

they have heard counsel of great ability argue the law and the facts disclosed by the testimony, and after mature consideration, respectfully report as follows:

The contestants claim that the contestees are ineligible as members of the House of Delegates under Article 3, section 9 of the State Constitution wherein it is provided that "no person shall be eligible as a Senator or Delegate, who at the time of his election is not a citizen of the State of Maryland and who has not resided therein for at least three years next preceding the day of his election and the last year thereof in the County or Legislative District of Baltimore city which he may be chosen to represent, etc."

The allegation being that Messrs. Walbach and Smoot were not residents of Charles county for the year preceding their alleged election to this House on the third day of November, 1903.

It being conceded that both the contestees have been residents of the State for more than three years, the two questions arising are:

First. Were the contestees or either of them non-residents of Charles county for the year preceding the election on the third day of November, 1903, and therefore ineligible as members of the House of Delegates?

Second. If the contestees or either of them are ineligible are the contestants or either of them entitled as minority candidates to the seat or seats thus declared vacant?

In order to discuss these questions intelligently it is necessary to first consider the testimony and law as to the respective residences of the contestees, Messrs. Walbach and Smoot and then the second question.

The testimony shows that both Mr. Walbach and Mr. Smoot were born in Charles county. Mr. Walbach at the Gardnuer Homestead in the Patuxent or Ninth district, that he cast his first ballot in that district, married in the county and lived there, either farming or teaching school. There seems not to have been any question as to his residence in the county until he received a position in the Rural Free Delivery Service of the Government, after the adjournment of