

vote for Comptroller, and that unless such scrutiny is had the House of Delegates, acting in its judicial capacity, cannot decide intelligently as to the said election, and this respondent insists upon scrutiny being had, in accordance with immemorial usage in such cases and his just rights under the laws of the land. And he further insists, that unless it shall appear after such scrutiny has been had, that *the excess* of legal votes which would have been cast for the contestant as alleged in said memorial over the legal votes which would have been cast for this respondent *when taken with* the excess of illegal votes cast for this respondent (as alleged in said memorial,) over the illegal votes cast for said contestant, constitutes a number greater than the official majority for this respondent as certified to the Governor, it will not be competent for the House of Delegates to declare that this respondent was not legally elected Comptroller of the Treasury.

And he is further advised and insists that in case this Honorable House should declare after such scrutiny as aforesaid, that this respondent was not legally elected Comptroller, the said House could not award the said office to the contestant, as is prayed in the said memorial, without a violation of the spirit and meaning of the Constitution and laws of this State, and departure of the immemorial practice in such cases in every county professing to be free. And he submits, that such action would in fact be an election of Comptroller of the Treasury, by the House of Delegates instead of an election by the qualified electors of the State, as prescribed by the Constitution as aforesaid, and he is advised that this Honorable House has no constitutional power or right to make such election of Comptroller.

This respondent is further advised that if this Honorable House after such full scrutiny, as aforesaid, should declare that he was not duly elected, it would seem that a new election should be thereupon had, but he is informed that no power has been given by the Constitution to order a new election in such case, and that therefore the vacancy in said office of Comptroller would be filled by the Governor, under the provisions of the Constitution in such cases made and provided.

And this respondent having fully answered the several allegations of the said memorial, prays that such scrutiny may be awarded, as aforesaid, and that this House may decide adversely to the prayer of the memorial of the said contestant, and as, &c.

W. H. PURNELL.