

ficult to find proper persons to fill the important stations of judges of the Court of Appeals, and for this reason the selections to fill that court were postponed. And the postponement was a long one, lasting for twenty months, to December, 1778. It was stated later in the House proceedings that there was difficulty in finding proper persons who would accept seats on that court. The number of five judges, agreed upon in this discussion, was the number of Councillors required under the act of 1729, chapter 3, section 2, to constitute a court when both the Governor and the President of the Council were absent. Meanwhile the selection of judges for the other courts went forward. To a considerable extent the same men were continued in old offices, and some of those selected as judges had had judicial experience before and during the Revolution.

After the delay of twenty months, on December 1, 1778, the Senate sent this communication to the House of Delegates:

Gentlemen, We consider the appointment of the Court of Appeals as a measure absolutely necessary to carry into full effect our present Constitution and form of government. We think the appointment ought not to be longer delayed. If you should be of the same opinion, it will be proper to fix the number of judges of the said court, and their salaries before we go into a nomination of them.

The House replied on December 9 that it agreed in the view of the Senate, and assumed that the number of judges to be appointed had already been fixed at five, but expressed a willingness to set up a court of three for the present if it was thought necessary to do so to get the court started;