

ticians, but which certainly would be acceptable to the people. They are willing that mercy should temper justice, but not that justice should be superseded in her office.

Mr. D. said, in conclusion, that the great majority of State Constitutions contained the qualification he now proposed to attach to the pardoning power, and in many States it had been in force for a great number of years.

Mr. GRASON, in reply to the urgent call of the gentleman from Anne Arundel, for reasons, would say, that if "reasons were as plentiful as blackberries," it was not pleasant to give them on compulsion. He would, however, state such as occurred to him. Suppose a man bears a challenge, and the fact is admitted and known to every one, would it be necessary to have a trial, as the gentleman suggests, if the circumstances were such as to justify a *nolle prosequi*? Would it be necessary to pay counsel for defending him from a charge which he admitted to be true? Take another case—a poor woman may be keeping house, without a particle of fuel to protect herself and children from the cold, and may take a few sticks of wood under the pressure of absolute want. The circumstances may be known to all, and all may wish the Governor to interpose; but the gentleman from Anne Arundel would have her imprisoned, and subjected to the delay and torture of a public trial, in order that the Governor should be prevented from abusing his powers. Numerous cases might be stated, but as the gentleman had only asked for a single reason, it was needless to say more on this point. Mr. G. then read an extract from a speech of Chancellor Kent, on the subject of pardons. He was aware that the Governor might err in exercising this power, and sometimes in *not* exercising it. He believed that he had himself erred in several instances, in which he had refused applications for pardon. Lawyers and judges seemed to think that the real facts of a case can only be ascertained by a trial before the court and jury; whereas it was notorious that material facts, which were known to the whole community, and which would decide the guilt or innocence of a prisoner, were shut out by the rules of evidence or concealed by the prevarication of witnesses. Gentlemen seemed to believe that courts and juries could never be deceived in the investigation of a criminal offence; and that it was presumption in the Executive to look behind the record for mitigating circumstances. He could state a number of cases to show the incorrectness of such an opinion. He had another objection to the amendment of the gentleman from Anne Arundel. The amendment requires the Governor to report every case to the House of Delegates. Suppose a runaway slave to be arrested, and a *nolle prosequi* to be granted at the instance of the owner—what advantage could be derived from a communication of the facts to either branch of the Legislature? The bill now provides that every case of pardon shall be reported, with all the petitions and reasons, whenever required by the Senate or House of Delegates. He wished the Governor to have an opportunity of giving his reasons, for he could then justify himself

against unfounded imputations. He had no doubt that the gentleman from Anne Arundel wished to improve the section, but the amendment was calculated to produce an opposite effect, and the Convention ought to consider it carefully before they adopt it.

Mr. SPENCER was opposed to the amendment of the gentleman, (Mr. Donaldson,) because it would deprive the Executive of the power to grant a *nolle prosequi*. He was disposed to leave this attribute untouched in the hands of the Executive. He had no doubt that the power is liable to abuse, but it often happens that truth comes to light after trial and conviction. He stated the case of a man who was convicted of an offence and was recommended by the jury to mercy. But the Governor happening to be present at the trial, was thoroughly convinced of his guilt. A new trial was granted in consequence of some irregularity in the indictment, and some lost evidence which the man on his first trial urged, would prove his innocence if it could be found, having come to light, his entire innocence of the crime was proved. Numerous cases of this kind were always occurring to require the exercise of this important power in the hands of the executive. He could call the attention of the Convention to other cases. Take a man whose character stands well, he did not mean of adventitious character, but one moving in any sphere of life, esteemed for his general amiability of demeanor, throw him suddenly into a scene of strong excitement, where he is suddenly provoked by some violent attack on his honor, and, under a momentary provocation, he seizes a stick and inflicts a blow which fatally wounds the traducer of his character. Public sympathy is with him, but he has violated the law. In such a case would you deprive the Governor of the power of granting a *nolle prosequi*, when it is known that he must otherwise be brought to trial, and that the facts being proved in evidence, he must be convicted? Would you say he should not be pardoned before conviction? Would you compel him to stand in the felon's box, to hold up his hand like a felon, and be consigned to a felon's doom? He would leave the power where it has always been. He could cite cases of a school master, a parent, a master of a family, inflicting incautiously a blow which inadvertently caused death. Yet every one knew that nothing could be further from the intention of the parent, and the effect of that blow would be to carry that parent in sorrow to his grave. And would you add to his agony by making him stand in the felon's box?

Mr. BRENT, of Baltimore city, asked for the previous question.

The previous question was ordered.

Mr. DONALDSON asked for the yeas and nays, which were ordered.

The question was then taken on the amendment of Mr. DONALDSON,

And decided as follows:

*Affirmative*.—Messrs. Lee, Chambers, of Kent, Donaldson, Dorsey, Wells, Randall, Kent, Sellers, Crisfield, Dashiell, Hicks, Eccleston, McMaster, Gaither, Davis, Weber and Smith—17.