

unperformed, and the Command of the Constitution still continues upon them. If they do less than is required. They do nothing. If they do more it is surplussage.

A Judge of a Sheriff's election may be compelled to make a perfect Return, or shew Cause why he cannot do so. - A mandamus would not be refused on such an occasion. - But we do not think the Return is at all defective in the particular in which it is excepted to. -

1. Because it was unnecessary to state who had a Majority of Ballots. the Constitution requiring only a Return of the two Persons duly elected, and a Certificate of the Number of Ballots for each.

The Judges are to be regulated in their Decision as to the Persons duly elected, by the Majority of legal Ballots, but altho this ought to be one of the Grounds of their determination, they are not bound to return the fact to us, and if not bound to return it. the omission of any word in the Statement of such a fact can never be fatal. -

2. Because the Constitution uses the word Ballots as equal to and signifying legal Ballots. In that part of it which specifies the nature of the Judges Return it says "with a Certificate of the Number of Ballots (not legal Ballots) for each of them;" - So far then as the Judges are called upon by the Form of Government to state any thing in their Return relative to Ballots, they are only required to use the word itself without prefixing to it any Form of ascertaining their legality. -

3. Because the strictness contended for, is, not only unwarrantable, but can never be productive of any real Advantage. - It is supposed in this Case that the word "legal" was purposely omitted. - Because it could not with Truth be inserted; - but it is forgot that upon this supposition the same Delicacy would have prevented the Judges from returning Jones and Hall duly elected. Again, it is certain that Jones and Hall had not a Majority of Ballots with a View to Hatchison, altho, with a View to every other Candidate, they had, and it is equally certain that so far as the Ballots counted