

vernment. The first act of the state wherein it was mentioned, was that of February 1777, Ch. 20; the 12th section of which, directed, that the *habeas corpus* act should be suspended during any invasion of *this* state by the enemy, as to the persons therein described, when arrested by the order of the governor and council. The act of 1785, Ch. 87, S. 8, made some provision respecting writs of *habeas corpus cum causa*, for persons charged, apprehended or indicted for crimes; and the act of 1790, Ch. 50, S. 2, directed the removal of prosecutions by *certiorari*. There was also in 1799, Ch. 58, a provision for the removal of indictments from the criminal court in Baltimore, but the act of 1798, Ch. 106, directed, that the several county courts, during their respective sittings, and at all other times the chief justice of the several districts respectively, should be authorized and empowered, upon application, to issue their writ of *habeas corpus*, and cause to be brought before them, any person or persons who should be in confinement within their respective jurisdictions, and to enquire into the cause of such confinement, and either discharge, admit to bail, or commit such person or persons, as the case might require, in the same manner as was then practised by the judges of the general court.

From the light in which this statute has been viewed, and the value which has been justly set upon it, the question as to the propriety of its being incorporated with our laws, since the passage of the act of 1809, Ch. 125, respecting writs of *habeas corpus*, will require some consideration.

The first section of the act, adopts most of the provisions of the statute, (with some alteration in the language,) but from the omission of other parts, it is evident that a change was intended. The first material part omitted, is that which required a payment or tender of the charges of bringing the prisoner, and his own bond for the charges of carrying him back, and against his making any escape by the way; and there is some change, though not a very material one, as to the time allowed, in proportion to the distance which the prisoner is to be brought. The direction in the third section of the statute, that the writs shall be signed by the person, who awards the same, is included in the first section of the act; but the one respecting their being marked, *per statutum*, &c. is omitted. The remainder of the third section of the statute, and the second section of the act, are the same in substance, (the alterations being in conformity to the establishment of our courts and justices,) except that the request of the prisoner, or any person in his behalf, is not in the act, required to be attested and subscribed by two witnesses present, at the delivery of the same, as is prescribed by the statute. The fourth section of the statute, which declared that persons neglecting two terms, to pray a *habeas corpus*, should have none in vacation time, is not inserted in the act; and the second section of the act being absolute, without any such qualification, that part of the statute must be considered as no longer in force in the state. The object of the third section of the act, and the fifth of the statute, are the same, viz: To declare how officers shall be proceeded against for not obeying such writs. The time limited for delivering a copy of the warrant, is the same in both, but in the act the penalty is 500 dollars, without any reference to the first and second offence. The mode of recovery is not pointed out, and it is declared that the right of action shall not cease by the death of either, or both of the parties.

In contrasting the fourth section of the act, with the sixth section of the statute, it appears that there is mentioned in the former, an additional ground on which a person delivered upon a *habeas corpus*, shall be recommitted, to wit: being surrendered by his bail; but the forfeiture for recommitment or procuring the same is omitted.

The fifth section of the act is, in substance, the same as the ninth section of the statute, except as to the forfeiture prescribed by the latter; and the fifth section, provides also, for cases arising out of the constitution and laws of the United States.