

alienable right to change their Government as they pleased—I voted that the change must be regulated according to law; that a Government regulated and established by law must be revolutionized according to law; for any other revolution can sustain itself only by force. And when the article in relation to the poll tax was reached, I there desired to depart from the lessons of the fathers, and make a change in that. And so in going through this bill of rights, wherever I am satisfied, by the experience of the past or the present, we should make some change—for we all live to learn—I am not to be tied down simply by the fact that it was so written by our fathers. But experience in the State of Maryland having shown the necessity of having some provision in your Constitution which shall not be merely advisory to your executive and other officers, but one which will be mandatory, I will vote for that. It was supposed heretofore that it was only necessary to have an advisory clause; and a few years past it never was heard of, and any man who had intimated, when this bill of rights was drawn, that we should substitute “shall” for “ought” would have cast a reflection upon the State authorities. We had then seen in reference to many cases that had arisen—the Pennsylvania cases, the cases under the fugitive slave law—that the rights of the people were manfully maintained; and gentlemen would have said, had you proposed this—“you are reflecting upon the State authorities.” But we have lived to see the necessity of mandatory clauses. I want to say to the executive: you shall do something. What, I leave to his judgment. I want the Constitution to contain something else than mere advice to him; I want it so framed that when persons are placed in this position he shall find it his duty to do something, and to do the best of his ability. If he cannot succeed, if the Federal authority is the stronger, and is determined to exert its power and will to do it, and any opposition will bring about a clashing of authority, then it can be determined how far measures are to be pushed. But I want something which shall declare to our State officers: you must at any rate do the best you can, for if you do nothing you certainly fail to do your duty.

Mr. SANDS. If the gentleman will permit me, I would remind him that this fifth article of the amendments to the Constitution of the United States, is simply declarative of a principle as applied to the Federal Courts; while our Constitution and bill of rights apply to our State Courts.

Mr. CLARKE. I want to make this same principle apply to our State officers.

Mr. SANDS. I think I understand the gentleman's position. I wish to remark that this amendment to the Constitution of the United States was simply to regulate a matter in the Federal Courts which in the State Courts is

regulated by the bill of rights and the Constitution of the State; that no man shall be tried in one of the United States Courts, and held to answer, without the presentment of a grand jury, and should not be put twice in jeopardy of life and limb for the same offence, just as our State Courts apply the matter. I would like to know of the gentleman how far his proposed amendment is in consonance with, or in conflict with the late act of Congress, not yet declared unconstitutional, expressly defining a great many crimes and providing the mode of punishment.

Mr. CLARKE. I do not regard it as at all in conflict with any law of Congress; and until it is passed upon judicially it must be regarded as an exercise of constitutional power.

Mr. SANDS. That act provides for the taking of certain parties out of the hands of the State authorities, and subjecting them to a mode of trial not known to our State laws and State Courts.

Mr. CLARKE. I think this is it; it provides that the parties shall be taken from the State authorities and transferred, not to Military Courts or Tribunals, but to the civil Courts of the United States.

Mr. SANDS. I think the gentleman will find it otherwise.

Mr. CLARKE. There are a great many acts of Congress; I do not know to which the gentleman alludes. I will go one step further; considering that the gentleman is right, if you please. When a citizen of the State shall be placed in this position, if you insert this provision in the Constitution, it will then become the duty of the Executive to institute the necessary proceedings for the protection of the citizen, to be carried up to the Court of highest authority, the Supreme Court of the United States, there to be adjudicated. If this provision had been in our present Constitution, I believe, with that before our Executive, some of these cases would have been carried up.

Mr. SANDS. I have no objection to my friend making a speech when—

Mr. CLARKE. I want to show that this is a practical provision.

Mr. SANDS. In order to get a case before the Supreme Court of the United States, in order to test the constitutionality of any law, is the action of the Executive ever necessary?

Mr. CLARKE. Yes, sir: One or two sessions ago, the Supreme Court decided a case between Gov. Magoffin, of Kentucky, and Gov. Dennison, of Ohio, where a practical question was brought up by the two Governors in reference to the rights of the States. It is within the power of the Executive, and if this provision is inserted it will be made his duty, as the representative of the State, to carry the case up to the highest tribunal, the constitutional umpire, to be decided.

Mr. SANDS. The gentleman can hear what