

shall reach the 24th article, I shall move to strike out that article.

Mr. MILLER. I do not see the necessity of altering this provision in the bill of rights. The 15th article relates to the power of the Legislature; it is a prohibition on the power of the Legislature to pass any law inflicting cruel and unusual pains and punishments, and penalties. That, it seems to me, is a very appropriate provision, directed against undue exercise of authority in this respect by the legislative department of the Government. The 24th article relates to the administration of justice by the Courts of Law. It is well known to gentlemen here, to the gentleman from Baltimore city (Mr. Stockbridge) that the common law prevails in this State, in pursuance of an article adopted in the bill of rights. Under that common law, the Courts, when the party is convicted of any offence, for which no penalty is prescribed by statute, have the power, in their discretion, of inflicting fines, penalties or imprisonment; and this 24th article is directed against undue exercise by the courts of the power they thus have entrusted to them by the common law. When the statutes define the penalty and prescribe the punishment for any offence, then no Court of Law can exceed it in according the punishment for the offence. And the 24th article is designed to prevent the Courts of Justice from inflicting unusual and cruel punishments in cases where the punishment is left entirely to their discretion; and that I think is a good provision. And as these two articles relate to different subjects-matter, I think they should continue as separate and distinct provisions in the bill of rights. The one prohibiting the passage by the Legislature of an act which would warrant a Court of Justice in inflicting cruel and unusual pains and penalties, and the other providing that, in cases where the common law prevails, no such cruel or unusual punishments should be inflicted at the arbitrary will of the Judge, or in the mere discretion of the Court. The combination of the two, proposed by the gentleman from Baltimore city (Mr. Stockbridge) leaves out, it seems to me, that part of the 15th article which provides that no cruel and unusual pain or penalty ought to be made in any case or at any time hereafter. Now unless there is some good reason why the two articles should be so combined, I cannot see the propriety of altering this article in this respect.

Mr. CHAMBERS. I think there is a great deal of sound sense in what has been said by the gentleman from Anne Arundel (Mr. Miller.) I had hoped it would have induced the gentleman from Baltimore city (Mr. Stockbridge) to withdraw his proposition. So far as I understand it, his proposition will but save a half-a-dozen words, and the cost of printing and paper to that extent, while it disfigures the symmetry, and I think, too, th

substance of this provision. As has been said, if gentlemen will look to the two articles referred to, they will find that they refer to two different departments of the Government, the one being a direction to the Legislature, and the other a direction to the Courts themselves. By putting the two articles together, there would seem to be no restraint upon the administration of justice such as the 24th article intends to declare. I hope my friend will see the propriety of withdrawing his proposition, which only saves a half-a-dozen words, at the expense of a very sound principle in the bill of rights.

Mr. STOCKBRIDGE. I should be very sorry to deprive this bill of rights of any sound sense there may be in it. But I am not persuaded that it is not best to make the amendment I have proposed. As I said in the outset, however, I consider it more a matter of form than substance, and I would not have offered it at all if I had supposed it would have taken up any of the time of the Convention. Now the purpose of this bill of rights is to declare the rights of the people, and this section means only that they shall be exempt from all cruel punishments and excessive bail, and nothing more, and that principle instead of being incorporated in one section is embodied in two sections, one restraining the legislative department, and the other restraining the judiciary, when they could as well have been embraced in one. There would be just as much propriety in adding another section to restrain the executive department, and so on for every other officer of the government. My object was simply to consolidate these two articles, and make one general declaration that the people shall be protected against all unusual and cruel pains and penalties. Neither the one or the other article amount to much, but as it has been thought best to have this principle asserted, for whatever it may be worth, I thought it best to have it all in one article. However, I am not strenuous on the point.

Mr. SANDS. I propose to offer an amendment to the amendment, which I think will avoid all difficulty. I think there is some force in the objection that the amendment leaves out something contained in these two articles. But I can see no reason why the bill of rights should be cumbered with two articles when one can be made amply sufficient. I move the following as an addition:

—“and excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted by the courts of law.”

The article if so amended will read:

“That sanguinary laws ought to be avoided as far as it is consistent with the safety of the State; and no law to inflict cruel and unusual pains and penalties ought to be made in any case or at any time hereafter; and excessive bail ought not to be required, nor excessive