

Mr. THOMAS. That can be done in a separate independent section.

Mr. THURSTON. That is taking a whole section to do the work which two words will do in this section.

Mr. THOMAS. It looks to me as if it were providing for both appointment and election.

Mr. THURSTON. It is.

Mr. THOMAS. That is what I object to. It looks like submitting both an elective and appointed judiciary to the people.

Mr. THURSTON. I have no such object.

Mr. JONES, of Somerset. The gentleman from Baltimore city (Mr. Thomas) is mistaken. It merely prescribes that when there is a vacancy, which the governor will be authorized to fill by appointment, the one so appointed shall have these qualifications herein prescribed.

Mr. THURSTON. I will modify my amendment so as to insert after the word "election," the words "or appointment by the executive, in case of a vacancy by death, disqualification, or otherwise."

Mr. SANDS. I would just like to suggest that the proper place for this amendment would be in the third section. If the members of the convention will look at the report, they will see that it being based upon an appointive system, there is no section in it in regard to vacancies. And we will have to incorporate in it a section providing for the filling of vacancies occasioned by death, resignation, or disqualification. And in that section would be the proper place to include the idea of my friend from Albany (Mr. Thurston); that in case of the death, resignation, or disqualification of any of the judges, the governor should appoint for the unexpired term a person learned in the law, as judge of said circuit, and said person shall have all the qualifications heretofore prescribed for the judges of this State.

Mr. STIRLING. That is what the present constitution says, but it says what is a technical absurdity. It says that a man shall possess "the same qualifications." And when we look back to the section prescribing the qualifications, we find that he must have resided in the State for five years preceding his election. Now a man not elected but appointed cannot have resided in the State for five years before his "election." I know that the proper construction would be that he must have resided in the State five years preceding his appointment. But why not make this section read properly while we have it under consideration?

Mr. SANDS. We must have a section in this report providing for the filling of vacancies. And when we do that, we can prescribe the same qualifications for the judges appointed that we prescribe for those elected. What are those qualifications?

Mr. STIRLING. It requires a residence of five years before election.

Mr. SANDS. Certainly; you fix the age, and the number of years that he must have been a citizen of the State. You will want in additional section in regard to filling vacancies. And this amendment certainly does impair, it seems to me, very much the phraseology of this section.

Mr. THURSTON. This is the only and the proper place for it.

Mr. JONES, of Somerset. I would suggest to the gentleman to add the words "as hereinafter provided."

Mr. THURSTON. I desire to read for the information of the convention, this section as I propose to have it amended.

"The judges of the several courts, except the associated judges of the orphans' courts, shall be citizens of the United States, and of this State, not less than five years next preceding their election or appointment by the executive, in case of a vacancy by death, disqualification, or otherwise," &c.

We are here prescribing the general qualifications for any one to be a judge; and here is the proper place to prescribe the qualifications for appointment or election to the office of judge, whether you have another section for filling vacancies or not; the judges must all possess these qualifications, and this is the proper place to prescribe these qualifications for all judges, whether appointed or elected.

Mr. STIRLING. I will also add that this very question has already been raised under the present constitution. And while it was not decided, because it was finally determined that the judge had the proper qualification as to residence, the question was actually raised that because the present constitution said that the judge shall have resided one year next preceding his election in the judicial district for which he was elected, that was not binding upon the governor in case of appointment. And I know that in the case of the appointment of the present judge of the criminal court, the governor took the ground that he had a right to appoint a man to fill the vacancy without any reference to the fact of his residence, because the constitution said one year before he was elected, and that if a man was not elected but appointed, that did not apply to him.

The question then being taken upon the amendment of Mr. Thurston, upon a division—ayes 32, nays 18—it was adopted.

Mr. ABBOTT. I move to strike out the words "appointed" and "appointment," wherever they occur in this section, and insert the words "elected" and "election."

The question being then taken, the motion to so amend was agreed to.

Mr. STIRLING. I move to strike out the words "and not less than one year next preceding their election resident in the judicial district or circuit, as the case may be," for