sing Sing, repaired to Europe, and there committed extensive forgeries upon the Bank of England, for which he was condemned in a court of that country, and sentenced to penal servitude. After the perpetration of the crime last mentioned, he escaped to this country, where he was arrested, and returned to England under the treaty of extradition. In the proceedings here to arrest and detain the prisoner, Irving and Farley in their official capacity participated.

After his trial, conviction, and sentence in England, Macdonnell made a statement to the effect, in substance, that after his escape and arrival in this country, and before he left the ship in the harbor of New York, he gave to Irving and Farley a portion of the proceeds of his forgeries

upon the Bank of England, upon a corrupt understanding that they should use the same to screen him from the consequences of his crime, and that they, after performing some services in his behalf, added to their official turpitude the crime of appropriating to their own use the greater part of the property which he had delivered to them. This statement was committed to writing and signed by the prisoner in the presence of a reputable witness, who has testified in the pending proceeding before your Board.

An inspection of this document would seem to show that it was acknowledged by the prisoner in the form usually adopted where it is desired to place on record deeds for the conveyance of real property; but it does not appear upon the face of the paper itself, nor in the testimony, that the statement was sworn to. It is manifest that at the taking of this statement no person was present on behalf of the accused officers; and of course the prisoner was not cross-examined on their behalf.

The eminent counsel for the Bank of England present this paper in evidence, and offer to corroborate it, in some particulars, by other testimony. Giving the matter the deliberation to which the gravity of the accusation entitles it, you have adjourned the proceedings in order to consider the question of the admissibility of the paper, and have requested me to give you my judgment upon the point.

It may perhaps be that I do injustice to the distinguished counsel in stating that in offering this paper at all they intend to claim for it the character of evidence. Indeed, there are expressions and intimations in their reported remarks from which I may fairly infer that the paper is not offered as matter of evidence, but only as a convenient mode of presenting their case. Statements of this character are often given by counsel in substance, though rarely in the very words, as a part of the opening address preceding the examination of witnesses; but it is safe to say that in modern times no Court in England or the United States, either civil or military, has permitted such a statement from a criminal so situated to be used as evidence on the trial of any person.

The system of deputing competent members of a police force to act in the detection of crime and the discovery of criminals is one which prevails in every large city, both here and in Europe. Its benefits are obtained at the cost of great and acknowledged evils. Whether it should be continued is a question for Legislatures and not for Boards of Police. It is plain, however, that while its evils will be continued, its advantages will be substantially diminished if convicted criminals are to be facilitated by any extraordinary rulings in the projects of revenge which they often institute against the officers who have pursued them. No punishment can exceed the crime of a faithless or treacherous policeman. At the same time, it is impossible to over-estimate the importance of protecting honest officers from the machinations of those whose enmity they have earned by the fearless performance of duty. The investigation in which you are engaged will determine whether these two accused officers are to be vindicated from malicious charges or are to be removed and degraded upon established guilt. Your only safe and legal course is to adhere (if not technically, substantially) to those established rules of evidence which the most eminent writers upon law have declared to be the best means not only of protecting the innocent, but also of eliciting truth against the guilty.

It must be borne in mind that you are acting in a judicial capacity. Your proceedings are subject to review upon a writ of *certiorari* by the Supreme Court of the State. And upon the highest judicial authority you are bound to proceed "according to law" when undertaking an investigation which must end in either sustaining or degrading an officer of the force. (See the opinion of Mr. Chief Justice Henry E. Davies, in the case of McDermott against the Board of Police, Supreme Court, First District, December, 1857, Fifth Abbott's Reports, page 422.) The Court of Appeals of Kentucky many years ago declared, "The power of removal is a judicial power." (Graham v. Sackett, 6 B. Monroe, page 146).

It may be said that a trial before your Board is more in the nature of a trial by court-martial than an ordinary case in a criminal Court; and we may concede that in a court-martial, usage, though not any positive law, sanctions a more liberal rule in the reception of evidence than prevails in ordinary courts of justice. Though this may be true, a substantial departure from ac-

cepted rules of evidence would be fatal to the validity of the proceedings. A standard authority remarks that "As the rules which govern courts-martial are the same as those obtaining in the criminal Courts of the land, it is of essential importance that military men should well understand the general principles of the law of evidence." (De Hart on Courts-Martial, chapter 16, page 334).

Under these principles, which must govern you in the present trial, it requires little argument to determine that the paper in question cannot be admitted in evidence, nor be permitted to take a place in the case for any purpose.

First—The prisoner who makes the statement is a convicted felon, having in this State served a term of imprisonment at hard labor for an infamous crime; and having resumed a place in the community without pardon; and having, also, in England, been again convicted of one of the highest felonies, and been actually under sentence for this second crime when his statement was made.

Second—The statement is *ex parte*.

Third—Although technically acknowledged and made in the presence of one of the counsel of the Bank of England, it is not sworn to.

Fourth—While it is true that accomplices are permitted, if personally present at a trial, to be sworn and examined upon the condition that their testimony is to be disregarded unless corroborated, yet this rule does not reach the case of persons already convicted of felony. And in this case the prisoner is not averred to be an accomplice in the alleged criminal acts of the accused, but on the contrary is the perpetrator of a crime for which he was arrested by the officers whose ruin he now seeks to accomplish.

Fifth—If the prisoner were here present, his personal examination would not be permitted, even with every opportunity of cross-examination.

Sixth—If the prisoner were personally competent as a witness, still an unverified statement of this character emanating from him must upon its face be rejected.

In the reported remarks of the counsel for the complainants it seems to be intimated that the paper may be received as a statement of what was read and repeated to and in the presence of the accused, in order to give in evidence what was said by them in respect to the charges, or what, by their silence, they must be regarded as having admitted. Admissions of an accused person are competent testimony; although judicial tribunals invariably pronounce them as of an exceedingly weak and unsatisfactory character. Indeed, they are regarded with great disfavor, because they are subject to the misunderstanding of the witness who narrates them. But it has been expressly determined by high judicial authority that it is not competent to produce in evidence a document which has been read in the presence of accused parties in order to prove their statements or their silence when the reading took place. This decision meets the very point we are now considering. (See the case of Sheridan against Smith, in the old Supreme Court, where the opinion was given by the eminent jurist, Mr. Chief-Justice Samuel Nelson, supported by Chancellor Walworth, Mr. Justice Bronson, Mr. Justice Cowen and other distinguished judges. 2 Hill's Reports, page 538). In that case, Mr. Justice Nelson said: "It was insisted upon the argument that the proof of what James testified to before the justice in the presence of the plaintiff was admissible upon the assumption that the plaintiff heard and assented to it." This the learned Chief-Justice pronounces incompetent, and a new trial in that case was granted upon an error of the Court below in admitting just such testimony as we are now considering in the proceeding before you.

If you should deem and declare that the accused officers are guilty and ought to be branded and dismissed from the force, it will be important that the decision be based upon evidence of a character which the law and the judgment of mankind regard as competent and admissible. If, however, when such evidence shall have been adduced, the accused shall stand with no actual proofs against them, it is equally important to public justice, as well as to individual rights, that a judgment in their case should be in no way influenced by a paper coming from such a source and presented under such circumstances as characterize the statement which we have been considering. In any case of a convicted felon, imprisoned for an infamous crime, it might be easy to produce a "confession" of this character, to malign the supposed authors of his downfall. Such a statement could be made plausible by the skill of counsel or the cunning of the culprit.

In my judgment, and I am confident the eminent counsel for the Bank of England will agree with me, the paper must be rejected and utterly excluded from the case.

I am, gentlemen,

With great respect,

Your obedient servant,

E. DELAFIELD SMITH,  
Counsel to the Corporation.

NOTE.—Since this opinion was given, the Counsel of the Bank of England have stated, in effect, that under the laws of Great Britain, the statement must be regarded as a sworn deposition. The explanation must be, that the Parliament of that country, regarding the too common administration of oaths as demoralizing, have in many cases substituted regularly acknowledged declarations for affidavits, and visited falsity in the former with the penal consequences of perjury. No legislation can obliterate essential distinctions. An oath is an appeal to the Supreme Being. A man already sentenced to a penal colony has little more to apprehend from human penalties. If he speaks falsely, it could not seriously harm him in this world. But if under oath, some possible scruples might influence his testimony. The legislation referred to may, upon the whole, be wise; but no such change in the law of evidence has yet been made in this State.

Chapter 335 of the Laws of 1873 provides that the detailed canvass of votes at every election shall be published at the expense of the city only in THE CITY RECORD. Chapter 823 of the Laws of 1873 provides that the official canvass shall be publicly advertised for one day only, and that all advertising provided for in this later statute shall be done in two daily newspapers only published in the City of New York, to be designated by the Board of Police. HELD, that the two acts must be construed together, and that the publication must be made in THE CITY RECORD, in addition to the two newspapers to be selected by the Board of Police.

It appears that THE CITY RECORD is not to be legally and technically held to be a "newspaper."

#### LAW DEPARTMENT,

OFFICE OF THE COUNSEL TO THE CORPORATION,  
NEW YORK, November 7, 1873.

Abraham Disbecker, Esq., Supervisor of the City Record:

SIR:—The one hundred and eleventh section of chapter 335 of the Laws of 1873 provides that "The detailed canvass of the votes at every election shall be published at the expense of the city only in THE CITY RECORD."

The fourth section of chapter 823 of the Laws of 1873 provides that "The official canvass, immediately upon its completion and declaration by the Board of County Canvassers, shall be publicly advertised for one day only; all advertising provided for in this section shall be done in two daily newspapers only published in the City of New York, to be designated by the Board of Police."

You request my opinion whether the official canvass of the votes at the recent election should be published in THE CITY RECORD.

It is an established rule that, in construing two statutes relating to the same subject, both should be construed together, and, if possible, effect be given to the will of the Legislature thus doubly expressed. It is true that where the later law is plainly repugnant to that first passed, the last expression of the legislative will must prevail. In this instance, while the earlier statute declares that the publication in question must be in THE CITY RECORD, the more recent act seems to require that the publication should be made in only two newspapers, to be designated by the Board of Police. In the first place, the official publication called THE CITY RECORD can hardly be considered a "newspaper" for the purposes now under consideration. Indeed, it is restricted by law to the publication of an official record of the transactions of the executive and legislative departments of the municipal government. General news is by the very act under which it is established excluded from its columns. I think it safer to give effect to the two laws in this respect, rather than to throw ourselves upon the idea that by implication, in the absence of any express repeal, the provision which I have cited from the later act is to be regarded as abrogating the provision quoted from the first statute.

Upon the whole, it is my opinion that the publication to which you refer must be made in THE CITY RECORD in addition to the two newspapers which the Board of Police Commissioners are called upon to select.

I am, sir,

Very respectfully yours,

E. DELAFIELD SMITH,  
Counsel to the Corporation.

DEPARTMENT OF FINANCE.

CITY OF NEW YORK, DEPARTMENT OF FINANCE, COMPTROLLER'S OFFICE.

Appointments.

Nov. 8, 1873—Robert Christie, Bureau for the Collection of Assessments, to serve notices.

Nov. 11—Charles M. Eisig, temporary clerk, Bureau for the Collection of Taxes.

Nov. 12—John Thomas, temporary clerk, Bureau for the Collection of Taxes.

Removals.

Nov. 5—Robert Grace, sweeper Jefferson Market.

Nov. 10—William E. Sackett, assistant clerk Comptroller's office.

Nov. 10—M. M. Livingston, assistant clerk in Auditing Bureau.

Designation of Salaries and Transfers.

Nov. 11—John H. Brooch, assistant clerk, Comptroller's office, \$1,700 per annum.

Nov. 11—Charles H. Swan, clerk Bureau for the Collection of Taxes, \$2,500 per annum.

Nov. 1—Washington T. Romaine, transferred from position of deputy clerk, Washington Market to that of clerk of West Washington Market, \$1,500 per annum.

ANDREW H. GREEN, Comptroller.

BOARD OF EDUCATION.

Nov. 12, 1873.

A special meeting of the Board convened at 4 o'clock, in response to the call of the President, to take into consideration the report of the Joint Committee of the Committees on By-Laws and Finance, relative to the annexation of the lower portion of Westchester county to New York, and also to consider in Committee of the Whole the report of the Committee on Salaries and Economy.

Present—Wm. H. Neilson, Esq., President, and Commissioners Baker, Beardslee, Brown, Dowd, Farr, Halsted, Jenkins, Lewis, Kelly, Klamroth, Man, Mathewson, Patterson, Townsend, Traveley, Vermilye, West and Wetmore—19.

Absent—Commissioners Hoe and Seligman—2.

The report of the Joint Committee on By-Laws and Finance was read, submitting the estimate of the amount of school moneys required for the year 1874 for the "Eighth School District," composed of these portions of the County of Westchester, as will be annexed to the County of New York under the law. The amount reported by the Committee is one hundred and sixty-six thousand five hundred and eighty-six dollars, (\$166,586), as follows:

Table with 2 columns: Item, Amount. Includes Teachers' salaries (\$112,086), Janitors' salary (\$8,000), Supplies, books, maps, &c. (\$9,000), Fuel (\$9,000), Incidental, printing, &c. (\$1,000), Rents of buildings (\$2,500), Repairs to buildings (\$25,000).

\$166,586 00

The report of the Committee was unanimously adopted.

The Board then went into Committee of the whole, Commissioner Beardslee in the chair, to consider the report of the Committee on Salaries and Economy. The report was taken up by paragraphs, and several amendments were made, when the Committee rose reported progress, and asked leave to sit again. Which was granted.

On motion of Commissioner Dowd, the application of the Trustees of the Tenth Ward to advertise for proposals to repair the wall of the rear building of Grammar School, No. 7, was granted, on the report and recommendation of the Committee on Buildings.

The President laid before the Board a communication from Hon. Andrew H. Green, Comptroller, transmitting a copy of the minutes of the Board of Estimate and Apportionment for 1873.

Commissioner Townsend presented a communication from the Board of Education of School District No. 1, West Farms, and Commissioner Man presented a remonstrance from citizens and taxpayers of the same district against the said communication.

The communication and remonstrance were referred to the Joint Committee of By-Laws and Finance.

The President laid before the Board communications from the School Boards of Kingsbridge and West Farms inviting the Board of Education to meet with them and visit the schools of these towns.

Referred to the Joint Committee on By-Laws and Finance.

Commissioner Vermilye presented a report from the Finance Committee, stating that the Board has the "financial ability" to furnish a new piano for the female department of Grammar School No. 39.

Also, to appropriate \$2,000 for the use of the committees in the Nautical School.

The reports were adopted and the appropriations made.

The Board then adjourned.

L. D. KIERNAN, Clerk.

TREASURER'S REPORT

TO THE COMMISSIONERS OF EMIGRATION,

FOR THE PERIOD ENDING NOVEMBER 11, 1873.

RECEIPTS.

Table of Receipts: Cash balance on hand at date of last report (\$24,227 49), RECEIVED—For Commutations, On Aliens, For Forwarding Account, For Ward's Island Expenses, For Relief and Charities, For State Charitable Institutions, For County Houses, For State Agencies, For Castle Garden, For insurance to last report, For inmates' funds.

DISBURSEMENTS.

Table of Disbursements: PAID—For Ward's Island Expenses, For Castle Garden Expenses, For General Exp. Account, For Forwarding Account, For Relief and Charities, For State Agencies, For County Houses, For State Charities Inst's, For Insurance, For account of contracts on Lunatic Asylum, Bowling Green Savings Bank, Inmates Funds.

FINANCIAL RECAPITULATION OF PRESENT COMMISSION.

Table of Financial Recapitulation: Balance on hand June 1, 1873 (\$5,077 88), Total receipts since (213,085 51), Total Disbursements since June 1 (\$197,634 92), Balance on hand at date (\$218,763 39).

Total amount of bills passed by Finance Committee since last report (\$8,541 26). GARRET BERGEN, Treasurer.

DEPARTMENT OF PUBLIC CHARITIES AND CORRECTION.

DAILY MEETINGS NOV. 3D TO NOV. 8TH, 1873.

Present—Commissioners Laimbeer, Bowen, Stern.

Communications.

From Almshouse, Charity, Small-pox, Fever, Bellevue, Reception Hospitals, Lunatic Asylum, Blackwell's Island, New York City Asylum for the Insane, Ward's Island—Reporting daily census of these institutions. Ordered on file.

From Lunatic Asylum, Blackwell's Island, and New York City Asylum for the Insane on Ward's Island—Reporting number of inmates and how employed. Ordered on file.

From Lunatic Asylum, Blackwell's Island, and New York City Asylum for the Insane, Ward's Island—History of patients admitted. Referred to Examining Clerk.

From Almshouse—Statement of the amount of labor performed by mechanics (inmates), for week ending Nov. 8, 1873. Ordered on file.

From Lunatic Asylum, Blackwell's Island, New York City Asylum for the Insane, Ward's Island—History of patients admitted. Referred to Examining Clerk.

From Charity Hospital—Consumption of Liquors during October, 1873. Ordered on file. From same—Attendance of visiting Physicians and Surgeons, during October, 1873. Ordered on file.

From Medical Board of Bellevue Hospital—Minutes of monthly meeting, October 31st, 1873. Ordered on file.

From Bellevue Hospital—Attendance of Visiting Physicians and Surgeons, during October, 1873. Ordered on file.

From Bureau of Medical and Surgical Relief for out door poor—Attendance of Consulting and Visiting Physicians and Surgeons, during October, 1873. Ordered on file.

From same—Number of prescriptions issued on orders of district physicians, during October, 1873. Ordered on file.

From New York City Asylum for the Insane—Consumption of Liquors during October, 1873. Referred to Medical Inspector.

From same—Statement of extra diet issued during October, 1873. Referred to Medical Inspector.

From Inebriate Asylum—Consumption of gas during October, 1873. Ordered on file.

From Nursery and Infants Hospital—Consumption of liquors during October, 1873. Referred to Medical Inspector.

From Warden, Hart's Island—Appearing before Grand Jury, against John Cody and Frank Hysen for arson, William Smith detained as witness. Ordered on file.

From Nursery, Infants Charity Hospital, New York City Asylum for the Insane—Statement of drugs and medicines on hand October 31, 1873. Referred to Medical Inspector.

From Charity Hospital—Statement of extra diet issued during October, 1873. Referred to Medical Inspector.

From Lunatic Asylum, Blackwell's Island—Statement of extra diet issued during October, 1873. Referred to Medical Inspector.

From same and Epileptic and Paralytic Hospital—Consumption of liquors during October, 1873. Referred to Medical Inspector.

From Physician, City Prison—Monthly report for October, 1873. Ordered on file.

From Examination Office, Bellevue Hospital—Monthly report for October, 1873. Ordered on file.

From Work House—Report of elopements and deaths during October, 1873. Ordered on file.

From George Campbell—Resignation as keeper at City Prison. Accepted.

From Bellevue Hospital—Complaint against William Bowles, orderly.—Discharged.

From Hart's Island—Transmitting to Department of Interior, Washington. Report on Educational Department. Ordered on file.

From City Prison—John Behan, reporting for duty as keeper. Ordered on file.

From New York City Asylum for the Insane, Ward's Island—Resignation of Edward L. Farr, M.D., assistant physician. Accepted.

From Bellevue Hospital. Consumption of liquors during October, 1873. Referred to Medical Inspector.

Lunatic Asylum, Blackwell's Island.

Lizzie McEwen appointed nurse. Nov. 3, 1873. By the Board.

Free Labor Bureau.

By Commissioner Bowen—Resolved, That Mrs. Clara A. Molon be promoted to the office of Matron of Labor Bureau, and that her salary be \$50 per month from this date. Nov. 3, 1873. Adopted.

Inebriate Asylum.

By Commissioner Laimbeer—Resolved, That George Campbell, cook of Inebriate Asylum, be discharged. Nov. 6, 1873. Adopted.

By Commissioner Stern—Resolved, That John Miller be and is hereby appointed cook to the Inebriate Asylum for one month on trial, at a compensation of \$10 per month. Nov. 6, 1873. Adopted.

Penitentiary.

By Commissioner Laimbeer—Resolved, That the warden of the Penitentiary furnish to-day a gang of men suitable for repairing small-pox pavilion, with a good keeper, viz.: 1 mason, 1 carpenter, 8 laborers; subject to orders of Supervising Engineer Knapp. Nov. 6, 1873. Adopted.

City Prison.

John Behan, appointed keeper, vice George Campbell, resigned. Nov. 6, 1873. By the Board.

Ward's Island Improvement.

By Commissioner Laimbeer—Resolved, That Mr. Dilts be informed by the secretary that hereafter he must perform his duties with his hands out of his pockets, and devote his entire time and attention to the details required. Nov. 6, 1873. Adopted.

City Prison.

By Commissioner Laimbeer—Resolved, That Peter Collins be discharged as keeper at the Tombs for neglect of duty. Nov. 6, 1873. Adopted.

All Institutions.

By Commissioner Laimbeer—Resolved, That the Secretary be instructed to notify all wardens that their requisitions made upon this Department up to and until January, 1874, must be confined to the positive wants of the institutions under their care, and that no article will be allowed unless the wants of the inmates demand it for actual use up to January 1, 1874. Nov. 6, 1873. Adopted.

Storekeeper.

Ordered, That previous to acting on the present requisitions, the storekeeper to see the several wardens, and ascertain what articles or portions of them can be dispensed with. Nov. 6, 1873. By the Board.

All Institutions.

Ordered, That special requisition for lumber, nails, &c., for improvements, repairs, &c., be made on the first of each month only. Nov. 6th, 1873. By the Board.

City Prison.

By Commissioner Stern—Resolved, That Abraham Newfield be, and is hereby promoted from his present position as guard at the Penitentiary to that of keeper of the City Prison, in place of Abraham Curran, discharged. Nov. 7, 1873. Adopted.

Penitentiary.

By Commissioner Stern—Resolved, That William Pierce be, and is hereby appointed guard at Penitentiary in place of Abraham Newfield, promoted. Nov. 7, 1873. Adopted.

Free Labor Bureau.

Ordered, That the rooms over male department, formerly occupied by Mrs. West, be assigned to Paul Schmitzler, in consideration of his additional services as assistant janitor. Nov. 7, 1873. By the Board.

Store House, Blackwell's Island.

Ordered, That the storekeeper instruct the baker that on receipt of flour, bills are to be certified immediately and transmitted to this office on the following day. Nov. 7, 1873. By the Board.

All Institutions.

By Commissioner Stern—Resolved, That the wardens of the several institutions be requested to aid Mr. Flagler in getting up the clothing for the Children at Randall's Island, by applying all the available assistance of persons under their charge for that purpose, in preference to all other work to be done for their own department. Nov. 7, 1873. Adopted.

Charity Hospital.

By Commissioner Laimbeer—Resolved, That Doctor Herman Knapp be appointed Visiting Physician to Charity Hospital, in place of Henry D. Noyes, M.D., resigned. Nov. 7, 1873. Adopted.

District Physician.

By Commissioner Laimbeer—Resolved, That Benjamin Wilson, M.D., be appointed a District Physician in place of Wm. F. Wooster, M.D., being for 8th District, 18th and 21st wards. Nov. 8, 1873. Adopted.

Central Office.

Estimate for building coal vault. Laid over for 1874. Nov. 8, 1873. By the Board.

JOSHUA HILLIPS, Secretary.

DEPARTMENT OF BUILDINGS

New York, November 10, 1873.

The following comprises the operations of the Department of Buildings for the week ending November 8, 1873.

BUREAU OF CONSTRUCTION AND ALTERATION OF BUILDINGS.

Plans, Specifications and Special Applications, filed, examined and passed upon.

NEW BUILDINGS.

Table: No. of Plans and Specifications filed and examined... 3; No. of Buildings embraced in same... 3.

CLASSIFIED AS FOLLOWS:

Table: Tenements... 1; Third class Stores... 1; Manufactories and Workshops... 1; Total... 3; Plans &c., approved, including those previously filed... 3; amended and approved... 2; pending... 1; Total... 6.

ALTERED BUILDINGS.

Table: No. of Plans and Specifications filed and examined... 7; Buildings embraced in same... 7.

CLASSIFIED AS FOLLOWS:

Table: Second class Dwellings... 3; Tenements... 2; Hotels and Boarding Houses... 1; Manufactories and Workshops... 1; Total... 7; BUILDINGS EXAMINED AND PLANS RELATING THERETO PASSED UPON INCLUDING THOSE PREVIOUSLY FILED... 14; Approved... 11; Amended and approved... 1; Disapproved... 1; Pending... 1; Total... 14.

SPECIAL APPLICATIONS.

Table: Number filed examined and passed upon... 9; Approved... 9; Amended and approved... 4; Pending... 1; Total... 14.

HENRY J. DUDLEY, Deputy Supt.

and Chief of Bureau.

BUREAU OF UNSAFE BUILDINGS, VIOLATIONS AND COMPLAINTS.

Abstract of operations for the week ending November 8, 1873:

Table: Complaints received from outside sources... 6; Violations of the law reported... 2; Violations of the law removed... 7; Unsafe buildings reported... 8; Unsafe buildings made safe... 8; Unsafe buildings taken down... 0; Surveys held on unsafe buildings... 0; Violation cases sent to Attorney for prosecution... 0; Unsafe building cases sent to Attorney for prosecution... 0; Violation notices served... 20; Unsafe building notices served... 20; Buildings surveyed as to general condition... 326.

The classification of the unsafe buildings reported are as follows:

Table: Unsafe walls... 4; chimneys... 4; Total... 8.

ANDREW OWENS, Chief of Bureau.

