

In Council annapolis march 12 1805

Gentlemen

I have taken your communication of the 5th instant into consideration, and have also consulted the Council on the occasion, but came to no conclusion on the subject.

The question is in my opinion a very delicate and important one, and it is by no means clear, whether a mere omission to execute a Bond, within the time prescribed by the act of assembly can be considered as a refusal to act, within the meaning and spirit of the Constitution. - If, after the time limited by the act of assembly, the Sheriff had refused to give a Bond on being required by the Court, or done any act tending to shew a determination on his part not to execute the office or conform to the law, I should have no hesitation to commission another person pursuant to the provisions of the Constitution, in this respect. But as there was no express, or implied, determination on the part of the Sheriff not to execute the office, but a mere omission arising from the distressed and afflictive situation of his family, and the truth is, that the Sheriff never did in part refuse to act, it is extremely questionable how far the circumstance just mentioned will in a constitutional view amount to a forfeiture of his office. - This construction of the Constitution is certainly a very strict and rigid one, and if a more liberal exposition of it can be given, it would, perhaps, be more conformable to its spirit and meaning. Such has been the exposition of the Constitution and act of assembly, where the same case has occurred on this shore.

About two years ago this case arose in Montgomery County, and the Court determined to receive the Bond, leaving it open to the future operations of law. The same decision took place about four years ago in Prince Georges County, and tho' it may be doubtful how far the Bond, under these circumstances, is good, it is equally doubtful whether the