

The omission of the words Legal Ballots might possibly be passed over and might be supposed to be inferred by the conclusion, if the case was clear of suspicion. But where a probable cause has been assigned for it and we have reason to surmise that the word could not with truth be inserted the want of it seems more fatal.

The circumstance stated in the return, of the change in the Judges goes strongly to shew that the word was purposely omitted. but I should be willing and I should deem it proper to hear evidence respecting it.

The principles on which the law of evidence is founded apply strongly to this case. That the best evidence shall be required that the nature of the case admits of and that no evidence shall be received which shews on the face of it the omission of facts that might be contrary. It appears to be likewise a defect in the return that W. Hatchson is mentioned as having the greatest number of votes (notwithstanding the reason given for rejecting him) In my opinion the Judges when they determined against him should have omitted his name entirely and simply declared the two others duly Elected.

But I am not clear whether this alone would vitiate the return or be considered otherwise than surplusage if their reason was thought agreeable to the Constitution.

The return being made by only two Justices and nothing being said by the third who was originally a Judge is in my opinion a circumstance perfectly fatal to it.

The principle of evidence which I have just recited certainly applies here. The Judge who was last taken in could not determine as to the preceding days of the Election.

The plain and obvious mode would have been for all to have certified according to their respective knowledge.

The possibility of death or accidents requires that a special return should be admitted on the ground of necessity: when the original Judges cannot complete the business. But when that is the case the return ought to be as much authenticated as possible.

The defects in the return may be properly laid hold of for the purposes of Justice and right which are involved in a full compliance with the Constitution.