

State of Maryland
Executive Department
Annapolis May 15th 1855

Dear Sir,

I have received your letter of the 11th inst., informing me that there are now twelve or fifteen prisoners in the jail of Howard County, ready & anxious for trial in addition to an unusual amount of other criminal business that should be immediately disposed of, and that the health of Judge Con- stable is such, as to preclude the possibility of his being able for a considerable period of time to resume his official duties.

Under such circumstances you inform me that a number of the members of your Bar, concur with you in opinion, that it is competent for the Executive under the Act of 1787, made perpetual by the Act of 1798, to make an appointment of special judge to try & dispose of the Criminal business of the Court, & that the Acts referred to, do not conflict with any of the provisions of the New Constitution.

It seems to me that the new Constitution has provided for the very contingency that has arisen in your County (to wit, the inability of a Judge to sit, in consequence of sickness) and that the Legislature, in obedience to this provision, has expressly provided a mode of appointment of special judge different from that provided for in the Acts referred to.

The 9th section of the 4th Article of the Constitution provides that "whenever any of the judges of the Circuit Courts, or of the Courts for Baltimore City, shall be then disqualified, or whenever by reason of sickness, or any other cause, the said judges, or any of them, may be unable to sit in any cause, the parties may, by consent, appoint a proper person to try the said cause; or the Judge, or any of them, shall do so when directed by law."

To carry into effect the above section, the Act of 1852, ch. 68, was passed, the second section of which reads as follows: "that whenever the judge of any Circuit Court shall not sit in any cause by reason of the happening of any of the contingencies mentioned either in the said Section of the Constitution or in the first section of this Act; then, unless the parties to such cause shall by consent appoint some proper person to try the cause before the next term or before the next term, or by the announcement of such contingency, the Clerk of such Court shall notify the judge of any adjoining judicial Circuit Court, who shall forthwith appoint a proper person to try such cause."

You will perceive that this section provides two modes of appointment of special judge, to wit: one by consent of parties, in case there be no such consent than upon the notification by the Clerk of the Court, by appointment of the Judge of an adjoining judicial Circuit.

In the absence of any intimation showing why one of the two modes of selection provided for can not be resorted to in the present