

I nominated for your advice and consent, James H. Weather's, of N. for the office of Adjutant General. On the 3<sup>d</sup>. day of May, your Honorable Body adopted and transmitted to me a series of resolutions, the import of which was, that it was not competent for me to nominate a person for that office, without previous legislation, inasmuch as the Constitution had not fixed the period for the determination of the term of the incumbent. In the message of the same date, which I had the honor to send to you, I stated that I would conceive it to be my duty to make an appointment during the recess, in order that an opportunity might be thereby afforded for testing that question before the supreme law-tribunal of the State.

The nominee not having been rejected by you, within the meaning of the thirteenth section of Article II, of the Constitution, I felt at liberty to appoint him to the same office during the recess, which I accordingly did. Upon the question of his eligibility, no point has been, nor, I presume, can be raised. The incumbent having refused to deliver up the records of his office, the new appointee filed his petition in the Circuit Court for Anne Arundel County, for the writ of mandamus. It was refused by that Court; whereupon an appeal was taken to the Court of Appeals, a copy of whose decision I have the honor herewith to transmit.

Doubts were entertained (though not by me) of the validity of the commission issued during the recess, for reasons analogous to those which appear in the decision of the Court. Nevertheless, I determined to issue that commission, because it was the only mode within my reach, by which the question could be brought to a hearing. The Court of Appeals has decided that the Commission was invalid; because an appointment of a successor to supersede the present incumbent could only be made by the concurrent acts of the Governor and Senate - because the incumbent held over, according to the original tenure of his office, until such time as he should be duly superseded by the appointment of a successor - and because, therefore, no vacancy existed during the recess, to be filled by a temporary commission. The principle of the decision of the Court does not affect the issue raised in the resolutions passed by your Honorable Body, at the last session; and yet, it was sufficient to justify the Court in affirming the judgment of the Court below.

In private cases, and in many ordinary cases of a public character, all Courts very properly confine their decision to the points raised in the record of the particular case before them. But, as this was a question of great public concern, the speedy determination of which was a matter of considerable importance to the Militia, and especially to the volunteer troops of the State, I had hoped to obtain the views of the Court of Appeals upon the point suggested in your resolutions, which is alone material. As the decision of the Court, even upon the points raised in