

to the Judges and the Clerk of the Court of Appeals.

The words in the 62<sup>d</sup> Section making the Magistrates Judges of the Election and of the Qualifications of the Candidates do not, *ca vi termini*, make them exclusively so.

A return could not be made without such Judges in the first instance. The mode of Electing Sheriffs was perfectly new, but (considered as a popular Election) it was conformable to Precedent that there should be an Appeal.

The case of the Sheriffs return of Elections is certainly not in point. and the distinction has been insisted on by Mr. Jones's Counsel. but it may throw some light on the general propriety of the Appeal contended for.

The want of an express appeal by the Constitution might have been a *Casus omnisus*. but we can hardly believe that the Framers of it intended to vest so great a power with two Justices of the Peace, who might be indiscriminately picked up at the pleasure of the former Sheriff.

The two Tribunals may well stand together and the first Judgment is suffered to be final if no objection is made.

Would the Judgments or return of the Magistrates be so conclusive as to place the case beyond the reach of the General Court. I think not. Supposing the case to be only doubtful, it is the safest way to act under the Law of 1777 a part of which expresses that doubts on the subject then existed which it was the object of the Law to remove.

If this Point is given up, we are next to consider how far the act of 1777 authorises the Council to interfere or to what cases they are confined.

The Preamble recites the occasion for passing the Act, and it has been argued from thence that the power of the Executive is confined to Elections: not made fairly and freely and agreeable to the Constitution; owing to that Cause.

But the 3<sup>d</sup> Clause seems to have a greater extent and by enabling the Executive to determine the Validity of all Elections it provides for every case that is controverted let the ground be what it may.

This opinion is warranted by the doubt recited in the second Clause. and if we can judge at all of the intentions of the Legislature. we may reasonably infer that on the occurrence of such a doubt in a material part of the Constitution. they meant to remove it by giving a complete appellate jurisdiction to the Council. for in the particular