

power and jurisdiction to go behind the election returns—to examine into the qualification of voters—purge the ballot-box and recount the votes—subjects over which the Courts have no jurisdiction.’”

If the House of Delegates, which shall judge of the election and qualifications of the candidates at such election, has the power, under the twelfth section of Article four of the Constitution, “to inquire into the qualification of voters—purge the ballot-box of fraud and recount the votes’—upon the part of the contestant it was insisted that, should the Committee find that Henry Brooke was elected on the fourth of November, eighteen hundred and seventy-three, by a majority of the legal and qualified voters of the county, it is the duty of the House of Delegates not only to determine that Widdicombe was not elected, and render “judgment” against him, but to go further, and without ordering a new election, to declare Brooke duly elected and entitled to the office.

By the Constitutions of 1851 and 1864, it was contended that, “in case of any contested election, the Governor shall send the returns to the House of Delegates, which shall judge of the election and qualification of the candidates at such election.

Acting under this broad grant of power, the House of Delegates, in the contested election cases of *Gambrill vs. Hairwood*, *Spence vs. Franklin*, and in other cases to which it is unnecessary to refer in detail, where the chief ground of contest was on account of disqualification of the candidates returned elected, after finding that the party elected was disqualified, declared the contestant elected and entitled to the office, although in fact he had received a minority of the votes cast at the election, upon a strained presumption of law, that the candidate being disqualified, the voters were presumed to know it, and hence all votes cast for the disqualified candidate were thrown away, and only those votes were counted which were cast in favor of the candidate who was qualified. The effect of this construction of the law was practically to legislate a candidate into office, when in fact he was the choice of only a minority of the legal voters.

To remedy this evil, when the present Constitution was adopted, the following clause was added to the section in reference to contested elections before the House of Delegates, viz: “And if the judgment shall be against the one who has been returned elected, or the one who has been commissioned by the Governor, the House of Delegates shall order a new election within thirty days.” While the power to judge of the election and qualification of the candidates would seem to include the power to declare the contestant elected, if the