

the General Assembly may not intervene before the election whenever ordered by the President of the Senate or by the Governor can lawfully be held to fill the vacancy, the election must be postponed until the next general election for Senators and Delegates. The Sheriff is prohibited by the Code (Article 33, section 90), as well as by the Constitution (Article 3, section 13), from giving less than ten days notice. And section 92, of Article 33, which requires the election to be held within fifteen days after he receives the warrant, is, as I have shown, repealed by necessary implication by the Australian Ballot Act.

The time prescribed by this Act necessarily carries any date for a special election beyond the expiration of the present session, and then the proviso at the end of section 13, of Article 3, of the Constitution, commands the election to be postponed until November, 1893.

The reason of this is obvious. Whenever circumstances do not allow the vacancy to be filled during the session of the General Assembly, the object of this proviso is to defer the election until the next general election, in order to avoid the inconvenience and expense of a special and wholly unnecessary election.

The three questions which your Honorable Body put to me are stated as abstract propositions, but inasmuch as they plainly refer to the existing contest for the seat of the late Senator Talbot, I have thought proper, in order to make my meaning explicit, to deal with the actual case.

I am of opinion, therefore,

1. That the President cannot properly issue his warrant for a new election until the pending contest shall be determined and a vacancy declared to exist by a decision that Senator Talbot was duly elected or that there was no valid election at all.

2. The President has no power to fix the day for holding the election

3. The Australian Ballot Act will apply to any election that may be held, but inasmuch as under its provisions no valid election can be held before the expiration of the present session, the Constitution controls the case and the vacancy is not to be filled until the general election in November, 1893.