

death during the session of the Senate of a member thereof, to fix the time of such election at the next ensuing election for Delegates and Senators?

3. Would such an election as is referred to in the preceding inquiries be held under the provisions of the Act of 1890, chapter 538, said Act being in force in the county where the election was to be held, and if so, what length of time would candidates be required before said election under said act to file with the Supervisors of Election for the county certificates of nomination and nomination papers, and are the provisions of said Act as to the time of filing said certificates and papers mandatory, and could a legal election be held under such a warrant of the President of the Senate without a compliance with this provision of said act? Does the proviso at the close of section 13 of Article 3 of the Constitution limit and qualify the time at which the election is to be held under the warrant of the President of the Senate, as well as the time at which the election is to be held under the warrant of the Governor, referred to in said section.

*As to the first of these Questions :*

It seems quite clear to me that until the Senate has finally disposed of the contest and thereby determined whether a vacancy exists or not, it is not within the power of the President to issue his warrant for a new election.

In the contest in question, Dr. Samuel R. Bird claims that he was in truth and in fact elected Senator from Calvert county on the 4th of November last, and his petition prays that the seat shall be awarded to him. And that his competitor shall be decided not to have been really and truly elected. In such a contest, these conclusions may be reached by the Senate: 1st. That the late Mr. Talbott was elected; or 2nd. That Dr. Bird's contention is well founded, and that he was elected; or 3rd. That there was no valid election at all.

The death of Mr. Talbott does not settle the controversy or relieve the Senate of its duty and responsibility to decide the contest. Nor does it *ipso facto* create a vacancy. Before a vacancy can legally be ascertained to exist, it will be necessary for the Senate to determine either that Mr. Talbott was elected, or that there was no election whatever.