

or disqualifies a Judge in the following instances.

- 1st Where he is interested in the suit;
- 2nd Where he is related by affinity or consanguinity;
- 3rd Where he has been counsel in the case;
- 4th Where (from) sickness or any other cause he may be un-
able to sit.

These are the only cases known to the constitution, and no one of them was applicable to Judge Perry. The fourth cause is the only one upon which the shadow of a doubt could be hung. But there the words "any other cause" are surely governed by the word "unable", and have reference to such "causes" as are signified in the context, "sickness". If then these be the only causes and neither one of them applies to this case, where was the authority to constitute the Court as it was constituted, and by that Court try Swan? It may be replied that the act of Assembly, passed last Winter, gave an additional cause of excuse or disqualification, by saying, as it does in its 1st section, "nor shall any Judge sit in any cause at the trial whereof it may be in his opinion improper for him to preside by reason of his relation to or connexion with any of the parties to said cause". From the language in the first section of the act of Assembly this clause was actually intended to, as it does, give an additional cause of excuse or disqualification. It has been said, and with truth no doubt, that it was intended to meet this very case, and if the Legislature had the power to pass such an act, there would be an end to my argument. But, the Legislature has no power to insert a clause in the Constitution. It cannot add to or take from that instrument, and therefore cannot say that in addition to other causes of excuse or disqualification enumerated in the organic law, it will add one other, by which the Judge may retire whenever his whims or caprices may induce him to believe that his relation to or connexion with a party may render it improper for him to preside. The Legislature cannot do this, and even if it could, the Constitution has so well guarded the office of Judge, that such legislation would be impolitic and unwise.

The 2nd section of Article I of the Constitution gives the Legislature power to pass laws necessary for carrying into effect the powers vested in any department of the State government. But, it hardly will be contended that such an additional power was necessary to carry into effect the powers of the Judiciary. To me this law, instead of being necessary, seems the very reverse, and one that cannot fail to produce bad consequences. Judges as well as lawyers must expect to have some disagreeable things to do, and if they are to be excused