

that that amendment was practically covered or really covered by article 31. As I stated the other day, so long as I think the old bill of rights declares truly the principles of right and law as belonging to the citizen, I am opposed to changing the phraseology at all, whether it has been changed in other States or not. If we in our old bill of rights assumed the right doctrine in proper language, I prefer, simply because it is Maryland language, that it should remain there, rather than have any change. Article 31 as reported says, "that no person except regular soldiers, mariners and marines, in the service of this State, or militia when in actual service ought in any case be subject to or punishable by martial law." I do not know how a regular soldier can be in the service of this State. It is only the United States that can keep a regular standing army; and therefore really this provision is a contradictory expression. The State of Maryland has no mariners and marines. Practically, therefore the first clause of the article amounts to nothing; for there can be no regular soldiers, mariners or marines in the service of this State. The militia when in actual service may be under State authority or Federal authority. If they are under Federal authority our Constitution has no jurisdiction over them. If they are under State authority, this article only reaches a small class of cases.

My amendment adopts the language of the 5th amendment to the Constitution of the United States, which is in these words:

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger."

We have already heretofore provided in reference to presentments by the grand jury, and therefore it is unnecessary here to make provision for that; my amendment there excepts "cases arising in the land and naval forces of the United States, or in the militia of the State when in actual service in time of war or public danger." My amendment excepts the militia of the State when in actual service, covering all cases when they are in the service of the United States or of the State; and therefore according to my understanding, includes all that is practically provided for in the article as reported, while it does not bring in classes to which it never can be applicable. It is also preferable in consequence of its adopting the language of the Constitution.

This bill of rights was originally adopted prior to the formation of the Federal Constitution; and that explains this singular contradiction which must have been overlooked I think when our Constitution was amended. At the time our original bill of rights was

adopted, the State of Maryland had regular soldiers, mariners and marines. Therefore the provision was then right and proper. But when Maryland became one of the United States, it could no longer have regular soldiers, mariners, or marines. I think that this must have been undoubtedly passed over by the last Convention when they adopted the bill of rights, because it certainly bears inconsistency upon its face.

Mr. CLARKE demanded the yeas and nays upon the adoption of his amendment; and they were ordered.

The question being taken the result was—yeas 16, nays 34—as follows:

*Yeas*—Messrs. Berry of Prince George's, Clarke, Cunningham, Davis of Charles, Duvall, Hodson, Horsey, Jones of Somerset, Marbury, Miller, Morgan, Parker, Peter, Stockbridge, Thomas, Wilmer—16.

*Nays*—Messrs. Goldsborough, President; Abbott, Annan, Audoun, Baker, Cushing, Daniel, Davis of Washington, Dellinger, Earle, Farrow, Hebb, Hopper, Keefer, Markey, McComas, Mullikin, Murray, Negley, Nyman, Pugh, Russell, Schlosser, Scott, Smith of Carroll, Smith of Worcester, Sneary, Swope, Sykes, Thruston, Todd, Valliant, Wickard, Wooden—34.

So the amendment was rejected.

Mr. STOCKBRIDGE. There is a slight grammatical error that I wish to have corrected. I move to insert the word "to" after "case," so as to read "ought in any case to be subject to."

Mr. CLARKE. Can the gentleman explain to me how there can be regular soldiers, mariners, or marines, in the service of the State?

Mr. HEBB. The article is an exact copy of the article in the Constitution of 1850. As we went along reading the different articles, if no objection was made to any article it stood unchanged. We only talked about articles to which objection was made. The minority heard this article read in the Declaration of Rights and did not propose any change.

Mr. CLARKE. Since the point has been raised, I should like to know how gentlemen get out of this difficulty. I understand that the minority did not go over these articles with the majority.

Mr. JONES, of Somerset. It must have been overlooked by the Convention of 1850. This 31st article was adopted in 1776, before the formation of the Articles of Confederation, when the State of Maryland had regular soldiers, mariners and marines in the service of the State as well as militia in its service. It was when she was in the full exercise of all her power of sovereignty without any connection with anybody else except voluntarily. It is certainly, as the gentleman from Prince George's, (Mr. Clarke,) has said, not applicable to the present condition of the State.