

properly Qualified and Having the Majority of legal Ballots duly Elected.  
It may be going rather minutely into the business but it may be useful to state what should be the Considerations and the Questions of the Judges.

1. What persons on summing up the Ballots have the Majority?

This will be answered by a reference to the Names discovered on the Tickets (which names I contend need not be at all known before)

2. Have those two persons the Qualification of Property required by the Constitution? When this is answered in the Affirmative I ask what part of the 42. Section prescribes that this Qualification should have existed before there was a certainty of its being useful or at any time before the Judges had a right to enquire into it.

But according to the present return. The Judges admit that the per-  
son Chosen was Qualified at the time of his being so Chosen that is,  
at the Close of the Election. for every thing till then was uncertain. and  
the foremost Candidate was no more entitled to the office than the most distant.

The other Qualifications of Age and residence are not particularly in  
question at present. but as depending on the same principle I am  
clearly of opinion that they may be sufficiently complied with if  
the Candidates possess them immediately before the Close of the Election.  
All that the Constitution requires either in the Spirit or the Letter is that  
the person when chosen should have the Qualifications required.

Till that period every Applicant is a private Citizen, is not recognised  
by the Constitution as an officer and therefore is by no means amenable  
to the requisites pointed out and required in officers.

The opening, the progress and the Close of the Election tho' (the duration  
of it is limited) may be compared to the different stages of an  
Election or Choice made by the Executive either in filling up Vacan-  
cies in their own Body or in appointing Civil officers. In the for-  
mer case it has happened that some days have elapsed between  
the Commencement and the Close and I should apprehend that  
the Qualifications if they had been disputed would have related  
to the time of the Choice. In the latter case the six months residence  
would likewise apply to the time when the appointment was made.  
Some stress has been laid on that part of the 42. Section making