

Clerk in my opinion is not essentially necessary to the validity of a Sheriff's Election. Can it possibly be supposed that the Framers of the Constitution designed to exclude the persons to whom they intrusted the Election from receiving in their own hands the Ballots from the Voters if they thought proper, or is it not more rational to say for the convenience of the Judges alone, that the authority of appointing a Clerk was given; otherwise it would be making the creators inferior to the created, it would be saying we intrust you to appoint a person who is to be under your sole and absolute direction in the conducting of the election, but we will not intrust you to do the business yourselves, a construction for which no good reason in my Judgment can be given. But it is said the language of the Constitution, "who shall appoint," is peremptory, it leaves no room for construction: but I say you cannot in this instance construe literally the Constitution, without being guilty of the absurdity of saying that persons who are unknown shall appoint the Clerk. for it is not the Judges who are to appoint but the candidates, and let me ask who are they? persons whose names are set down upon the Ballots, and who are unknown until the Election is closed. if then a Clerk must be appointed, I say no election can be held or at least any one Vote may defeat it. for if the persons who are openly considered the candidates make the appointment and on an examination of the Ballots any other person shall have been voted for than those who concurred in the appointment the Election would be void. for being a special authority, as contended, it must be done by the whole. But it is not contended that the candidates are to appoint: but I say if the Constitution is literally and grammatically to be construed they must. as then a literal construction would produce such absurd consequences I am inclined to give it a rational meaning, and say that it is not essentially necessary that a Clerk should be appointed, but that the Judges may appoint or not as they please.

But if it is essentially necessary the Judges of the Election in my Judgment are alone to determine if they adjudge wrong, if from pure Motives there can be no redress, if from improper motives, they as other Judges are answerable for their conduct.

The principles laid down above in my Judgment preclude the Executive from taking notice that part of the Election was conducted by one Judge. for if they are the sole Judges of the Election they must also determine the manner by which it is to be conducted and are not in my opinion answerable for their conduct to the Executive.

John Johnson

I dissent to the opinion of the Council on the Election and Return of Prince Georges County for Sheriff. because in the Petition of Joseph Boone against the said Election the following points were supported by the Testimony produced before the Board. 1. That there was such violence made use of at the Election as to prevent a number of the Citizens of Prince Georges County from voting, one Man being killed and others so severely wounded that their lives were despaired of, and therefore the free voice of the people was not had. 2. That the Judges of the Election did not appoint a Clerk for several Hours after the Polls were opened and 3. That on the coming of the first day the Polls having been closed, one of the Judges, to wit, John Smith Brooks refused to attend and open them again that Night, but went home five Miles from where the Election was held and that Samuel Hebburn the