

truth into falsehood, cannot make *that* an election according to the Laws and Constitution of Maryland which *is not* an election.

But admitting that the military orders under which the election was, in fact held, do constitute a part of the law of the case, it cannot be contended for a moment that the whims and caprices of subordinate officers contrary to the superior military authorities are a part of the law of the case. The arrest of the judges at Princess Anne, and the refusal at another polls to allow any but the yellow ticket to be voted, are contrary to the General Order No. 53, as modified by the President, and even as it originally stood, and are sufficient in themselves to invalidate the election. After all, this is nothing but a question of fact—the simple question—was there an election, or was there not an election? These officers were to be elected by the people of Somerset county. Was there an election? Was there a choice by the people? The question as to what would have been the result of a free and fair election, and whether it would have been different from that which the face of the returns show, cannot be considered. We are to decide not upon what would have been, but upon what really was the case. The law requires that there should be an election by ballot, not by guesswork. As well might we dispense with balloting altogether, and let this House decide beforehand upon whom the choice of the people of Somerset county would fall for these offices of Clerk, Register and Judge. Again the question of expediency may be urged. But this House is sitting in this matter in a judicial capacity, and are to decide according to the law and facts, under the same solemn obligations that bind the conscience of a jury in any other court.

It may be urged that there was a valid election in at least three districts of the county, and that whoever received a majority of the votes in those districts should be considered as elected, although in all other districts the election was invalid. But these officers are to be elected by the people of the county, and the question is upon the election in the county as a whole. It is true that where the cause of invalidity applies to only one district, there may still be sufficient evidence to show that there actually *was* a choice by a majority of those voters who offered to vote, or who were free and unconstrained to vote or not to vote, either by fear, bribery, force, or other cause, controlling their free will. But it must appear that there *was* such a choice. And this is the precise ruling of the House of Delegates in 1860, in the case of the contested seats of the Baltimore City delegation, where the committee reported that there was a fair election in the 8th Ward of that city—but the election, notwithstanding, was declared void. See *House Documents*,