

ted upon the Sheriff, it is difficult to speak with calmness.— But I shall endeavor to discuss the subject uninfluenced by feeling. The able and eloquent argument submitted by my friend Mr. Latrobe covered entirely the case of the commissioners, and presented clearly the relative position of the actors in this miserable drama. In the Sheriff's case there were facts presented by the evidence which require, on the part of your Honor, the severest reprobation of those who were connected therewith. You may search the annals of jurisprudence from the earliest records down to the present day, without omitting the period of Charles the Second, and you will find no similar case on record.

But before I proceed to present the facts in this case, allow me to inquire if it is true that if a party is incarcerated in our jail, and the commitment is regular upon its face, and by the authority of a competent officer, that he must lie there? It cannot be, and it is not so, in this State, by your own authority, and that of the Court of Appeals, who approved of your decision in the case of Maulsby. There are numerous cases in the books sustaining that, [Here the counsel referred to several authorities.] This is not the case of the execution of a judgment, but in regard to a commitment, which is mesne process, there can be no doubt upon the question of the right to go behind a commitment. On page 637 of 13th Maryland, you yourself have said "that it is competent for the judge, notwithstanding the warrant of commitment is in due form and by a competent officer, to determine upon the proof exhibited the real ground of the accusation."

The cases referred to by the counsel on the other side are cases of judgment on contempt, and of execution issued upon judgments rendered. But in reply to all the cases cited on this point, I stand upon your own decision in the case of Maulsby. To say that we cannot inquire into the cause of commitment, and ascertain if there be sufficient ground therefor, is to destroy the privilege of the great writ of habeas corpus, of which we boast so much. But if we were compelled to rely upon the commitment and on the papers returned in this case, the defects in the case of the Sheriff are palpable and numerous. In violation of the Constitution of the United States and of our own bill of rights, the bench warrant for the arrest of the Sheriff was issued without any oath to support it, and he was dragged from his office to the Criminal Court. Had the Judge of that Court any right to issue that writ? By the 26th Article of the Declaration of Rights it is declared that all warrants without oath or affirmation, "to seize the property or arrest the person of any citizen, are grievous and oppressive." And yet this high officer is dragged from his office and from the quiet exercise of the duties of his position without the sanction of an oath, (3d Bailly, 38.)

While in the very execution of the process, through his