

mon law or under the habeas corpus act of 31 Car. 2, be controverted with a view to the absolute discharge of the prisoner." (Page 276.)

An effort was made in 1758 to amend the law by act of Parliament, but was not successful. The author says, (p. 279): "The seeds, however, which had been sown in the discussion upon the bill sprang up and yielded appropriate fruits in American law, long before the passage of the statute of 56 George 3." He then refers to the various State laws on this subject and the decisions of Courts upon them. Maryland is not included in his enumeration, but a reference to the act of 1813 and the Code will show that our State is not behind any in its legislation in favor of personal liberty, and in rendering this writ effectual for the accomplishment of its great end of "liberating the citizen from illegal confinement."

The 12th section of the Code is as follows:

"Any person at whose instance or in whose behalf a writ of habeas corpus has been issued may controvert by himself or his counsel the truth of the return thereto, or may plead any matter by which it may appear that there is not a sufficient cause for his detention or confinement, and the Court or Judge, on the application of the party complaining, or the officer or other party making the return, shall issue process for witnesses or writings, returnable at a time and place to be named in such process, which shall be served and enforced in like manner as similar process from Courts of law is served and enforced; but, before issuing such process, the Court or Judge shall be satisfied, by affidavit or otherwise, of the materiality of such testimony."

Under this law, as under the Pennsylvania statute, which is somewhat similar in its provisions, the Judge will look beyond the commitment in a criminal case, and hear extrinsic evidence, and go into an examination of facts, in order to ascertain whether there is a sufficient legal cause for the detention or confinement.

Such has been the construction of the act of 1813. In *Maulsby's case*, 13 Md., 637, it was said, with the approbation of the Court of Appeals, "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.

In these cases all errors in pleading have been waived, and the evidence adduced must be considered; not for the purpose of trying the case and deciding upon the guilt or innocence of the parties accused. My office under the writ stops far short of that, and casts upon me only the duty of deciding whether upon the return and the proof there is any probable