

of speech. may offer himself in any capacity independent of any prospect of his offer being accepted. If the Qualifications of the Candidates are of necessity to be in existence at the Beginning of the Election it would seem proper that the Justice should examine into them at that time.

But they cannot have a right to do it in this case because from the nature of Balloting for Sheriffs the Candidates need not be named or known.

If the Qualification is not to attach at the opening of the Election we must determine when it does attach. and we shall thence be under the necessity of determining what share or portion of the office of Sheriff any Candidate has at any progressive stage of the Election.

According to the Constitution only two can be returned. If then there are six Candidates four of them must remain as of no consideration when the Election is finished and in the uncertainty that exists during the pendency of the Election they are all equally inconsiderable as to the right to the office.

In my opinion the Qualification ought to attach either before the Commencement of the Election or at any stage of it without distinguishing which. or in other words. if a Candidate was not qualified before the Election commenced his becoming so, on the first or second day so as to induce a presumption or even a certainty that a sufficiency of Ballots were afterwards inserted for him does not make his case better than if he had qualified just before the Close of the Election.

This opinion is opposed to the late determination of the House of Delegates in the case of a Member from Frederick but (with deference to that Body) I did not nor do I now think their decision warranted by the Constitution.

No person being entitled to the office of Sheriff or the Station of a Delegate until the Close of the Election it is impossible to make the Condition of one Candidate better than that of another till the event of the Election is determined. The point of time to which the Judgment of the Magistrates is to relate may be ascertained by attending to the express authority given to them by the Constitution. They are directed to count the Ballots when the Election is finished. but are not directed to do so at any prior stage of it. The contrary indeed is not inferred from the whole of the section.

On counting the Ballots they are to declare and return the two