

The second enacting Clause is of a general Nature. and was intended to vest a power of some kind in the Governor and Council with regard to future Election. The extent of that power (unless it be enlarged by Construction) is sufficiently obvious.

The Executive are empowered to set aside Elections for Sheriffs where it appears that they have not been made fairly and freely and agreeable to the Constitution.

The present Election (for ought that appears) was made fairly and freely and agreeable to the Constitution.

It is only of the Return. it is only of the Judgment of the Magistrates that there is any Complaint.

The Election (considered abstracted from the Decision of the Judges) is surely a good one in favour of some persons or other. There is no Doubt that it was free. for no Violence overawed. no Impediment kept back the Voters from the Polls. -

It could not be unfair. on account of one Candidate being unqualified. for he who gives his Suffrage is to take care that he gives it where it shall have Effect. and besides he knows or ought to know that the ultimate Decision upon the Effect of his Suffrage resides with the Judges of the Election and if the Election is not in itself exceptionable on either of these Grounds we know not how it can be said to be contrary to the Constitution : -

It is evident, however, that it is not the Election which is objected to. but the Judgment of the Magistrates. But over that (if the Election is not incurably defective) we have no Controul even by the Act of 1777. In short, being satisfied that either Hatchison and Jones. or Jones and Hall. were duly and constitutionally elected we cannot persuade ourselves to think that the Election is liable to be set aside by the Provisions of this Law (admitting it to be in force) merely because the Judges may have been mistaken in Returning the true Effect and legal Consequences of that Election. -

And under the Act of 1777 it is certain that we must either issue the Commission according to the Return or vacate the Election altogether. -

Reduced to this alternative. we cannot hesitate to say. that the latter part of it ought not to be adopted. -

III. This Question has already been examined so far as is material. It is to the same point with the former. i. e. our Right to controul the Determination of the Judges. -