

other Judge did on application open the said Election and keep it open for about three hours when no other Judge attended but himself.

From the Evidence produced to the Council it is clear to my mind that the Riot was so great the first and second days that few peaceably inclined people would risk going to the Election. For after it was ascertained that a great Riot had taken place the first day when many were severely beat and wounded, and that on the second day party spirit had become so high, that another Riot took place of more serious consequences than on the first day and that one Man was actually killed at the place where the Election was held and numbers of others so badly beat and wounded that their lives were despaired of, and one Man has certainly died of his wound since. I say that after this was generally known throughout the County, that very few Men but from party spirit would venture to go to the Election and give their Votes, and I think such a spirit ought never to govern Elections, because it is not within the spirit or meaning of the Constitution to countenance such Elections, and from this and other circumstances it is impossible to say how far the violence committed had weight even with those who voted much less with respect to those who would not come to the Polls from fear, and it was given in Evidence that several refused to go on that account. I am therefore for setting the Election aside on this ground alone. On the 2nd Point I agree with the Board: for it appeared in Evidence that the Judges procured a Clerk as soon as they could. Therefore am willing to pass over that objection. The third point is of much more importance with respect to future Elections. It appeared in Evidence that one of the Judges after the other had refused to open the Polls again the first night went up and held the Election for three hours when no other Judge attended but himself. It appeared to be given up even by the Council for Mr. Maddox the Sheriff elect that this part of the Election was held unconstitutionally, but the Polls being opened at the request of Mr. Boon's friends the Board ought not to sit it aside. To this I reply that the Board considered that they had the power under the law of 1777 and were acting in conformity to it, or they would not have heard Counsel upon the subject. If this is the law I ask what part of the law is it putting the constitution out of the question, that gives the Board such power to judge. The affirmative words are that if Sheriffs Elections are not held truly and fairly and agreeable to the Constitution the Council are directed to issue writs. But does the law give a power to the Board to say when an Election is held partly unconstitutional and partly agreeable to it to judge which of the candidates are benefited or injured by holding the Election in this manner, and reject or concur as they may think proper. I am clearly of opinion it does not, but taking the Constitution for my guide, it prescribes the manner in which Elections are to be held which few Men can mistake, if they examine it, and I am not for departing from the Constitution in any point whatever, because if you permit of it to be done at this time and another part next year it will soon be difficult to say what part of it will be strictly adhered to and what part will be dispensed with. This is what I can never consent to. The testimony not being disputed on this point, I am clearly for setting the Election aside on this ground also.