

If they shall adopt the report of the majority of the Committee on Elections, and finally decide that Mr. Talbott was duly and lawfully elected, then, upon the adoption of said report and the dismissal of Dr. Bird's contest, a vacancy will necessarily be determined to exist, for the death pending the contest of the gentleman thus decided to have been entitled to the seat, leaves the seat vacant, and requires an election by the people to fill the vacancy thus arising.

The same result will happen, if the Senate, upon a review of the whole case, instead of adopting the report of the majority of the committee, shall determine that neither the contestant, Dr. Bird, nor the contestee, Mr. Talbott, was duly elected.

And should the Senate reach either of these two suggested conclusions, to wit: 1st. That Mr. Talbott was duly elected; or 2nd. That there was no valid election at all, a warrant for a new election must be issued.

But, until the contest is disposed of and the disputed question of title to the seat settled, it cannot be known that Dr. Bird may not be declared to have been duly elected, the contest may be decided in his favor, and, of course, in this event, there will be no vacancy and consequently no occasion for the issuing by the President of the Senate of a warrant for a new election.

It is manifest, therefore, that until there shall be a final decision by the Senate that a vacancy in fact exists, the President has no power to assume that one does exist, and upon such assumption issue his warrant for an election.

In fact, his right and duty to issue such warrant depend entirely upon the existence of a conceded or an adjudicated vacancy.

*As to the Second and Third Questions.*

As soon as the pending contest shall be finally determined by the Senate, and a vacancy decided to exist, it will be the duty of the President to issue his warrant to the Sheriff of Calvert county, notifying him of the existence of said vacancy and authorizing him to appoint a day for holding an election for the purpose of filling it. As I interpret section 13, of Article 3, of the Constitution, it is no part of the duty