

In Green's Reports, second volume, page 312, it is recorded that if a judge at chambers can inquire into and decide the right of a plaintiff to arrest the defendant, there shall he terminate his inquiries. Not a single case sustains the contrary doctrine. The writ is a legal and proper one. The court has competent jurisdiction. I refer to fourth McCord; reports to 1 Watts, 66; to 2 Casey, 9; to Hurd on Habeas Corpus, p. 332, 335.

Unless aided by the Assembly of Maryland in this case, you are limited to the inquiry. Was there a proper legal mittimus under which these parties are held? The Code provides that the party may controvert the truth of the return, or plead to the matters alleged therein. The act of 1813, chapter 135, contains the law up to that time. Under that act, the recognized law of Maryland, until the adoption of the Code, the verity of the return alone could be impeached. The truth of the return may be controverted, or plead matters repugnant, or avoid it by showing that there was not sufficient legal cause for the detention. The return alone is drawn in question. In the act of 1809, it is said the truth of the return may be controverted. Chancellor Kelly understood the law as I have read it. The law goes no further than to say the return may be controverted.

The Code was designed to simply embody the scattered enactments of the State. It does not give appellate power to every judge of Maryland over every other judge. The case 13, Md., 636, does not conflict with the statement of the law. Where the law is clear, the argument from inconvenience cannot avail. A defendant cannot be discharged from the commitment by reason of any error in the original proceedings. A writ of habeas corpus is not a writ of error. At common law the return imputed absolute verity. It could not be traversed or its truth inquired out. The act of 1813 authorizes all these things. If a party is convicted by legal process, he is denied the benefit of the writ. If the judgment is by a competent court, that judgment cannot be inquired into because of error. The law is not affected by the statute of Maryland, or by any decision in this State. The jurisdiction of the Criminal Court is not fixed by the acts of Assembly.—The twenty-ninth article of the Code determines its jurisdiction. It has jurisdiction of all crimes and felonies in Baltimore. It has exclusive jurisdiction, and its decision concludes the whole until they are reversed upon a writ of error. The judge of the court is at all times a conservator of the peace. It has the power to commit to jail in default of bail, and to require bail when a prima facie is made out. There can be no controversy with reference to the power of that court in this matter.

The return in this case sets forth two different commitments, one to answer for a crime, the other in default of bail to keep