

compensation of all officers whose pay is not elsewhere limited. Suppose the fees of the sheriffs had been increased at January session, 1865, would Mr. Harwood be eligible as sheriff of Anne Arundel county during his term of office? Undoubtedly not, if the words of the Constitution are to be understood in their obvious sense; and yet Article 12, section 1, limits the compensation of the sheriffs quite as effectually as section 44 of Article 3, limits the compensation of the clerks. Any other qualified person, not a member of the General Assembly in 1865, would be eligible as such sheriff, notwithstanding the fees may have been trebled, and he could retain the compensation up to three thousand dollars, but no one who was a member of that body at the time such a law might have passed, could be eligible until after the end of the whole period of time for which he was elected.

In view of these considerations, the undersigned have no difficulty in deciding that Mr. Harwood was not eligible as clerk of the Circuit Court of Anne Arundel county in November, 1865, and therefore that he was not elected.

The next question is, was Mr. Gambrill legally elected as clerk at that election?

In our opinion, Mr. Gambrill was legally elected at the election, and is entitled to the office.

In Cushing, on Legislative Assemblies, page 66, the law is thus stated: "If an election is made of a person who is ineligible, that is, incapable of being elected, the election of such person is absolutely void, even though he is voted for at the same time with others who are eligible and who are accordingly elected; and this is equally true whether the disability is known to the electors or not; whether a majority of all the votes or a plurality only is necessary to the election; and whether the votes are given orally or by ballot." The author proceeds to quote instances to support his assertion, in this country and in England, and states that if the electors have notice of the disqualification every vote given for him afterwards will be thrown away, and considered as not having been given at all, and the candidate having the next highest number of votes will be elected. "This doctrine, however hard it may seem, is founded on the familiar principle that every man is bound to know the law with reference to any act which he undertakes to do." And in section 179, he says: "In reference to elections by ballot, where secrecy is the distinguishing feature, and in which consequently neither the returning officers nor the electors themselves are supposed to know for whom the votes are given until the result is declared, it seems not unreasonable to consider the votes for ineligible candidates to be thrown away in all cases, and the opposing candidate elected, *where the electors know or*