

amendment providing that the counsel for the prisoner shall have the right to close the argument.

Mr. BOWIE. Move a separate article.

SEVERAL VOICES. Move a re-consideration.

Mr. DIRICKSON. I did not vote for the article.

Mr. PHELPS. I did—and I move a re-consideration, so that the gentleman, (Mr. Dirickson,) can offer his amendment.

Mr. DIRICKSON offered the following amendment.

Add at the end of the article, the following:

"And upon his trial, his counsel shall have the privilege of making the closing address to the court or jury."

Mr. JENIFER suggested, that perhaps the proper place for this amendment would be the judiciary bill.

Mr. DORSEY moved to amend the amendment by adding at the end thereof, the following:

"And that the State have the same right of challenging jurors that the accused has."

And the question being on the amendment to the amendment,

Mr. STEWART, of Baltimore city, asked the yeas and nays, which were ordered, and, being taken, were as follows:

*Affirmative*—Messrs. Morgan, Blakistone, Dent, Chambers of Kent, Mitchell, Donaldson, Dorsey, Wells, Kent, Weems, Sollers, Brent of Charles, Merrick, Jenifer, Chandler, John Dennis, Williams, Goldsborough, Bowie, Sprigg, McCubbin, Gaither, Presstman, Davis, and Hollyday—25.

*Negative*—Messrs. Chapman, President, Lee, Dalrymple, Bond, Buchanan, Bell, Welch, Ridgely, Colston, Dashiell, Eccleston, Phelps, Chambers of Cecil, Miller, McLane, George, Dirickson, McMaster, Hearn, Fooks, Jacobs, Shriver, Sappington, Magraw, Nelson, Carter, Thawley, Hardcastle, Gwinn, Stewart of Baltimore city, Brent of Baltimore city, Ware, Fiery, John Newcomer, Michael Newcomer, Kilgour, Weber, Slicer, Fitzpatrick, Ege, Shower, and Cockey—42.

So the amendment to the amendment was rejected.

The question then recurred on the amendment of Mr. DIRICKSON.

Mr. DONALDSON, said: it was proper that we should know clearly what we are about when we propose radical changes in the law. We live in a community of honest men; and it is not the fact that injustice was done to accused persons, in our administration of the criminal law. When a man charged with crime is put upon his trial, his right of challenge is so extensive as in effect to give him the choice of his own jury, whilst the State can only challenge for cause. He thought that we ought not to extend the right of challenge to the State, as the practice now exists. He had voted for it as an amendment to the amendment of the gentleman from Worcester, (Mr. Dirickson,) because he feared that amendment might prevail, although he hoped it would not. If the counsel for the accused was to have the closing speech, he was in favor of allowing the State the right of peremptory challenge.

Every facility is already afforded to an accused person, to enable him to prove his innocence. All presumptions of law are in his favor, and he has the advantage of every technical defect which astuteness may detect in the proceedings. When his case comes up, even should the charge be most heinous, the sympathy is almost always on his side; counsel is provided for him, if he is unable to pay for such services. The Attorney General or his deputy is actuated by no vindictive feelings; he is not like the avenger of blood in the old testament, pursuing the slayer to the cities of refuge. He stands in the position not of counsel, but of judge advocate. He opens the case with a description of the offence and its circumstance, and states the law and its application. The prisoner's counsel follows, examining and often preventing the facts in evidence, and answering the arguments of the prosecutor. And although the prosecuting attorney follows in reply, he is not permitted to introduce any new matter; and not being an advocate, as his opponent is, but representing the dignity of the State, he is bound not to descend to any unworthy artifice. Great complaints have been made of the extent to which the counsel for a prisoner frequently goes in order to obtain an acquittal; and if the advantage proposed by this amendment be added to the facilities already allowed—if the prisoner's counsel is to have the final speech and thereby have full license, without contradiction, to state such principles of law, and place such a construction on facts as may most favor his end,—it would be the means of throwing back into the community a still greater number of persons who ought to have been convicted. He knew that the gentleman from Worcester was actuated by pure motives when he offered this amendment, but believing it would be mischievous, he felt bound to oppose it.

Mr. DIRICKSON said:

He did not claim the entire credit of the amendment which he had just submitted to the Convention—it having been in part, suggested by the honorable gentleman from Harford county, (Mr. Magraw,) now upon his right. Familiar with the proceedings of courts of justice from his earliest manhood, it had been his fortune to witness many prosecutions for criminal offences, and he had often observed the terrible effect of the last uncontradicted speech against the accused. The motive that had induced the offering of the proposition, was in perfect harmony with the humane spirit of that principle which was eminently the characteristic of all criminal law in all Christian lands. And when he said, it was better "that ninety and nine guilty persons should escape, rather than one innocent man receive unmerited punishment," he uttered a doctrine familiar to all—and one, the justice and propriety of which, no one for a moment doubted. It had been argued by the gentleman from Anne Arundel connty, that the prosecuting attorney acted both as prosecutor and judge advocate. That such ought to, and might occasionally, have been the case, he did not deny—but he was induced to believe that professional pride, must of-