

PETITION.

To the Honorable,

The General Assembly of Maryland:

The undersigned, Counsel for Robert Swan, against whom an indictment is pending for murder, feel themselves called upon by a sense of duty to their client to take some notice of the reference made to his case, in the recent Annual Message of the Governor of Maryland, to the Legislature. The undersigned design to raise no question about the power of the Governor to appoint special Counsel to assist in public prosecutions, as they ordinarily arise in the counties. This may be all legal and constitutional and proper. But a report to the Executive by the Counsel thus appointed, of what occurred during the prosecution, followed by the Governor's recommendation based upon such report, of further legislation to affect the pending case, the undersigned cannot but regard as startling novelties in the criminal jurisprudence of Maryland.

The Message first states it as a fact, that Robert Swan managed to evade a trial of his case by resorting to a technical point; and then suggests the propriety of passing a law to prevent Robert Swan, and all others, from doing the like in future. The undersigned do not quote the language of the Message, but believe they do not misapprehend its purport; they do not question the motives of the Governor, but they earnestly insist that a pending prosecution against a citizen upon a charge affecting his life, shall not be made the subject of any sort of discussion before the Legislature, and people of the State. Courts and Jurors are the sole tribunals to canvass and settle such matters.

The Governor, as the undersigned regret to perceive, has not been correctly informed as to what occurred in Hagerstown on the occasion alluded to. No technical point, nor indeed any point of any description, was made in behalf of Robert Swan. There was no court to decide any point technical or otherwise, if it had been made. The judge who held the court, kept his seat in the bench, while an informal conversation in reference to the trial took place between the Counsel at the Bar. The prosecution asked the defence whether they were prepared to appoint a judge by the agreement of the parties? The reply was that Robert Swan had no power to consent to the appointment. The same question had been asked of one of the undersigned by the State's Attorney for Allegany county, two weeks before the commencement of the term in Washington county. It was repeated in open court, on the first day of that term; and again repeated, one week thereafter, on the return day of the subpoena issued in the case. To this