

point two additional Justices of the Peace for the 2d election district of Frederick county, reported it without amendment.

Said bill was then read a second time.

The President laid before the Senate the following communication from his Excellency Governor Bowie, by the hands of the Hon. Wm. S. McPherson, Acting Secretary of State :

EXECUTIVE DEPARTMENT,

Annapolis, January 17, 1870.

*To the Senate of Maryland :*

Gentlemen : A vacancy having occurred in the office of Chief Judge of the Sixth Judicial Circuit by the death of the late Judge Nelson, I respectfully present for the consideration of the Senate the question of the construction of the constitutional provisions relating to the mode of filling the vacancy. While I entertain the opinion that the power of appointment in such case is conferred by the Constitution upon the Governor, and not upon the Governor and Senate as formerly, I express this opinion with diffidence, and as this is the first case which has arisen since the adoption of the Constitution requiring the exercise of the power, I would be glad to be informed, if agreeable to your Honorable Body, of the views entertained by the Senate on the question.

I will briefly state the grounds upon which my opinion is based.

The mode of filling a vacancy in the office of Judge is expressly provided by Article IV., section 5, which directs that the *Governor* shall make the appointment. As the case is one not falling within the 10th or 11th sections of Article II., it must be governed exclusively by Article IV., section 5, which seems to be free from ambiguity, confers the power of appointment upon the Governor, and does not provide for or require the concurrence of the Senate.

This provision is dissimilar from that contained in section 40 of the same Article relating to Judges of the Orphans' Courts, and which directs that a vacancy in that office shall be filled by the appointment of the Governor, "*subject to confirmation or rejection by the Senate.*" It is also plainly different from the provisions contained in the Constitutions of 1851 and 1864, prescribing the mode of filling a vacancy in the office of Judge. By reference to the provisions on this subject in those Constitutions, it will be found that the appointment in such case was required in terms to be made by the Governor "*by and with the advice and consent of the Senate.*" This provision appears to have been designedly changed by the present Constitution, and the language employed is essentially different—conferring in terms the power of appointment on the Governor alone. I respectfully suggest that the