

Contested Elections.

An. Code, 1924, sec. 140. 1912, sec. 129. 1904, sec. 127. 1888, sec. 93. 1896, ch. 202, sec. 119.

180. All contested elections for comptroller of the treasury, judges, clerks of the courts of law, and registers of wills shall be decided by the house of delegates, and the testimony shall be taken in such cases in the same manner as herein prescribed in the contested seats of the senate and house of delegates.

Secs. 180 to 196 are not applicable to primary elections. The contested elections of officers provided for by this section are elections at which the offices included are to be filled, and have no application to contests concerning the right to be candidates for such offices. The nominee of a political party is not an "officer," nor is a candidate for such nominee a candidate for an office within meaning of sec. 181. *Foxwell v. Beck*, 117 Md. 5.

Upon the return of judges of election, if Governor issues a commission to A., he is entitled to the office pending a contest before the house of delegates. The issuance of the commission terminates the official tenure of the predecessor. Upon a petition for mandamus to obtain possession of an office, the court of appeals is confined to the determination of legal right of petitioner to the office. The house of delegates alone can go behind election returns. *Brooke v. Widdicombé*, 39 Md. 386.

Decision of the house of delegates is final and conclusive; its jurisdiction is not special or limited. When house of delegates declares a man elected to an office, he is in same position as if he had been so returned by judges of election. *State v. Jarrett*, 17 Md. 309.

As to inquiry by committees on elections of the two houses, as to whether any member-elect is in default to the treasury, see art. 69, sec. 6.

An. Code, 1924, sec. 141. 1912, sec. 130. 1904, sec. 128. 1888, sec. 94. 1896, ch. 202, sec. 120.

181. All cases of contested elections of any of the officers not provided for in the constitution, or in the preceding section shall be decided by the judges of the several circuit courts, each in his respective circuit, and by the superior court of Baltimore City, in the city of Baltimore.

Superior Court is empowered by this section and sec. 238 to deal with all primary election contests. *Dorsey v. Ennis*, 167 Md. 445.

The power of the courts under this section includes authority to decide all matters involved in the contest; to declare who was elected; that the office was vacant, and that notice be given the Governor. *Handy v. Hopkins*, 59 Md. 168.

This section was passed in pursuance of the constitutional direction that the legislature make provision for contested elections not provided for by the Constitution. This section is still in force under Constitution of 1867. The court will either decide which contestant was elected, or notify the Governor of a vacancy. *Anderson v. Lively*, 58 Md. 201. See also *Warfield v. Latrobe*, 46 Md. 123.

For the effect of petitioner having a remedy under this section, and proceedings already instituted thereunder, upon application for mandamus to direct the Governor to issue a commission, see *Brown v. Bragunier*, 79 Md. 242.

See notes to sec. 180.

An. Code, 1924, sec. 142. 1912, sec. 131. 1904, sec. 129. 1888, sec. 95. 1892, ch. 12. 1896, ch. 202, sec. 121.

182. Each judge of the circuit court and of the superior court of Baltimore City may adopt such modes of proceeding and adjudging costs in cases of contested elections as to him shall seem most satisfactory, but the rules of taking testimony in such cases shall be the same as those which regulate the taking of testimony in contested election cases cognizable by the house of delegates.

When the boxes have been kept as required by sec. 122, the ballots may be examined by the court. *Leonard v. Woolford*, 91 Md. 627.

This section was passed in pursuance of the constitutional direction that the legislature make provision for contested elections not provided for by the Constitution. This section does not delegate legislative power to judges. It is still in force under the Constitution of 1867. *Anderson v. Lively*, 58 Md. 201. See also *Warfield v. Latrobe*, 46 Md. 123.

See notes to sec. 180.