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Court of Appeals of Maryland.
EX-PARTE MAULSBY.

Feb. Term, 1859

***1** This was an application made by William P. Maulsby, Esq., a member of the bar of the Circuit court for Frederick county, on the 22nd of March 1859, to the Hon. James L. Bartol, one of the judges of the Court of Appeals, for a writ of *habeas corpus,* to be directed to Joseph M. Ebberts, the sheriff of Frederick county.

The applicant in his petition for the writ, "represents that he is unlawfully imprisoned, and in the custody of the sheriff of Frederick county; your petitioner, therefore, prays your honor, to grant unto him the State's writ of *habeas corpus,* directed to Joseph M. Ebberts, the sheriff of Frederick county, commanding the said sheriff to bring the body of the said William P. Maulsby, before your Honor, that your Honor may determine, whether the cause of his imprisonment is just, and thereupon to do as to justice shall appertain. And your petitioner states to your Honor, that the Circuit court for Frederick county, is now in vacation, and that the jury attendant thereon has been discharged; and your petitioner herewith presents to your Honor, certified copies of the proceedings and orders of the Circuit court for Frederick county, and the attachment issued by order of said court, and of the judgment of said court, marked Nos. 1, 2, 3, 4, 5, 6, 7, by reason of which, your petitioner has been committed to the custody of the sheriff of Frederick county, and is now held in custody by said Sheriff."

The exhibits referred to in this petition are as follows:

[No. 1.]

"The Circuit Court)
) FEBRUARY TERM, 1859.
For Frederick County,)

You are commanded to summon Wm. P. Maulsby, Esq., and that he bring with him all notes and single bills in his hands on which the names of J. A. Lechlider, Isaac Neidig and Joseph Cover appear, or either of their names appears as principal or surety, to testify for Grand Jury. Returnable immediately.
By order,

MARCH 2. B. G. FITZHUGH, Clerk.

Which was endorsed, "Served."
True copy, test:

B. G. FITZHUGH, Clerk."

[No. 2.]
FEBRUARY TERM, 1859.

"TO HIS HONOR, MADISON NELSON,
Judge of the Circuit Court for Frederick County:

Wm. P. Maulsby, Esq., was summoned on the 2d inst. to appear before the Grand Jury, and that he bring with him all notes and single bills in his hands on which the names of J. A. Lechlider, Isaac Neidig and Joseph, Cover appear, or either of their names appears as principal or surety. This is to inform your Honor that he has failed to appear.

MARCH 9th. SAMUEL KEEFER, Foreman.

True copy, test:

B. G. FITZHUGH, *Clerk.*"

[No. 3.]
"Upon reading the communication of the 9th inst. by the Grand Jury to the court, having relation to the non-production before the said jury of certain notes and single bills in the hands of Wm. P.

Maulsby, Esq., and who failed to appear before the said Grand Jury.

***2** It is ordered by the court, this 10th day of March 1859, that Wm. P. Maulsby, Esq., deliver to the Grand Jury the papers required of him to be produced, being the notes and single bills in his possession, drawn by, or on which the names of J. A. Lechlider, Isaac Neidig and Joseph Cover appear, or either of their names appears as principal or surety.

True copy of the original order, test:
M. NELSON.

B. G. FITZHUGH, *Clerk.*
MARCH, 10th, 1859."

[No. 4.]
"TO THE HONORABLE M. NELSON,

Judge of the Circuit Court for Frederick County:
The undersigned, an attorney of your honorable court, respectfully states to your Honor, that on this 10th day of March 1859, an order passed by your Honor, or a copy thereof, was handed by the clerk of your honorable court to the undersigned, which said copy of said order is herewith filed, marked Exhibit No. 1, and which with all other exhibits herewith filed, the undersigned prays may be taken and considered as parts hereof; and he further states that having applied to the said clerk for a copy of the communication by the Grand Jury mentioned and referred to in the order passed by your Honor, aforementioned, the said clerk has furnished to the undersigned the paper herewith filed, marked Exhibit No. 2; and also having applied to said clerk for the summons which is supposed by the Grand Jury in their said communication to have been served on him, he has been furnished by said clerk with the copy herewith filed, marked Exhibit No. 3. The undersigned further states to your Honor that several days, perhaps a week, ago, as near as he can recollect, a paper, of which Exhibit No. 3 is a copy, was shown to him, and that he has not appeared before the said Grand Jury, because he supposed, and he now here respectfully suggests to your Honor, that the said paper was not a legal process, and therefore that he has not been summoned to testify to the Grand Jury. If he had supposed that he had been summoned according to law to appear and testify before the Grand Jury, the undersigned would have immediately applied to your Honor, in whose court he was then, and has been since, and now is continuously and uninterruptedly engaged in the trial of a cause, for your Honor's permission to absent himself from said court for the purpose of obeying a legal mandate, inasmuch as the undersigned deems that he could not, without disrespect to the high tribunal of which your Honor is the present chief, absent himself from that tribunal for any purpose without permission. The undersigned supposes and suggests respectfully to your Honor, that only after he had appeared before the Grand Jury to testify, when duly and legally summoned for the purpose, could he have availed himself of any supposed right to question the regularity and legality of a requirement to *bring with him all notes and single bills in his hands* on which the names of J. A Lechlider, Isaac Neidig and Joseph Cover appear, or either of their names appears, as principal or surety; and he craves leave to make this suggestion for the purpose of assuring your Honor of the single reason why he has not appeared before the jury, to wit, that he has not been duly and legally summoned for that purpose. The undersigned has adverted so much at length to the forestated fact, because he has supposed from the matter apparent on the face of the order passed by your Honor, that the said order was based by your Honor on the assumption by your Honor of the correctness of the statement contained in the said communication of the Grand Jury, that the undersigned had been *summoned* and had failed to appear, and inasmuch as it will appear to your Honor, from an inspection of the records and minutes of proceeding of your honor-

able court, that the undersigned has not been legally and duly summoned to testify to the Grand Jury, he humbly prays your Honor to revoke and rescind said order.

***3** But in case your Honor shall not deem the fact aforestated to be sufficient cause for revoking and rescinding said order, the undersigned respectfully asks leave to suggest to your Honor the following further causes for which he prays your Honor to revoke and rescind said order: First--Because the requirement of said order, that the undersigned "deliver to the Grand Jury the papers required of him to be produced, being the notes and single bills in his possession, drawn by or on which the names of J A. Lechlider, Isaac Neidig and Joseph Cover appear, or either of their names appears as principal or surety," is, the undersigned respectfully suggests, in derogation of the rights of the undersigned, secured to him by the Constitution and laws of, and in force, in the State of Maryland, of which the undersigned is a citizen, inasmuch as the said requirement is too general and indefinite, and does not specify any particular paper, note or single bill, which is ordered to be delivered to the Grand Jury. Secondly--Because it is a fact that the undersigned is in possession of no paper, note or single bill, 'drawn by or on which the names of J. A. Lechlider, Isaac Neidig and Joseph Cover appear, or either of their names appears, as principal or surety,' except such as has been delivered to him as an attorney by his client for the purpose of suit being brought for the collection thereof in your honorable court, and for which he has executed and delivered to his said client his receipt for the collection thereof according to law, and because the undersigned has no right to deliver up the papers so entrusted and delivered to him, except to or upon the order of his client, and on the return to him of his said receipt therefor, unless it be upon such strictly legal requisition as will absolve the undersigned from responsibility to his said client, and will secure the undersigned from loss and damage which may or might arise from or grow out of the parting with said papers, notes or single bills, by the undersigned without the authority and permission of his said client. For which and all other causes apparent on the face of the proceedings in the matter of said order, and arising upon the facts hereinbefore stated, the undersigned prays your Honor to revoke and rescind said order.

But if your Honor shall not, for any of the causes aforesaid, deem it proper to rescind said order, the undersigned asks leave respectfully to suggest and state to your Honor, that he has been for two weeks past engaged in the trial of a criminal cause in your honorable court, wherein Joseph A. Lechlider is arraigned and on trial on a charge of forgery. That said cause is yet pending; that the undersigned has been laboriously engaged in said cause continually since the said trial commenced, during the entire session of the court each day as counsel for said traverser. That during this day the undersigned has been engaged in the attempted discharge of his duties as such counsel from 9 o'clock A. M. until after 4 o'clock P. M., without rest or refreshment. That on the adjournment of the court, by your Honor, he was greatly exhausted, and that only the intimation made to him by your Honor soon after said adjournment, that he must show cause against the enforcement of said order by to-morrow morning, and his sincere desire to manifest his high respect for the tribunal in which your Honor presides, could have induced him to tax, beyond their limits of reasonable endurance, his physical and mental powers, by preparing this statement and cause during the hours which his health requires should be devoted to refreshment and repose. That he has had no opportunity to consult with counsel whom he would desire to employ for the purpose of advising him in regard to his legal rights, and of presenting those rights to the consideration of your Honor before final action shall be taken by your honor in the premises. That it is impossible that he can secure the aid of counsel, and have the privilege of fully

and freely advising with them, whilst he shall be engaged in the trial of said cause, and in constant service as an attorney in your Honor's court in actual session. That the immediate disposition of the subject matter of said order can scarcely be of great public importance, or such importance as imperatively to demand the interruption of the trial now pending in your honorable court, of an indictment found at the last October term against the said Joseph A. Lechlider for forgery; inasmuch as since the present trial commenced, and during the present term, six additional indictments against said Joseph Lechlider for forgery, of the name of the same party whose name is alleged to have been forged by the indictment now on trial, have been found by the said Grand Jury on the testimony of the same party--John O. Holtz--who is the principal prosecuting witness in the said case now on trial, and returned into court by the said Grand Jury in the presence of the Petit Jury now empannelled to try said case, and which indictments have been found for the alleged forgery of notes or single bills, on which suits have been brought, and were at the time of said indictments found standing ready for trial on the docket of your honorable court at the present term; and to the finding of which indictments the said Grand Jury deemed it necessary to enforce the appearance before them of the counsel in said cause, some of whom are associated with the undersigned in defence of the said Lechlider in the case now on trial, and to enforce the delivery up by said counsel to them, the said Grand Jurors, of the causes of action which said counsel had in their possession, for the purpose of conducting the trials of said civil causes, and to interrupt the trial now in progress by enforcing the withdrawal therefrom by the said associate of the undersigned to the extent to which his said enforced attendance on said Grand Jury, for the purpose of delivering up the said evidences of debt of his client, in order that indictments for forgery might be found thereon, before the trial of the civil actions thereon could be had and determined, rendered necessary such withdrawal; and inasmuch as the indictments found as aforementioned at the present term of your honorable court, cannot probably be tried at the present term, because the said term must be adjourned by your Honor, as the undersigned respectfully supposes, before the 1st Monday of April, (on which day your Honor is required by law to hold the April term of the Circuit court for Carroll county,) and therefore an indictment or indictments for forgery, founded on any papers, notes or single bills, which may be in the possession of the undersigned, if such be the purpose for which the delivery of said papers, notes or single bills is desired, can be found by the Grand Jury and be made as effectual to all intents and purposes, at the next term of your honorable court, as if found at the present term, if your Honor shall determine to compel the delivery up by the undersigned of said papers, notes and single bills. In consideration whereof, and to the end that the undersigned, may have a reasonable opportunity to consult with and retain counsel, and be heard by your Honor through his counsel on the subject matter of said order, and especially as the proceedings thereon may involve a deprivation of the personal liberty of the undersigned, the undersigned respectfully asks that said order may be so modified as to allow him to be heard thereon, and on cause against the enforcement thereof, at a future time to be fixed by your Honor, if your Honor shall not deem the aforestated causes sufficient to induce your Honor to rescind the same at this time. And the undersigned asks leave to suggest to your Honor that if your Honor shall determine to refuse the request hereinbefore made, and to proceed upon the matter of said order immediately, the undersigned will desire to be heard so far as the very limited time and opportunity allowed him may enable him to present to your Honor his views of his legal rights in the premises, and that inasmuch as such hearing can only be had in open court, and in the presence of the jury now empannelled in the trial of the pending cause, the probable effect of such proceeding will be to operate

injuriously to the interests of the accused now on his trial.

***4** In conclusion, the undersigned begs leave to repeat his assurance of the profound respect, which he feels, for the high tribunal in which your Honor presides, and to aver that, in what he has hereinbefore suggested, and in his views and conduct in relation to the entire subject matter, he has intended, and does intend, not only no contempt or disrespect towards either the court or the Grand Jury, but that the reverence with which he regards both, as amongst the most powerful and essential supports of the law and order indispensable to the well-being of the society of which he is a member, mainly induces him to seek at the hands of your Honor a just and full opportunity to be heard in vindication of his own supposed rights; believing, as he does, that the rights of no single citizen, however obscure and humble, can be lightly or hastily passed upon by those tribunals, on which all must repose for security, without thereby a most damaging blow being struck at the foundation of the fabric of social order, and at those tribunals themselves, its main supports.

WM. P. MAULSBY.

MARCH 10th, 1859--11 1/2 o'clock, P. M.

Frederick County, to wit:

On this 11th day of March 1859, personally appeared in open court, William P. Maulsby, and made oath on the Holy Evangely of Almighty God, that the matters, facts and things in the aforegoing statement and cause shown are true.

B. G. FITZHUGH, Clerk.
True copy, test:

B. G. FITZHUGH, Clerk."
[No. 5.]
"Ordered by the court, that the causes within shown be, and the same are overruled: And it is further ordered that William P. Maulsby, Esq., appear before the Grand Jury, and deliver to them the papers in his hands for which they have called.

M. NELSON.

MARCH 11, 1859.
True copy of the original order. Test:

B. G. FITZHUGH, Clerk.
MARCH 11, 1859."

[No. 6.]
"*By the Circuit Court for Frederick county*, Feb. Term, 1859.

You are hereby commanded to attach the body of William P. Maulsby, and have him before the said court now sitting, to answer a contempt by him committed.

By order, B. G. FITZHUGH, Clerk.

MARCH 17, 1859.

To the Sheriff of Frederick County.

Which was thus endorsed: 'Served.'

JOSEPH W. EBBERTS, *Sheriff.*
True copy. Test:

B. G. FITZHUGH, Clerk."
[No. 7.]
"Thursday morning, MARCH 17, 1859.

William P. Maulsby, Esq., appeared in court this morning and refused to appear before the Grand Jury, or to deliver to them the paper or papers required of him by said court.

Whereupon, the court ordered that an attachment for contempt do issue against him, which was done; and the attachment for contempt being rereturned served by the sheriff of Frederick county, and William P. Maulsby, Esq., being in court, the court adjudged that he pay a fine of

$500, and be in the custody of the sheriff of Frederick county until he purge the contempt by appearing before the Grand Jury, and furnishing to them the paper or papers required by them.

***5** STATE OF MARYLAND, FREDERICK COUNTY, SCT:

I hereby certify that the foregoing is truly taken from the minutes of the proceedings of the Circuit court for Frederick county. In testimony whereof, I hereunto subscribe my name, and affix the seal of the Circuit court for Frederick county, this 17th day of March, A. D. 1859.

B. G. FITZHUGH, Clerk."

The following affidavit was also filed before Judge Bartol:

"STATE OF MARYLAND, ANNE ARUNDEL CO:

I hereby certify that on this 23d day of March 1859, before the subscriber, a justice of the peace of said State, in and for said county, personally appeared William P. Maulsby, and made oath on the Holy Evangely of Almighty God, that in addition to the notes and single bills particularly referred to by him in his petition addressed to the judge of the Circuit court for Frederick county, and filed on the 11th day of March inst., this affiant was on the 10th, 11th and 17th days of March inst., in possession of other notes and single bills, on which the names of Joseph A. Lechlider, Isaac Neidig and Joseph Hoover appear, or some of their names appear, as principal or security, which were the property of and had been delivered to him by his client, Joseph A. Lechlider, on the 2nd, 10th and 11th day of March, on trial, on an indictment for forgery, to be used for the purpose of conducting said defence, and which were essential evidence to establish his innocence of said charge, and also essential evidence to be used for his defence on seven indictments yet pending against him. That the notes and single bills herein particularly mentioned, were not specified in the said paper filed by him on the said 11th day of March, only because of the hurried manner in which this affiant was compelled to prepare said paper.

WM. GLOVER."

The case was argued on behalf of the petitioner upon the application for the writ, by *Bradley T. Johnson, Charles J. M. Gwinn, Coleman Yellott* and *Reverdy Johnson.* The writ was issued and the sheriff made return thereto: "That he detains the body of William P. Maulsby, Esq., under and by virtue of certain orders passed by the Honorable Madison Nelson, circuit judge for the third Judicial Circuit of the State of Maryland," certified copies of which orders are exhibited as part of the return, and are the same as those above stated and filed with the petition, marked Nos. 1 to 7 inclusive.

West Headnotes

Contempt ⚿63(1)
93k63(1) Most Cited Cases
A summary judgment for contempt, if passed by a court of competent jurisdiction, is conclusive.

Contempt ⚿63(4)
93k63(4) Most Cited Cases
Acts 1853, c. 450, declaring what shall constitute a contempt of court, which is an offense at common law, does not confer any jurisdiction on the court in regard to punishment; and therefore the ground of a judgment of conviction need not appear on its face, and show that the case is within the statute.

Contempt ⚿82
93k82 Most Cited Cases
A commitment for contempt was until purgation by appearance before the grand jury. On the discharge of the grand jury the commitment no longer holds, and the prisoner may be discharged

on habeas corpus.

Contempt ⚿82
93k82 Most Cited Cases
Where a party in contempt of court is fined and committed to the custody of the sheriff until the contempt be purged, but is not committed for non-payment of the fine, nor until the fine be paid, he cannot be held by the sheriff in custody for the fine.

Habeas Corpus ⚿201
197k201 Most Cited Cases
(Formerly 197k1)
The Act of 1813, does not constitute the writ of habeas corpus, a writ of error.

Habeas Corpus ⚿205
197k205 Most Cited Cases
(Formerly 197k2)
The Constitution of 1851 does not in express terms or implication repeal or alter the Act of 1809, ch. 125, relating to the writ of habeas corpus.

Habeas Corpus ⚿205
197k205 Most Cited Cases
(Formerly 197k2)
Act of 1809, ch. 125, relating to the writ of habeas corpus, is a remedial Act, and applies to the members of the Court of Appeals, (1859,) as well as to the court which was in existence at the time it was passed.

Habeas Corpus ⚿612.1
197k612.1 Most Cited Cases
(Formerly 197k612, 197k2)
The words "in vacation time," as used in Act of 1809, ch. 125, relating to the writ of habeas corpus refer to the vacation of the Circuit Courts and Courts of Baltimore City.

Habeas Corpus ⚿753
197k753 Most Cited Cases
(Formerly 197k19)
Under the Act of 1813, ch. 175, where a party is committed upon mesne process, as upon a charge of crime, upon a writ of habeas corpus, it is competent for the judge to examine testimony and determine the real ground of the accusation, and to bail or discharge the prisoner, although the warrant set out in the return may be in due form, and by a competent officer.

Habeas Corpus ⚿448.1
197k448.1 Most Cited Cases
(Formerly 197k448, 197k22(1))
If it appears that the party is convict and in execution by legal process, by the terms of the Act of 1809, he is denied the benefit of the writ.

Habeas Corpus ⚿528.1
197k528.1 Most Cited Cases
(Formerly 197k528, 197k22(2))
An order of the Court committing a party to the custody of the Sheriff, until he purge a contempt by complying with an order set forth therein, shows upon its face that the party is convict and in execution on legal process, as respects availability of writ of habeas corpus.

Habeas Corpus ⚿528.1
197k528.1 Most Cited Cases
(Formerly 197k528, 197k22(2))
The action of a court having jurisdiction in a matter of contempt, the commitment being in due form, cannot be reviewed on a hearing on habeas corpus in the court of appeals.

Habeas Corpus ⚿528.1
197k528.1 Most Cited Cases
(Formerly 197k528, 197k22(2))
A judgment finding a party guilty of contempt of court cannot be impeached on habeas corpus.

Habeas Corpus ⚿761
197k761 Most Cited Cases
(Formerly 197k22(2))
A summary judgment for contempt is as conclusive on a habeas corpus as a sentence on an indictment.

Habeas Corpus ⚿683
197k683 Most Cited Cases
(Formerly 197k79)
At common law, the return of the writ of habeas corpus, imported absolute verity; it could not be traversed, or its truth denied; nor could any matter repugnant thereto be alleged; nor its effect be avoided by extrinsic proof.

Contempt ⚿31
93k31 Most Cited Cases
It is a branch of the common law; the Act of 1853, ch. 450, does not confer jurisdiction upon the courts; it is merely declaratory of what shall constitute a contempt.

Contempt ⚿33
93k33 Most Cited Cases
The right of punishing for contempt by summary conviction, is inherent in all courts of justice and legislative assemblies, and is essential for their protection and existence.

Habeas Corpus ⚿503.1
197k503.1 Most Cited Cases
(Formerly 197k92(2))
But even then, it is doubtless competent under the Act of 1813, to controvert its truth, and to show that no judgment or execution in fact exists, or that the judgment was by a court having no jurisdiction to pronounce it; but no proof can be heard as to whether a judgment by a competent court is erroneous.

Habeas Corpus ⚿528.1
197k528.1 Most Cited Cases
(Formerly 197k92(2))
Where the grounds of the contempt are not set out in commitment, the court on habeas corpus is precluded from inquiring into them.

Habeas Corpus ⚿528.1
197k528.1 Most Cited Cases
(Formerly 197k92(2))
On habeas corpus, if the grounds of contempt are not set out in the commitment, the court cannot inquire into them.

Habeas Corpus ⚿442
197k442 Most Cited Cases
(Formerly 197k92(2))
Where such a judgment is pronounced, by a court of competent jurisdiction, and the commitment is in due form, the party cannot be discharged therefrom under habeas corpus, by reason of any alleged error or irregularity in the antecedent action of the court.

Witnesses ⚿204(2)
410k204(2) Most Cited Cases
An attorney may be obliged to produce papers which his client could be obliged to produce.

Witnesses ⚿204(2)
410k204(2) Most Cited Cases
No counsel can be compelled to discover any paper furnished to him by his client. The privilege recognized by the law is that of the client; it is one which it is the right and duty of the counsel to assert, and which courts are bound to respect.

Witnesses ⚿204(2)
410k204(2) Most Cited Cases
But the claims of the privilege cannot be made in defense to an order of the Court, to produce papers called for to be delivered to the Grand Jury, that would not in any manner prejudice or injure the civil rights of the clients.
JUDGE BARTOL then delivered the following opinion, and passed the following order in the case:

***6** "This is an application for a writ of *habeas corpus*, made by William P. Maulsby, Esq., alleging that he is *unlawfully* imprisoned, and in the custody of the sheriff of Frederick county. With the petition are exhibited certified copies of the proceedings and orders of the Circuit court for said county, of an attachment issued by order of said court, and of a judgment of said court; by

reason of which, it is alleged, the petitioner has been committed to the custody of said sheriff, and is now held in custody by him. The petitioner further states, that the Circuit court for Frederick county is now in vacation, and that the *Grand Jury* has been discharged.

The first questions presented on this application are, whether, as a judge of the Court of Appeals, I have the power to grant the writ in any case, and whether that power can be exercised during the term time of the court of which I am a member?

This power, if it exist at all, can be claimed only under the act of 1809, chap. 125.

By the third article of the Bill of Rights it is declared, that the inhabitants of Maryland are entitled to the benefit 'of all acts of Assembly in force on the first Monday of November 1850, except such as have since expired, or may be altered by this Constitution.' There is nothing in the Constitution to repeal or alter, either by express terms, or by implication, or repugnancy, any part of the act of 1809. It is a remedial statute, and I do not entertain any doubt that it is still operative and valid, and applies as well to members of the present Court of Appeals, as of the court which was in existence at the time it was passed. But this question has passed in *rem judicatam.* In the case of *Ex-parte* *O'Neill, 8 Md. Rep., 227,* it is expressly so decided; and whatever doubts I might have before entertained on this question, they have been set at rest by that adjudication; nor am I at liberty to set up my individual opinion upon the construction of the words, '*in the vacation time*,' as used in that act. In the same case it is distinctly ruled, that those words do not apply to the vacation of the Court of Appeals, but mean 'the vacation time of the county, now circuit courts, and the courts of Baltimore, to which have been transferred the powers and duties of the former county courts.' *8 Md. Rep., 228*. Having, upon the authority cited, and for the reasons which I shall hereafter assign, determined to grant the writ, one was accordingly issued, to which the sheriff made return: 'That he detains the body of William P. Maulsby, Esq., under and by virtue of certain orders passed by the Honorable Madison Nelson, circuit judge for the third judicial circuit of the State of Maryland,' certified copies of which orders are exhibited as a part of the return, and are the same as those filed with the petition, marked Nos. 1, 2, 3, 4, 5, 6, 7.

The case was fully argued on behalf of the petitioner, upon the application for the writ, and the question to be determined is, whether upon the case made by the petition and return, the petitioner is entitled to be discharged?

***7** The act of 1809 gives the benefit of the writ to 'any person who is committed or detained for any crime, or under any color or pretence whatsoever, unless it be for treason or felony plainly expressed in the warrant of commitment,' '*or not being convict or in execution by legal process;*' and directs, that 'if it shall appear that such person is detained without any legal warrant or authority, the judge before whom he is brought on *habeas corpus,* shall release and discharge him.'

It appears by the return to this writ, as well as by the papers exhibited with the petition, that on the 17th day of March 1859, the circuit court for Frederick county issued an attachment against William P. Maulsby, Esq., 'to answer a contempt by him committed,' which was served on the petitioner, and on the same day the court passed the following order:

'THURSDAY, *March* 17*th,* 1859.

William P. Maulsby, Esq., appeared in court this morning, and refused to appear before the grand jury, or to deliver to them the paper or papers required of him, as ordered by this court. Whereupon, the court ordered that an attachment for contempt be issued against him, which was done, and the attachment for contempt being re-

turned served, by the sheriff of Frederick county, and William P. Maulsby, Esq., being in court, the court adjudged that he pay a fine of $500, and be in the custody of the sheriff of Frederick county, until he purge the contempt, by appearing before the grand jury, and furnishing to them the paper or papers required by them.'

This order discloses the authority under which the petitioner is detained in custody. Upon its face it shows that he is *convict and in execution on legal process*. 'When a court commits a party for contempt, their adjudication is a conviction, and their commitment in consequence is execution.' 3 *Wilson,* 188. 7 *Wheaton,* 43.

The Supreme Court declare, in *Ex-parte* Kearney, 7 *Wheaton,* 43, that there is, in principle, no distinction between a judgment pronounced by a court after trial upon an indictment, and a summary judgment for contempt, where it is sought to avoid their effect in a collateral proceeding; each is alike conclusive, if the court which pronounces it has jurisdiction to pass the judgment.

This principle is so well settled, and so universally recognized, that it can hardly be necessary to cite authorities to support it. The decision in the case of *Brass Crosby, Lord Mayor of London,* reported in 2 *Wm. Bl. Rep.,* 754, and in 3 *Wilson,* 188, was only the recognition of the law, as it had before been held from time immemorial. That decision was approved and adopted by the Supreme Court of the United States, in the case in 7 *Wheaton,* already cited. And it is supported by an unbroken current of authorities. See *Burdett vs. Abbott,* 14 *East.,* 1, and the same case before the House of Lords, 5 *Dow.,* 199; the case of the *Sheriff of Middlesex,* 11 *Ad. & El.,* 273, (in 39 *Eng. C. L. Rep.,* 80;) *King vs. Hobhouse,* 2 *Chitty,* 207; *Yates' Case,* reported in 4*th,* 5*th,* 6*th* and 9*th Johnson's Rep.;* Commonwealth vs. Hambright, 4 Sergt. & Rawle, 149; *The* People vs. Cassels, 5 Hill, 164; *Summer's Case,* 5 *Iredell,* 149. See the cases cited in the American notes to *Crepps vs. Durden,* in 1 *Smith's Leading Cases,* 703, and the able decision of the Supreme Court of Pennsylvania, pronounced by Judge Black, in *Passmore Williamson's Case,* 26 *Penn. State Rep.,* 9.

***8** But it has been argued in this case, that the judgment under which the petitioner is held in custody was *coram non judice* and void, and the act of 1853, ch. 450, has been cited for the purpose of showing that the courts in Maryland now exercise over the subject of contempts, a special and limited jurisdiction conferred by the act, and that unless the ground of a judgment of contempt appear upon its face, and show affirmatively, that the facts upon which it is based are within the act of 1853, the judgment is void. This position is not tenable. A contempt is an offence at the common law; it is not created by the act of 1853, nor is the jurisdiction to punish it conferred by that act alone. 'It is an offence against the court, as an organ of public justice. The right of punishing for contempts by summary conviction is inherent in all courts of justice and legislative assemblies, and is essential for their protection and existence. It is a branch of the common law, adopted and sanctioned by our State Constitution.' 9 *Johns.,* 417. The act of 1853 does not confer upon the courts jurisdiction; it is merely declaratory of what shall constitute a contempt; and while it is intended to restrain the courts from punishing, as a contempt, any thing which does not fall within the terms of the act, it necessarily devolves upon each court which is called on to enforce it, the power and the duty of construing it. That is the case with every law which the court is called on to construe and administer.

To use the language of *Chief Justice Marshall,* (1 *Cranch,* 177,) 'It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound that rule.' It is clear, that the circuit court for Frederick county,

which is a court of general common law jurisdiction, has the power of adjudicating and punishing contempts, as well as every other offence known to the common law, and, *ex necessitate*, has the power of construing the Act of 1853, in the same manner as, before that act, it had the power of deciding what constituted a contempt at common law; and its judgment is final and conclusive and cannot be set aside or impeached under this proceeding, or in any other collateral way. It is no answer to say, that the power may be abused; government cannot exist without vesting the authority somewhere, and if it is abused the Constitution points out the remedy.

In this connection I cannot forbear quoting the language of *Judge Story*. In 7 *Wheaton*, 45, he says: 'The argument of inconvenience has been pressed upon us with great earnestness. But where the law is clear, this argument can be of no avail; and it will probably be found, that there are serious inconveniences on the other side. Wherever power is lodged it may be abused. But this forms no solid objection against its exercise. Confidence must be reposed somewhere; and if there should be an abuse, it will be a public grievance, for which a remedy may be applied by the Legislature, and is not to be devised by courts of justice.' The judgment of contempt, in this case, being pronounced by a court of competent jurisdiction, and the commitment, which is the process of execution thereon, under which the petitioner is held, being in due form, it follows, from what has been said, that he cannot be discharged therefrom under *habeas corpus*, by reason of any alleged error or irregularity in the antecedent action of the court. A writ of *habeas corpus* is not a writ of error. My powers, to be exerted by means of the writ, are no greater than those of any other judge in the State, who has the right to grant it, under the Acts of Assembly; and it is as much beyond my authority to revise the judgment of the Circuit court for Frederick county in this way, as it would be for myself, or any other judge, to revise or annul a judgment pronounced by the Court of Appeals, upon a matter within their jurisdiction.

***9** The operation of such an authority would lead to the greatest disorder and confusion, produce an endless conflict between the courts of the State, and, in the end, destroy the very foundations of our government.

But I pass to the consideration of the other grounds, upon which, it has been urged, that the judgment of the circuit court ought to be disregarded as void. Together with the petition, and with the return to the writ, are exhibited several papers, showing the antecedent proceedings of the court, which culminated in the judgment and commitment for contempt. I have very great doubt whether, upon any of the grounds suggested, I can be at liberty, under this proceeding, to regard those papers.

It is contended, that it is my duty to do so, under the Act of 1813, chap. 175. That act greatly enlarged the power of a judge, acting under the writ of *habeas corpus.* At common law the return to the writ imported absolute verity; it could not be traversed, its truth could not be denied or inquired into, nor could any matter repugnant thereto be alleged, or its effect be avoided by extrinsic proof; all these things are authorized to be done by the Act of 1813: '*Whereby it may appear, from the circumstances* to be proved, that there is not a sufficient legal cause for such detention.' Where a party is committed upon *mesne process*, as upon a charge of crime, it is competent for the judge, notwithstanding the warrant of commitment, set out in the return, may be in due form and by a competent officer, to examine testimony, and to determine, upon the proof exhibited to him, the real ground of the accusation, and to bail or discharge the prisoner. But if it appear *that the party is convict and in execution by legal process*, by the terms of the Act of 1809, he is denied the benefit of the writ. If the return so state, it is doubtless competent, under the Act of 1813, to controvert

its truth, and to show that no judgment or execution in fact exists, or that the judgment was by a court having no jurisdiction to pronounce it; but if it appear, that there is judgment by a competent court, then no proof can be received, nor any inquiry instituted, to determine that the judgment is erroneous. The Act of 1813 does not constitute a writ of *habeas corpus* a writ of error.

It has been argued, that where the facts alleged, as constituting the contempt, appear on the face of the judgment or commitment, the law authorizes me to pass upon their sufficiency, or in other words, to decide, whether those facts constitute a contempt in law. It is not necessary for me to express any opinion on that point in this case. It certainly rests upon high authority. *Lord Ellenborough,* in pronouncing his judgment in the celebrated case of *Burdett vs. Abbott,* 14 *East.,* 1, is reported to have said: 'If a commitment appeared to be for a contempt of the House of Commons generally, I would, neither in the case of that court, or of any other of the superior courts, inquire further; but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could, by no reasonable intendment, be considered as a contempt of the court committing; but a ground of commitment, palpably and evidently arbitrary, unjust and contrary to every principle of positive law, or national justice; I say, that in the case of such a commitment, (if it ever should occur, but which I cannot possibly anticipate as ever likely to occur,) we must look at it and act upon it as justice may require, from whatever court it may profess to have proceeded.' And *Lord Denman* afterwards, in the case of the *Sheriff of Middlesex,* in citing this paragraph remarks: 'That in the same case, *Bailey, J.,* appears to have been of opinion, that if particular facts are stated in the warrant, and do not bear out the commitment, the court should act upon it; but that if the warrant merely states a contempt in general terms the court is bound by it.' The same opinion was held by *Lord Holt,* in *Regina vs. Paty,* 2 *Ld. Raym.,* 1105, but in that case three of the judges held the contrary. The Supreme Court of North Carolina, in 5 *Iredell,* 149, expressed the same opinion On the other hand, the contrary doctrine has been held by high authority, as in *Brass Crosby's case* in 3 *Wilson,* which has the sanction of the Supreme Court in *Kearney's case,* 7 *Wheaton,* and of *Chancellor Kent* and other distinguished jurists. But no case which I have seen, asserts, that if the grounds of contempt be not set out in the judgment or warrant, it is competent to inquire into those grounds.

***10** In the case before me, the grounds of the contempt are not set out in the commitment, and I am therefore precluded from inquiring into them. But if it be admitted, that by the terms of the commitment, in this case, the previous orders of the court are incorporated into, and form a part of it, and that I have the right to pass upon their sufficiency; still there is no ground appearing, which could authorise me to declare the judgment invalid. In the course of the argument, the question of privilege was very earnestly and ably pressed upon me. If I were at liberty to pass upon that question, I would be compelled to say, that no sufficient ground of such privilege was presented to the circuit court. On what does such a claim rest when urged by counsel? No counsel can be compelled to discover any paper furnished to him by his client, to be used for the purpose of criminating the client. In such case, the privilege recognized by the law is that of the client, which it is the right and duty of the counsel to assert, and which courts of justice are bound by law to respect. On this principle were decided the cases of *Rex vs. Dixon,* 3 *Burrows,* 1687; *State vs. Squires,* 1 *Tyler, (Vermont,)* 147; The *Anonymous case,* 8 *Mass.,* 370; *Coveney vs. Tannahill,* 1 *Hill,* 33, cited in the argument. No such ground of privilege appears to have been urged or relied upon in the circuit court. The privilege claimed was based on the fact, that the papers called for were furnished to the counsel by sundry clients, not one of whom would have been privileged from producing them, if called on; how

then could the privilege be claimed by the counsel?

The rule which seemed to be invoked by the counsel, in this case, is stated in 1 *Starkie's Ev.*, 86, as follows: 'There seems, however, in one respect, to be a distinction between the compelling a witness to answer a question orally, and the obliging him to produce written documents. He must answer questions, although the answer may render him civilly responsible; but it seems that he is not compellable to produce title deeds, or any other document belonging to him, when the production might prejudice his civil rights.' The same rule is recognized in 3 *Starkie's Rep.*, 140, (14 *Eng. C. L. Rep.*, 170;) *Cocks vs. Nash*, 9 *Bing.*, 723; (23 *Eng. C. L. Rep.*, 439,) and in other cases. But this case does not come within that rule. It did not appear that a compliance with the court's order, requiring the papers called for to be delivered to the Grand Jury, would in any manner prejudice or injure the civil rights of the clients.

The court's order, in this case, has been discussed, as if its operation was to deprive the clients of the use and benefit of the promissory notes, called for; as if it were an order to deliver the notes to the Grand Jury to *be cancelled, or destroyed, or kept.* It cannot receive such a construction; its whole scope, purpose and effect was to do what a *subpoena duces tecum* accomplishes, requiring the papers to be furnished to the Grand Jury, for their inspection, to be used in the discharge of their duty, and for a lawful and proper purpose. Such is the intendment and legal construction of the order, the contrary not appearing. On this question I am constrained to say, that, upon the case presented to the circuit court, the counsel was in error on the question of privilege. It is sometimes a question of great delicacy for counsel to determine between his obligations to the public and his solemn and sworn duty to his client, and in such cases the counsel can seldom form an impartial judgment; and if mistaken, he is not to be harshly or severely dealt with. His duty is to submit the question to the court, upon whom the law has cast the duty of deciding it.

***11** I have gone into this subject thus at length out of deference for the arguments which have been addressed to me on behalf of the petitioner. A supplementary affidavit has been filed before me, by the petitioner, setting out other and additional facts as grounds upon which the privilege might be claimed; but in no view of this case can the new matter alleged be before me.

It follows, from what has been said, that upon none of the grounds insisted upon in the argument can I interfere with the judgment of the Circuit court. It is binding and conclusive, and its force and validity cannot be questioned under this proceeding, or disregarded by me. It therefore only remains for me to interpret it according to its legal effect, and to decide whether under it the petitioner can still be lawfully detained in the custody of the sheriff. The judgment imposes a fine of $500, and directs 'that the petitioner be in the custody of the sheriff until he purge the contempt by appearing before the Grand Jury and furnishing to them the paper or papers required by them.' He is not committed for non-payment of the fine, nor until the fine shall be paid. Without such commitment, he cannot be held by the sheriff in custody for the fine. This was decided in 7 *Peters*, 568, *Watkin's case.* The acts of Assembly point out the mode by which the fine may be collected, and it is not in my power to release him from it. Although it may have been, as alleged, excessive and wholly unjustified by the circumstances, that is a matter with which I have nothing to do.

The commitment is 'until he purge the contempt, by appearing before the Grand Jury,' &c., but it appears that the Grand Jury has been discharged, so that it has become impossible for him to obey the court's process; and the question arises whether by reason of that fact he is entitled to be discharged, or in other words whether the term of

imprisonment as fixed by the warrant is ended? This point was not presented in the argument, but it seems to me upon the best reasons which I am able to apply to the subject, and by the analogies of the law, that on this ground it is my duty to discharge the petitioner. It is always competent to inquire whether any thing has arisen since the commitment to put an end to the imprisonment, (5 *Hill*, 165,) as a pardon, or an expiration of the term fixed by the commitment. In determining the legal effect of the commitment, it is proper to notice a distinction between punishment and process. This distinction is taken by *Patterson, J.*, in *Crawford's case*, 13 *Ad. & El. N. S.*, 629, in which it is said, that 'a committal of a party till he answer is in the nature of process.' It was decided in the court of King's Bench, in the case of the *King vs. James*, 5 *Barn. & Ald.*, 894, (7 *Eng. C. L. Rep.*, 292,) that a commitment by a magistrate for contempt, till the party shall be discharged by due course of law, 'is void, because it is not for a time certain, as there was no course of law by which he could be discharged, and therefore, if valid, it amounted to perpetual imprisonment.' In that case it was held, that the commitment was for punishment. There is no doubt of the power of the court to commit until the party answer, or testify, or produce papers before a Grand Jury. In such a case the commitment is a compulsory process to compel the party to obey the mandate of the court. But if by an event subsequently happening, as by the adjournment of the court, and the discharge of the Grand Jury, it becomes impossible for him to obey the court's process, it must result from necessity that term oft he imprisonment imposed is ended, and that the party is entitled to be discharged; otherwise the imprisonment would be perpetual. It was decided in *Dunn's case*, 6 *Wheaton*, 204, that where a party was committed by the House of Representatives for a contempt, that 'to the duration of the imprisonment a limit is imposed by the nature of things, and that the imprisonment must terminate with the adjournment.' See also judgment of *Senator Clinton*, 6 *Johns.*, 506, 507, and of *Senator Platt*, 9 *Johns.*, 420.

***12** It is true that the reason assigned by *Mr. Justice Johnson*, in 6 *Wheaton*, does not strictly apply to the case of a commitment by a court, because while the House of Representatives has no power to commit a party for a period extending beyond the adjournment, the power of a court is not so limited; yet there appears to me to be a strong analogy between the *case of Dunn* and the case I am now considering, although the reasons on which they depend are not in all respects the same.

In this case, the duration of the imprisonment must be determined by the terms of the commitment and its legal operation and effect. It is *until he purge the contempt by appearing before the Grand Jury and producing the papers to them.* How can that be done after the Grand Jury has been discharged? It has become impossible, although the petitioner should be ready and willing to do so. If in an ordinary case a witness, failing to recognize, be committed to the custody of the sheriff, for the purpose of testifying to the Grand Jury, when the Grand Jury is finally discharged he is entitled to be released; and in my opinion the same principle applies to this case. The term of imprisonment fixed by the warrant is ended by operation of law, not because the court has not the power to commit for contempt for a period extending beyond the term of the court, but because in this case it has not done so. This point may not, perhaps, be free from doubt; but if that be conceded, it is my duty to cast whatever doubt may exist, in favor of the liberty of the citizen, and I shall therefore order the discharge of the petitioner.

If it should appear that there have been points presented in the arguments of counsel which have escaped my notice, some apology may be found in the fact, that I have been called upon to examine the many grave and important questions involved in this application, whilst burdened with the regu-

lar business of the court. In examining the case, however, I have been aided by consultation with my brother judges, a majority of whom agree with me in the conclusions stated.

It is thereupon, this 24th day of March 1859, by me, as one of the judges of the Court of Appeals of Maryland, and by the authority conferred on me as such, by the Constitution, and the acts of Assembly, ordered and adjudged, that William P. Maulsby, Esq., of the county of Frederick, now in the custody of the sheriff of said county, in virtue of a judgment and warrant of the Circuit court for Frederick county, dated the 17th day of March 1859, be, and he is hereby discharged from said custody, and for which discharge this shall be a sufficient warrant to the aforesaid sheriff.

Witness my hand and seal, the day and year first aforesaid. Done at Annapolis.

(SEAL.) JAS. L. BARTOL."

13 Md. 625, 1859 WL 3862 (Md.)

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