

writing, before the Governor can remit the penalty. So, the payment of costs is made, by the act of 1832, chapter 155, a condition precedent to the granting of a *nolle prosequi*. Numerous other laws of a similar character might be referred to. When the new Constitution went into effect, it became a question of much practical importance, as to how far these various acts, and parts of acts, were continued in force, by virtue of the third Article of the Declaration of Rights, which recognizes all laws existing on the first Monday of November 1850. The new Constitution invests the Executive with full power to grant reprieves and pardons, except in cases of impeachment, *and in cases in which he is prohibited by other articles of that instrument*; and, to remit fines, and forfeitures, for offences against the State. This general grant is absolute. The Legislature can no more infringe upon it, than the Executive can upon the grants to the Legislature. It was clear, therefore, to my mind that, all acts of Assembly, restrictive of this general power, conferred by the new Constitution upon the Executive, stood virtually repealed. Whereas, the enlarging acts, being consistent with the Constitution, (which is silent upon the subject,) were continued in force, by the third Article of the Declaration of Rights; subject, of course, to future amendment or repeal by the Legislature. This being the case, in my judgment, I respectfully suggest a revision of all of these laws; and, the passage of a general act. I would also recommend, (as it has been omitted in the Constitution,) that, power be expressly given to the Executive to grant a pardon or *nolle prosequi*, *upon condition*, in any case; as he is now authorized, by law, to do in capital convictions. The ends of justice, and the requirements of public policy, often render an absolute pardon inadmissible, in certain cases; where, a wise clemency would dictate a mitigation of the severity of the judgment. This power cannot now be exercised, in cases less than capital, but by construction. The doctrine that, the greater contains the lesser power, is latitudinous in practice; and may occasion precedents dangerous to republicanism. All prerogatives should be clearly defined, by law, in a Constitutional Government. There are other improvements, which will be suggested to your minds, by a careful examination of the class of acts, to which I refer. As the Legislature has the power to declare what shall be considered crimes against the State, and to prescribe the punishment for each offence; so, likewise, it may ordain the conditions upon which that punishment shall be changed; excepting in so far as the Constitution itself has expressly conferred authority upon another Department of the Government.

The Governor is required, by the new Constitution, before granting a pardon or *nolle prosequi*, to publish a notice of the application made, and of the day, on or after which, his decision will be given. Without an amendment of the existing laws, the pardoning power will be, thereby, virtually abrogated, in nearly all cases of ordinary misdemeanors, where the period of imprison-