

## CASES IN THE COURT OF APPEALS

1810.

Horsey  
vs  
The State

The cause was argued before BUCHANAN, NICHOLSON,  
GANTT, and EARLE, J. by

Martin, for the Appellant, and by  
Barroll and Chambers, for the Appellee.

THIS COURT reversed the judgment of the General Court,  
and affirmed that of the County Court.

JUDGMENT OF REVERSAL REVERSED.

JUNE (E. S.)

HORSEY VS. THE STATE.

A special court of oyer and terminer and gaol delivery, acting under a commission from the governor, has all the powers and jurisdiction which can be exercised by the county court in criminal cases.

Certain objections, made in arrest of judgment on a verdict of guilty in the above case, overruled, viz. Variances between the names of the grand and petit jurors who found the indictment and verdict, and those returned on the venire—As to the manner of issuing the venire to summon the jury—the committing the prisoner without his being brought into court by a *capias*—the not issuing a *capias*—there being no presentment found; and it not appearing that the jurors were freeholders.

WRIT OF ERROR to the justices of a special court of Oyer and Terminer and Gaol Delivery for Worcester county, to remove the proceedings on a judgment in a criminal prosecution, against the plaintiff in error, for murder. The verdict in the court below was guilty, and the prisoner, by his counsel, moved the court in arrest of judgment, and assigned the following reasons: 1. Previous to the adoption of the constitution of this state, all the criminal jurisdiction of the province was vested in, and exercised by, the provincial and county courts. That instrument recognized the county courts, and established a court called The General Court, to which the powers and jurisdiction, exercised by the late provincial court, were transferred. By that instrument an executive power was provided for the state, consisting of a governor and council. The governor is expressly prohibited from the exercise of any prerogative by virtue of any law, statute, or custom of England. The issuing of commissions of Oyer and Terminer in England, is an exercise of the royal prerogative, inherent in the King by the common law. By the constitution of this state, the powers to be exercised by the governor and council are expressly prescribed; and it is provided and enjoined, that all judges and justices should thereafter be appointed by the governor, by and with the advice and consent of the council. The persons named in a commission of Oyer and Terminer, &c. and authorised thereby to hear and determine criminal charges in any particular place, when acting by virtue thereof, are in the exercise of high and important judicial powers, and are known to the law as justices. The act of assembly, passed at November session 1807, ch. 1, by virtue of which the commission, under which this court has