

Case before them, they gave immediate directions themselves.

Considering as I do the Executive not limited to cases of force let us examine the words of the Act. They are empowered to determine the Validity of all Elections and to set them aside if not made freely and fairly and agreeable to the Constitution. Under these words, all the requisites, should be complied with and a departure from either is equally fatal.

The last part is so comprehensive as to take in every possible violation of the Constitution, but even the former as sufficiently so to include the Return as well as any stage of the Election and it is to no purpose to have the latter Fair and free if the former is otherwise.

Further reasons will arise for not receiving the return in the course of those applying to the 4th 5th Modes proposed.

With regard to the 2nd Mode, sending the Return back to the Justices for Amendment.

I am against this, from considering the Grounds on which their Opinion appears to have been formed, which I conceive to be erroneous as they relate to the Constitution. If nothing of this kind appeared other errors not so material might probably be rectified. . . . but the time that has already been taken seems likewise to be an objection to sending it back to the same Justices.

The 3rd Mode of Commissioning Mr. Hatcherson I am likewise against on the face of the present return altho I think that he ought to have been returned otherwise for the reasons which I shall state as to the other Modes.

I am in favour of the 4th Mode, of setting aside the Return and ordering a new Election.

I have premised that I consider the Return (both with regard to its fairness and its agreement with the Constitution) as a part of the Election, so as to come within the provisions of the Act of 1777. and of course that the Board is competent to decide on the return as it is brought before them.

It is not necessary in this instance to determine whether if the return was in the usual form and no inconsistency appeared on the face of it, we should receive evidence as to the pretensions of a person not named in it, or should leave him to his remedy. But I incline to think that we could, even in that case, interfere.

The return states the fact that Mr. Hatcherson had the greatest number of Votes, and as the Constitution requires that the two persons having Majority of legal Ballots should be declared and returned.