

Mayville N.Y.
Dec. 30 '89

J. F. Clafflin Esq
Cheney N.H. My dear Sir:

I hasten to acknowledge my indebtedness to you for your timely article in "Law." It has been of especial service to me in the preparation of a bill I am engaged at the request of several Congressmen, in drawing up in regard to National elections. Your letters had been ~~examined~~ set aside for reviewing by lines of thought you presented, it is like all the preparation, I realize the possibility of error.

Regarding your letters, I see there has been a curious misapprehension on my part, or more properly perhaps on my part. I confess it did not clearly occur to me that the expressions of the opinion in your letter, were the basis of your opinion, chiefly perhaps from the fact that I have always looked upon them as extravagant and recalled the discussions of a point not presented by the case.

I think, too, from your second letter, that I must have stated too strongly, and perhaps with too little care for the premises, my belief as to the power of Congress to prescribe the qualifications of electors at National elections. I think it has this force by unavoidable inference resulting from consideration of all the provisions of the Constitution, -- not specifically because of the XVth Article, -- though it would not be clear without that. I was probably less careful and more emphatic than I would have been, had your note to the

CONFER been a little less highly acidulated. However, we are just as far apart as to the significance of the XVth Article as before; the perhaps I may make it clear to you that we approximate more nearly in regard to its effect, than one would imagine.

The dicta from Reese vs U.S. are very strong and yet, perhaps because they are dicta, I cannot bring myself to admit that they are the law.

I cannot rid myself of the belief that the term, "The right of any citizen of the United States to vote," has a different meaning from that given it either by White, J., or Hunt, J., in their opinions in that case. A right must have an origin, a source, a ground-work of authority, unless it be that of mere immorality. It is established by all the learned judges that it is not granted by the XVth Article of the Constitution. It has also been asserted that it is not created by any of the provisions of the Constitution. At the same time does it exist? It is asserted by all the judges as well as by the distinguished publicists you have alluded to, that this is a restriction on the power of a state to grant the "privilege" of suffrage, to one race and not to the other. They construe it as if it read, "The right of any citizen of the United States to be made a voter, shall not be denied, &c." There can be no "right to vote," attaching to the "citizen of the United States," until he becomes, by virtue of some enactment, -- some grant of power or privilege -- a voter. "The right to vote," is to my conception, just as distinct a thing as the right to hold an office and like that right does not consist of mere eligibility. A man has not a "right to vote", merely

because he belongs to a class which may be lawfully constituted voters, any more than he has a right to hold an office because eligible thereto. He must show before he can allege such right, that he has been legally constituted a voter, either by express enactment, or the culminating operation of some specific legal provision. Until and not until then, he has, "a right to vote." Then, if he is "a citizen of the United States," the XVth Article of the Constitution authorizes the Congress to provide for the protection and enforcement of this "right", and to furnish a remedy for its infringement. If he is not a "citizen of the United States,"--and it is a singular fact that in one state at least, an alien may not vote for Congressmen or Presidential electors--of course the National Government will not interfere.

Now, this term, "right to vote", has always been just as clearly defined as any other legal phrase when this amendment was adopted, and according to the familiar rule, it must be construed as having therein its usual signification. To give it any other, is to impute by construction, a meaning different from the accepted and defined meaning the term had up to that time.

But we say, this interpretation leaves this article without significance.

I submit that it still covers a most important field. It makes it, in effect, a declaration, that no citizen of the United States having once been legally clothed with the "right to vote," can ever afterwards be lawfully deprived of that right for the causes mentioned; and its effect is to give Congress and the Federal courts juris-

diction of this class of cases.

I have long been of the opinion, though I am not aware that the question has ever been expressly adjudicated, that this principle is an unavoidable declaration from fundamental principles, holding that a State could not by legislative action, debar any one to whom the right to vote had once attached, from the exercise of that right. If a majority may do it, directly or indirectly, then every minority is liable to be disfranchised. This has been done in some States both directly and indirectly, but so far as I am aware, has not been openly contested or stoutly claimed as a personal right.

Even if it had been so prevented, however, until the adoption of the XVth Amendment, it was purely within the purview of the State tribunals. The effect of the Amendment was to bring it within Federal jurisdiction.

You will perceive, from this more clearly, perhaps, why I do not hesitate to declare that, in my opinion, any state can lawfully insert the word, "white" in its constitution, as a qualification of the elector. The effect of such action, as I believe, would be to prevent any colored man who has not, therefore, been lawfully constituted a voter, from becoming one thereafter, but would not prevent one already having a vested "right to vote", from the due and proper exercise of that right. In other words, I think the effect of the Amendment is to extend Federal jurisdiction to the protection of the vested "right to vote" of the citizen of the United States. —

I thought I owed you this explanation as I see more fully from your article how we had been playing at cross-purposes.

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I trust you will make no public use of this letter, as I am preparing an article on the subject, the value of which would be impaired should you do so, and I am not in a position to justify my conscience in giving away what has an appreciable value.

Sincerely yours,

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