

their oaths, to be bound by lists, totally deficient in every necessary formality?

In the opinion of the undersigned, it seems clear from what we have stated, that the Registration act was not carried into effect by the Registers in these districts according to its plain requirements. We are not therefore surprised that the judges of election arrived at the same conclusion.

And as this House is the final judge of the election of the persons voted for, should they not express their disapproval of such negligence and misfeasance, by sustaining the conduct of the judges in their work.

Unless this House is resolved to sanction these errors, Mr. Franklin must be considered as duly elected, according to the returns of the judges of the district, in conformity with which he now holds his commission from the Governor.

But if the House should decide that Judge Spence is at liberty to attack the returns of the judges, though Judge Franklin cannot impeach the action of the Registers, we cannot agree the House can possibly decide with justice that Judge Spence is elected.

It is laid down as the law that where the electors *knew, or must be presumed to know* of the ineligibility of a candidate, they must be supposed to have thrown away their votes, and the next highest eligible candidate is elected.

But what could the electors have known as to Judge Franklin's ineligibility? Only that he was not registered; and this could only have been known in the district in which he lived. But we have shown that the mere fact of not being registered, is no evidence of disqualification for office. Even the voters of that district, therefore, knew nothing showing his ineligibility at the time of his election. In the other districts there could have been no knowledge even, that he was not registered, and of course the voters cannot, therefore, be supposed to have thrown away their votes.

But further, in this case according to the contestant's theory, the election was void in four districts of Somerset county. The constitution requires that the Judge shall receive a majority of the votes throughout the *whole* circuit, and therefore if the election in part of the circuit is declared void, that held in the *residue* of the circuit cannot elect the Judge. For if the right be conceded to reject *one* district of a circuit, the same principle would authorize a dominant party to reject all the districts *except one*. Such a course would be merely a repetition of what is known in the earlier history of the State, as the Allegany fraud, which was accomplished by rejecting the vote of several districts of that county, and allowing the vote of the remaining districts to be counted.

If the election in part of Somerset county was void, then the whole election is void, and it must be had *de novo*.