

House of Delegates should so find, as well as the one who has been returned elected, or the one who has been commissioned by the Governor, and although it would seem that the decision of the House of Delegates that the contestant is elected would logically entitle him to the office; yet your Committee have come to the conclusion that it is the better and more judicious construction to give to this clause of the Constitution, that in all cases where the judgment shall be against "the one who has been returned elected, or who has been commissioned by the Governor," a new election should be ordered.

It is true, as was insisted on behalf of the contestant, that force and effect would be given to this clause of the Constitution, by applying it only to cases of disqualification of the party elected, and to cases where facts do not show that the contestant has not received an actual majority of the votes cast by the legal and qualified voters, and it seems imposing a double burden and hardship upon the contestant if he has, upon purging the ballot-box, rejecting the disqualified voters, and recounting the votes, in fact received a majority of the votes of the legal and qualified voters to require him to undergo a second contest before the people, in order to secure the office. But the evil sought to be remedied by this clause of the Constitution was to prevent legislating parties, not returned elected, into office, under the influence of partizan or other considerations. If your Committee conceded that in a case in which the House of Delegates came to the conclusion that the contestant was elected, he could be declared elected and placed in office without ordering a new election, various pretexts and reasons might, in the heat of partizan contest, be found by which the party in the ascendancy could reach this result, and thus avoid a new election.

Thus the evil sought to be remedied of legislating parties into office would not be effectually checked. Your Committee, looking to past precedents, and with a view to place such a construction upon the Constitution as will most surely carry out the objects of the framers of the instrument, have reached the conclusion, that if their judgment is against Robert S. Widdicombe, who has been returned elected, the House of Delegates must order a new election.

The evidence taken in this case is very voluminous, and much of it, as conceded by the counsel of the respective parties, in their arguments before the Committee, has no great bearing upon the judgment to be rendered by the House of Delegates. If the House was not required to order a new election in case the judgment shall be against the candidate returned elected, but was called upon to ascertain the exact state of the vote, and make out new returns upon which to