

at all the attending judges at the close of the polls in the several districts of said county were assembled together in the manner prescribed by law, and there is evident cause to explain why the said return does not bear the signatures of the whole of the said six judges, for that two of them attending as before stated, did refuse to concur in the aforesaid return, which is signed by the other four judges, and regularly certified. The committee in accordance with the opinion already expressed by a resolution of the house, do therefore consider that the sitting members, all of them prima facie entitled to their seats, until it should be shown that the return made by the four judges in favor of the sitting members, is unconstitutional or illegal. In the memorial presented to the house by Upton Bruce, Benjamin Tomlinson and Thomas Greenwell, Esquires, it is urged that the return under which the sitting members hold their seats is illegal, because they alledge that it gives the votes only of a portion of the people of Allegany county; and it is insisted on the part of the petitioners, that they had a clear majority of the legal votes. In support of this allegation, the petitioners have adduced a certificate from the clerk of Allegany county, accompanying their memorial, to which the committee beg leave to refer.

In a counter memorial presented to the house by Beale Howard, George M'Culloch and George Robinett of Nathan, Esquires, being the three sitting members whose election is contested, it is represented that the allegations contained in the said petition are unfounded—That the said petitioners had not a clear majority of the legal votes in Allegany county—That it appears by the return made by four of the presiding judges out of six, that the sitting members are all duly elected—And that the said return is constitutional and in conformity with the express directions of the law regulating elections in this state.

From the statements and certificates by both parties, it appears to the committee that on an aggregate of the whole number of votes as taken in the six several election districts of Allegany county, including the votes taken in district number four, that Upton Bruce, Benjamin Tomlinson, William Hilleary and Thomas Greenwell (three of whom are the petitioners aforesaid) had the greatest number of said votes.

The committee also find that exclusive of the votes taken in district No. four, William Hilleary, George Robinett of Nathan, George M'Culloch and Beal Howard, had the greatest number of legal votes.

The committee refer the house for more particular information, to the certificates of the clerk of the county, which are exhibited with the petition and the counter memorial, in order to shew the whole amount of the votes taken in the several election districts of said county, and the number of votes taken in the said district No. 4. It is ascertained by a certified copy (marked A) of the return of the polls of district No. 4, that the election in the said district was held by three persons acting as judges of the election of that district—That two of the said persons were qualified as judges agreeably to law; but that the presiding judge of said district did not qualify as the law requires, and that he took the oath before one of the other judges, not being a justice of the peace, and not being authorised by law to administer such oath.

It thus appears to the committee that the election was held in the fourth district of Allegany county, by three persons as judges of the election, one of whom was not lawfully qualified to act in that capacity; and the committee are therefore of opinion that the poll in said district was illegally held, and was null and void. The sixth section of the Act of 1805, chapter 97, directs the appointment of three persons for each election district who, or a majority, or any one of whom, in case of the non-attendance of the other two, shall be the judges or judge of the election for such district. But this was not a case of non-attendance, for all the persons who had been appointed as judges did attend at the said poll; and one of them acted as the presiding judge of the election, and exercised all the powers of a judge in common with the other two, and was concerned throughout in conducting the said election, without being qualified in the manner which the act of assembly regulating elections has specially and positively enjoined. The 11th section of the act referred to, directs the form of the oath to be taken by the presiding judge of election, before he proceeds to take or receive any vote, by whom it shall be administered; and moreover that a certificate of every such oath, signed by the person administering the same, shall be annexed to the polls. It further provides, that, if no justice of the peace be present to administer the same, it shall be administered by a clerk of the said election, after such clerk shall have qualified as aforesaid. In this case then there was not, and there could not truly be, a proper certificate, annexed to the polls, of the necessary qualification of the said presiding judge, because it is well known that an oath administered by a person not competent or authorised by law to administer such oath, is in effect no qualification whatever; and can it be reasonably contended that the want of the requisite qualification in the person thus acting as presiding judge could possibly operate, as in case of actual non-attendance, to vest in the other two persons a complete and exclusive authority to conduct the election, and thus legitimate the said proceeding. They did not act in any rightful separate capacity, but in conjunction with a person who had no legal authority or power to act with them. In the execution of an important trust committed to them as judges of the election, there was an equal participation by an individual who had not bound himself by taking the prescribed legal oath before a justice or clerk authorised to administer it, and who could not, therefore, be held accountable for any breach of that sacred obligation of office, which the law meant to impose, and with which it was intended to guard the fairness and purity of elections. Under these circumstances the committee do not conceive it necessary that the house should comply with the demand expressed on the part of the sitting members, by entering into a general scrutiny of the election. In their counter memorial it is stated by Messrs. Howard, M'Culloch and Robinett, sitting members, that unconnected with the circumstance of there being no election