

that some penalty should be attached to it. A provision without a penalty, is no provision at all. Suppose you put in this provision that they should not do so, and attach no penalty to it, what does it amount to, suppose they violate it to-morrow. Being an offence not known to the common law or the criminal code, being a very serious offence, the convention of 1850 defined and declared what should be its punishment; and why should not we re-enact it? Are we to omit it, merely because if we retain it, it will necessitate the going of Mr. A to the counter of Mr. B, and saying: "Please to accommodate me," when striking it out may leave innocent communities at the mercy of rogues? I do not mean to say that bank officers are rogues; but I do mean to say, that dishonest men have heretofore been placed in those positions, and that they have embezzled and swallowed up the substance of the honest and upright citizens of the State; and that it is our duty to guard against it, if we can. For that reason, I shall vote for its retention, seeing that it can do no harm, and seeing that its rescission may do mischief.

Mr. MILLER. I am sorry to differ with my friend from Howard county (Mr. Sands,) with regard to the law he has laid down with reference to this provision. I refer to his assertion that a statute prohibiting a thing to be done, is of no force unless a penalty is attached.

Mr. SANDS. Of no effect.

Mr. MILLER. I cannot agree to that. If the constitution merely forbids the director of any bank to borrow money from it, and if any director should do that thing, although no penalty at all should be attached to it, he would be liable to be indicted and punished by fine or imprisonment at the discretion of the court. That principle of law has been settled over and over again.

Mr. SANDS. I did not mean to say that a violation of the law was not a misdemeanor; but I say that it would be practically of none effect.

Mr. STOCKBRIDGE. This does not operate to produce the practical inconvenience that seems to be apprehended by the gentleman from Howard (Mr. Sands.) A person is not under the necessity, in order to evade this law, of going to some other bank to borrow. The gentleman from Howard, for example, is a director of a bank, and wants to borrow some money. He will give me his note, and I indorse it, and get it discounted by him at his bank, and let him have the money. That is no very complicated arrangement.

Mr. SMITH, of Carroll. That is indirection.

Mr. STOCKBRIDGE. The constitution says nothing about indirection. The amendment which is proposed, says that no director "shall borrow any money from said corporation."

Mr. SMITH, of Carroll. It speaks below of

"directly or indirectly violating this article."

Mr. STOCKBRIDGE. That amounts to nothing whatever. It is the easiest thing in the world to evade. This clause was put in here without any public call for it. Banks had been in existence in this State for a century before this law was passed. When was the practical call for it? When was the practical inconvenience resulting from the want of it, anywhere? Who are the directors of banks? The gentleman from Washington county has had more experience than other members in this matter. Who are the directors of banks? Speculators? Men who have no means, nothing to lose, and everything to gain, playing the game of life in such a reckless way as he has described? Is it not almost always the case, that they are the most reliable and correct men in the business community, that they are large stockholders whose means would be imperilled by any bad conduct of the bank, prominent and active men in the business community?

Here is a man with \$8,000 of stock in a bank, and a sufficient good character and good name in the community; and others who have property there, have seen fit to select him as one of the directors to manage the affairs of that institution. What is the prohibition? In the course of events, which he might not have anticipated at the time he was elected and accepted the position of director of the bank, after he has given days upon days of gratuitous service to the other persons interested in the bank, he has occasion to want \$5,000. He cannot, without being liable to punishment at the discretion of the court, not by any fixed law, without a maximum or a minimum, but absolutely at the discretion of the court, liable to fine and imprisonment, borrow that money. It is more serious than an ordinary penitentiary offence, larceny, or highway robbery, so far as the fact is concerned.

There have been indictments under the constitution, mere malicious proceedings in this State. Men standing high in the business community, from mere inadvertence, not remembering this stern prohibition, supposing they could act as they had done before, have been brought before the courts and indicted under this section of the constitution. Has it done any good? Have the banks been in a better condition since this was adopted than before? I see no object to be gained by it.

The gentleman from Howard (Mr. Sands) has said in the course of his remarks that the objection which I make against mingling the criminal code of the State with the constitution does not prevail. Why not? Is not this a provision, which, if it exists at all, should stand in the code and not in the constitution? Why not add a provision, as in twenty other instances in the constitution,