

July, 1896, during a recess of the legislature, the Governor appointed the appellee commissioner, it was held that the appellant was entitled to the office until August, 1896. *Ash v. McVey*, 85 Md. 128; *School Commissioners v. Goldsborough*, 90 Md. 204. *Cf. Kroh v. Smoot*, 62 Md. 175; *Sappington v. Slade*, 91 Md. 649.

To recess appointments (under this section), sec. 13 is not applicable. The general assembly cannot disregard this section when the office is a civil office which must be filled by executive appointment. Contest for the office of supervisor of elections. *Sappington v. Slade*, 91 Md. 645.

Where the Governor named the appellant as adjutant-general during the session of the senate but the senate did not confirm the nomination, the appellee, who prior thereto was in office, and not the appellant, was entitled to the office, although the Governor issued a commission to the latter. This section construed in connection with art. 9, sec. 2, art. 2, sec. 10, and art. 15, sec. 3. This section only authorizes the Governor to fill vacancies, and if none exists, it has no application. *Watkins v. Watkins*, 2 Md. 354 (based on the Constitution of 1851).

Upon the removal of the adjutant-general under art. 9, sec. 2, or under art. 2, sec. 15, the Governor may, under this section, fill the vacancy thus created until the end of the next session of the senate, or until another constitutional appointment is made. *McBlair v. Bond*, 41 Md. 154.

This section referred to in construing sec. 15—see notes thereto. *Harman v. Harwood*, 58 Md. 10.

This section referred to in construing sec. 13—see notes thereto. *Dyer v. Bayne*, 54 Md. 99.

See notes to art. 2, secs. 10, 13 and 15, and to art. 4, sec. 43, Md. Constitution and to art. 33, sec. 5, An. Code.

Sec. 12. No person, after being rejected by the Senate, shall be again nominated for the same office at the same session, unless at the request of the Senate; or be appointed to the same office during the recess of the Legislature.

This section referred to in construing sec. 15—see notes thereto. *Harman v. Harwood*, 58 Md. 10.

Sec. 13. All civil officers appointed by the Governor and Senate shall be nominated to the Senate within fifty days from the commencement of each regular session of the Legislature; and their term of office, except in cases otherwise provided for in this Constitution, shall commence on the first Monday of May next ensuing their appointment, and continue for two years, (unless removed from office), and until their successors, respectively, qualify according to Law; but the term of office of the Inspectors of Tobacco shall commence on the first Monday of March next ensuing their appointment.

From the language employed in this section and secs. 11 and 14, it is manifest that the power of appointment to all civil offices was confided not to the Governor alone, but to the Governor and senate; hence the Governor has no power to appoint to office without the advice and consent of the senate, except to fill vacancies which occur during recess of senate, or as provided by sec. 14, within ten days before the senate's final adjournment. See notes to secs. 10 and 15. *Cull v. Wheltle*, 114 Md. 90.

In view of this section and of secs. 11 and 14, the Governor has no power to appoint to office without the advice and consent of the senate except to fill vacancies occurring during the recess of the senate or as provided by sec. 14 within ten days before its final adjournment; hence where the appellee was appointed tobacco inspector in January, 1880, and was duly confirmed and qualified, and in February, 1882, the Governor nominated another as inspector, but the nomination was rejected; and on April the 3rd, 1882, the appellant was nominated as inspector, but the legislature adjourned on the same day without acting on his nomination; and thereafter on April 10th the Governor appointed the appellant inspector and issued a commission to him, the appointment of the appellant is void, and the appellee is entitled to the office until his successor is appointed and qualifies in accordance with this section. *Smoot v. Somerville*, 59 Md. 86; *Claude v. Wayson*, 118 Md. 489. *Cf. Kroh v. Smoot*, 62 Md. 175; *Sappington v. Slade*, 91 Md. 649.