

1789 WL 103 (Vt.)  
Supreme Court of Vermont.

STATE OF VERMONT

v.

JOHN MARSH, esq.

Dec. Term, 1789.

West Headnotes (1)

**[1] Election Law**

 [Mode of voting in general](#)

Const.1786, c. 2, § 31, Vt. State Papers, p. 527, requiring elections “by the people, or in General Assembly,” to be by ballot, does not extend to the elections of town officers; but they may be elected *viva voce*.

[Cases that cite this headnote](#)

**\*1** This was an indictment against the defendant, John Marsh, for assaulting Joseph Marsh, constable for the town of H. in the execution of his office, and rescuing a horse taken by distress on a warrant for taxes.—The defendant plead the general issue, not guilty.

For the defendant it was insisted that Joseph Marsh was not legally appointed to the office of constable—The votes, as it appeared in evidence, for this and other officers chosen at their annual town meeting, being given in to the Clerk, *viva voce*, which had been their usual mode—whereas by the 31st section of the Constitution **\*\*29** of this State, “All elections, whether by the people, or in the General Assembly, shall be by BALLOT, free and voluntary.”

**Opinion**

The Chief Justice, in his charge to the Jury, gave his opinion on this point, in which the other Judges fully concurred.

Whether the clause in the Constitution insisted on for the defendant extends to the choice of officers in towns and lesser corporations, must be determined, 1st. by considering the subject matter; and 2d. by comparing it with other parts of the Constitution. The framers of the constitution were forming a plan for the general government of the State. They do not appear to have had an eye to the internal regulation of lesser corporations. In this section they point out the mode **\*\*30** of electing the officers to the general government, and in this view they confine it to elections by the people and General Assembly. “*The People*,” here means the collective body of the people, who have a right to vote in such elections—and is used as synonymous to “*Freemen*.”

The word “*Election*,” when the choice is to be by the people or freemen, is, in every part of the Constitution, used in the same appropriate sense; as in the 7th section, “In order that the Freemen of this State may enjoy the benefit of elections as equally as may be, each town within this State may hold elections therein”—For what purpose? for the choice of Representatives.—In the 10th section, “On the day of election for choosing Representatives,” &c.

**\*\*31** I am, therefore, clearly of opinion, that the 31st section of the Constitution does not extend to the choice of town officers, and is to be laid wholly out of the case under your consideration.

The Jury found the defendant *Guilty*.

**All Citations**

1789 WL 103, N.Chip. 28