

The provisions of this Act as to the use of official ballots, as to nomination papers, and as to the duty of the Secretary of State are mandatory, and cannot lawfully be disregarded. No elections not held in conformity with the requirements of that law can be valid.

Chief Judge Alvey so decided in reference to a local election in Hagerstown, and in the now famous election cases recently decided by the Court of Appeals of New York, the same doctrine was vigorously maintained.

From what I have already said, you will perceive that in my opinion, the proviso at the end of section 13, of Article 3, of the Constitution, applies equally to the warrant for a new election, whether such warrant be issued by the President of the Senate during the session, or by the Governor during the recess. There is no reason whatever for applying this proviso to the Governor alone. It is a proviso to the whole of the preceding part of the section and not being in terms restricted in its application to the case of an election ordered upon the warrant of the Governor, it must, according to a well established rule of interpretation, be held to embrace and cover as well the case of an election ordered to be held upon the warrant of the President.

And the reasonableness and necessity of this view, will be at once apparent if we suppose the case of a vacancy occurring less than ten days before the end of the session. In this case, the President must order a new election, and issue his warrant to the Sheriff, but as the minimum notice prescribed by the Constitution could not be given, the election of necessity must go over until the next general election. Neither the President nor the Governor, in my opinion, has any duty to perform so far as the appointing of a day for holding the election is concerned.

Their duty begins and ends with the issuing of the warrant for the election. The time for holding it and the regulations under which it is to be conducted are prescribed by Statute, subject to the two paramount limitations in section 13, of Article 3, of the Constitution, viz: First, that not less than ten days notice must be given in any event; and second, that if a session of