

the greatest number of votes for the particular office, the duty is imperative on him to issue a commission to such person. In this last particular, his function is merely ministerial. The Constitution gives no discretion, and wisely. To vest in any one man, however high his office, and however great may be the official and moral sanctions that this duty would not be abused, might, in times of party excitement, notwithstanding be abused, and be pregnant with infinite and perilous mischief. What ignorance, partizanship, or a desire to subserve the supposed purposes of men in high places, or seeking high places, may do, contrary to all law, and in conflict with the clearly Constitutional rights of the citizen, has been so recently exhibited in our State that history need not be searched to discover the danger incident to such a power as would place an Election in the discretion of any one functionary.

The Code in the Section quoted is also, I think, free from doubt. Its provisions is, "the Governor, on *receiving* (the word *returning* is clearly a mistake) the returns of Elections for Electors to choose a President and Vice-President of the United States, shall enumerate and ascertain the number of votes given for each person voted for as an Elector and member of Congress respectively, and shall thereupon declare by Proclamation, signed by the Governor, the name of the persons or person duly elected, and shall cause such Proclamation to be inserted in such newspaper as he may direct."

It is obvious that here also the authority of the Governor is wholly ministerial. The returns of those elections are to be made to him. No proof other than such returns is submitted to him. The direction that such returns are to be submitted to him is, from the nature of the matter to be decided by him, exclusive of all other proof. His enumeration and ascertainment, therefore, of "the number of votes given to each person" is to be made entirely from these returns.

With him, as far as the duty imposed on him by the clause is concerned, such returns are conclusive, as to the votes *cast*.

His sole power is "to enumerate and ascertain the number of votes," and having done that, he is bound—no discretion being reposed in him—to declare who is elected by such enumeration.