

IN THE SENATE OF THE UNITED STATES.

AUGUST 5, 1856.—Ordered to be printed.

Mr. BUTLER made the following

REPORT.

[To accompany bill (S. 428) "supplementary to the several acts in force relative to the election of President and Vice President of the United States."]

On the 26th of June, 1856, the Senate adopted a resolution in the following words:

"Whereas the Constitution of the United States provides that Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected:

"And whereas it greatly concerns the peace of the country, and, perhaps, the very existence of the government, that the laws enacted by Congress in pursuance of that provision of the Constitution, should be so comprehensive as to provide for every vacancy that can possibly occur in the office of President, and so clear as to admit of no controversy, nor any question of disputed succession to that high office:

"To the end, therefore, that all doubts or defects which may exist in our present laws, on this subject, may be remedied, and further controversy prevented:

"*Be it resolved by the Senate of the United States*, That the Committee on the Judiciary be instructed to examine into those laws, and inquire whether the provisions they contain are constitutional, proper, and adequate, in all respects, to that purpose and end, or whether any further legislation be necessary or proper, and to report thereon by bill or otherwise."

The committee has considered this subject with great care, and herewith reports a bill adequate, in its opinion, to meet all the difficulties suggested.

The fifth section of the second article of the Constitution is the one to which the resolution refers; and that article, together with the acts of Congress passed to give it effect, have been brought under consideration by the committee. The section of the Constitution is as follows:

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the Congress

may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected."

And the act of Congress approved March 1st, 1792, in reference to this subject, contains two sections, to wit, the ninth and tenth, which are as follows:

"SEC. 9. That in case of a removal, death, resignation, or inability, both of the President and Vice President of the United States, the President of the Senate pro tempore, and in case there shall be no President of the Senate, then the Speaker of the House of Representatives, for the time being, shall act as President of the United States, until the disability be removed, or a President shall be elected.

"SEC. 10. That whenever the offices of President and Vice President shall both become vacant, the Secretary of State shall forthwith cause a notification thereof to be made to the executive of every State, and shall also cause the same to be published in at least one of the newspapers printed in each State, specifying that electors of the President of the United States shall be appointed or chosen in the several States, within forty-four days preceding the first Wednesday in December, then next ensuing: provided there shall be the space of two months between the date of such notification and the said first Wednesday in December; but if there shall not be the space of two months between the date of such notification and the first Wednesday in December, and if the term for which the President and Vice President last in office were elected shall not expire on the third day of March next ensuing, then the Secretary of State shall specify in the notification, that the electors shall be appointed or chosen within thirty-four days preceding the first Wednesday in December, in the year next ensuing, within which time the electors shall accordingly be appointed or chosen; and the electors shall meet and give their votes on the said first Wednesday in December, and the proceedings and duties of the said electors, and others, shall be pursuant to the directions prescribed in this act."

The committee will first give its attention to the consideration of this last section, as the one mainly involving constitutional authority to pass it under the provisions of the 5th section of the 2d article.

The first point of view in which this section of the act has been presented to the committee is this: Can Congress, under the general authority and in strict pursuance of the Constitution, do anything more than designate the officer to perform all the duties of President, for the unexpired term of the vacancy occasioned in any one of the methods contemplated in the Constitution? It has been supposed and maintained, with a good deal of force, that the legislation of Congress must be controlled by the 1st section of the 2d article of the Constitution, which reads as follows:

"The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

"Each State shall appoint, in such manner as the legislature thereof

may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector."

According to this view, there can be no election of President except once in four years, and the executive functions of President may devolve upon an inferior officer, and be discharged by him, in pursuance of legislative enactment, during the full term for which the President and the Vice President had been elected. If such be a fair construction of the Constitution, then a President might become so without the direct agency or the deliberate judgment of the parties to the federal compact. This is not the opinion of the committee. The legislation of 1792 evidently contemplated that the President *pro tempore* or Speaker should not only be a contingent functionary, with presidential authority of a provisional character, but that he should be confined to a sphere of limited and prescribed duties. There are but two officers expressly provided in the election held once in every four years—a President and his substitute the Vice President. Beyond these, no election by the primary constituent college is provided for. In case of a vacancy in the office of President, either of a temporary or entire character, the powers and duties of the office devolve on the Vice President. In case of a vacancy in the office of Vice President also, the Congress may, by law, declare what officer shall *act as President*, and such officer shall act accordingly, until the disability be removed, or a President shall be *elected*. The *acting officer* has not devolved on him, in terms, the powers and duties of an elected President, according to the provisions of the Constitution. It seems to the committee that the officer selected can act only for a limited term and with a prescribed purpose.

Of course he must discharge all the duties of a President until one is elected, and for such purpose the officer is authorized to perform the duties prescribed in the act of 1792. This act came from the mind of the framers of the Constitution, and was passed in circumstances well calculated to give it the sanction of intelligence and purpose. The President and Vice President are elective magistrates, and hold their authority directly from the Constitution. The officer on whom Congress devolves executive functions by law is not elective; he is not the choice of constitutional constituents, and if he could become President the day after the election of President and Vice President, by their death, then a stranger to the people might indirectly become their ruler against their consent.

Whilst the committee do not question the constitutionality of the clause of the act above mentioned, they are satisfied that these provisions are not sufficiently full and explicit to guard, in all cases, against the mischief of confusion and anarchy.

The ninth section designates but two officers to take upon themselves the executive function, in the contingency specified, namely, the President of the Senate *pro tempore*, and in case there be no President, then the Speaker of the House of Representatives. These, only, are to perform the duties of President as specified in the ninth section. From the termination of one Congress to the meeting of the next,

there may be no Speaker; and whether such Speaker or a President *pro tempore* would have, at the time, the requisite qualifications, under the Constitution, to be invested with the duties and powers of an acting President, is a question of too much importance to be left to the decision of the occasion.

The fourth clause of the second article of the Constitution reads as follows:

“No person, except a native born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.”

Your committee is of opinion that no one can be eligible to discharge, for the time being, the functions of President, unless he be thirty-five years old, and a native born citizen. A Speaker of the House, or a President *pro tempore*, might not have these qualifications—and if so, he could not act as President in compliance with the Constitution.

To guard against the danger of an entire vacancy, in the office of President, prudence would seem to call for further legislation. What officers then should be designated, after the President *pro tempore* and Speaker, to act as President? The cabinet for the time being, in some prescribed order, would in most circumstances, be the proper functionaries to fill the vacancy. In cases of death they would be the persons most fit for the occasion. There are other circumstances, however, which would make the cabinet officers unfit to occupy the place of the President. In case of his impeachment for high political offences, the cabinet might be implicated, as *particeps criminis*, and ought not to be in position of allies. To allow any of the cabinet to become President, therefore, might be to arm them with powers of great mischief. Another question, also, might arise—whether they could be regarded as officers after the official functions of their principal had terminated, or were suspended. It might become the duty of the substitute of the President to have new advisers, by removing obnoxious ones from their offending position.

Another class of functionaries has been indicated as properly suited for the discharge of the duties of a vacant presidency, to wit: the senators in the order of their official term of service, or when several senators have the same continuous term of service, then the senator oldest in years to be invested with the authority of an acting President for the purposes contemplated. There are two objections to such an arrangement: first, a question of fact might arise as to continuous duration of term, and actual age would have to be ascertained by some inquiry before the power could vest with such certainty as ought to be provided by law. Besides, senators are local representatives, and such as are not in a relation to be fitted for the discharge of federative trusts.

The attention of the committee has been turned to another class of magistrates, namely: the chief justice and other justices of the Supreme Court, as officers well calculated to discharge the duties of a provisional President, under an act of the legislature.

These magistrates have assigned to them a high jurisdiction, bring-

ing within its scope duties and powers affecting the concerns and interest of the entire confederacy. They derive their commissions through high sources and the responsible sanctions of those representing the whole and the separate parts of the confederacy, and are well entitled to confidence. But for the provision, in the act of March 1st, 1792, having so long existed on the statute book, conferring on the President of the Senate *pro tempore*, and Speaker of the House of Representatives, the power to act as provisional President, the committee would have preferred to designate the chief justice and other justices of the Supreme Court as the proper officers to perform the executive duties. Acquiescing, however, in what has been enacted, the committee will proceed to recommend other provisions on the subject. When there shall be such a vacancy as may result from the want of a President of the Senate *pro tempore*, and Speaker of the House of Representatives, then the committee recommends that the duties prescribed by act of Congress shall devolve on the following officers: first, on the chief justice, when he has not participated in the trial of the President; and next, on the justices of the Supreme Court, according to the date of their commissions.

The committee is of opinion that none of the already mentioned officers can act as the provisional President, unless he have the qualifications prescribed for eligibility of the President of the United States, as contained in the fourth section of the second article of the Constitution.

The committee further recommends, that when the duties of a provisional President, designated by act of Congress, shall be undertaken, they shall be completed in view of a distinct end, to wit, to call into requisition the primary power of electing a President authorized to exercise all the powers of the Executive as emanating from the Constitution; to have the plenitude of constitutional authority; to be the President of the people, elected by recognized process and prescribed form.

The committee is of opinion that under the fifth clause of the second article of the Constitution, in case of a vacancy occurring in the office of President, that the Vice President elected by the people becomes the President for the residue of the term. In such a case, no power is reserved to elect a President during that term. But, under the same clause, the committee is equally clear in thinking that the officer designated by Congress to act as President when a vacancy occurs in both the offices of President and Vice President, can act only until the vacancy is removed, and a President is elected. And Congress, under this article, must provide the time of holding the election and the day on which the electors are to vote, that being the same throughout the United States. The President, so elected, is to hold the office during a term of four years: this is the only term known to the Constitution of a President elected by the people. No power is given to hold an election, by the people, for the residue of any existing term; the election held under this authority is like an election to provide for an approaching regular vacancy, an election of a President—and, under the first clause of the article, the time of every election by the people is to be four years. When any lesser period is intended it is in

words so stated. The officer who may be selected by Congress to act as President, in the event of the double vacancy of President and Vice President, is to act only until the disability is removed and a President elected. But when such an election is held, there is no limitation of this office other than the four years provided by the first clause. This seems to your committee to be clear. So that your committee has come to a decision as follows: A provisional President, under the act of March 1, 1792, is invested with the executive functions only until a disability is removed, or, in case of an entire vacancy, until a President is chosen by the electoral colleges.

It is apparent, from these suggestions, that the committee believes the act of 1792 to be constitutional in all respects; and, according to its provisions, an election for President must be held (except in a case therein specially mentioned) on the first Wednesday of December after the vacancy occurs. The President thus elected must be inaugurated, according to the twelfth section of the same act, on the fourth of March afterward, and his term will be four years from that date.

A BILL supplementary to the several acts in force relative to the election of President and Vice President of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of removal, death, resignation, or inability, both of the President and Vice President of the United States, the President of the Senate *pro tempore*, and if there be no President of the Senate, then the Speaker of the House of Representatives for the time being shall act as President of the United States until the disability be removed or a President shall be elected; and if there should be no President of the Senate nor Speaker of the House of Representatives for the time being, and it be not a case of vacancy caused by removal, the chief justice of the Supreme Court of the United States, or if there be no chief justice in office, or it be a case of vacancy caused by removal, then the associate justices of the said Supreme Court, successively, according to seniority of commission, shall act as President of the United States until the disability be removed or a President shall be elected: *Provided, however,* That in case any person holding either of the offices mentioned in this section shall not have the qualifications prescribed for President of the United States by the Constitution, or shall be under impeachment, then the next officer in succession (as hereinbefore specified) who may have the requisite qualifications, and not under impeachment, shall act as President of the United States until the disability be removed or a President shall be elected.

SEC. 2. *And be it further enacted,* That the electors appointed or chosen in the several States, pursuant to the tenth section of an act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in cases of vacancies in the offices both of President and Vice President, approved the first day of March, in the year seventeen hundred and ninety-two, shall, at the time and places of meeting to vote for a President of the United States, as prescribed in said section, vote also for

a Vice President of the United States ; and that the term of the President and Vice President so elected shall commence on the fourth day of March next succeeding such election, and continue for the period specified in article second, section first, of the Constitution of the United States.

IN THE SENATE OF THE UNITED STATES, *June 26, 1856.*

On motion by Mr. Crittenden,

Whereas the Constitution of the United States provides that " Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly until the disability be removed, or a President shall be elected ; "

And whereas it greatly concerns the peace of the country, and, perhaps, the very existence of the government, that the laws enacted by Congress, in pursuance of that provision of the Constitution, should be so comprehensive as to provide for every vacancy that can possibly occur in the office of President, and so clear as to admit of no controversy, nor any question of disputed succession to that high office ;

To the end, therefore, that all doubts or defects which may exist in our present laws on this subject may be remedied, and future controversy prevented :

Be it resolved by the Senate of the United States, That the Committee on the Judiciary be instructed to examine into those laws, and enquire whether the provisions they contain are constitutional, proper, and adequate, in all respects, to their purpose and end, or whether any further legislation be necessary or proper ; and to report thereon by bill or otherwise.

Attest :

ASBURY DICKINS,
Secretary.

IN THE SENATE OF THE UNITED STATES

REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
MAY 10, 1865

THE SENATE OF THE UNITED STATES
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE
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