

in all such cases, will not preside more than half the time.

Believing then that Judge Perry was by our Constitution neither excused or disqualified, that the Legislature had no authority to give an additional exemption to the judges, and that therefore so much of that act as does this is void, it follows that Judge Merrick had no authority to act in the premises; that all proceedings by that Court are illegal, and that Swan could absent himself, and his bail not be held responsible for one cent. If these opinions be correct, something ought to be done & done at once, to prevent his escape, and bring about a fair trial. As I presume the counsel for Swan are not in possession of this view, I have no doubt that if he were arrested again, that they would take him before one of the Circuit or Appeal Court Judges on the writ of Habeas Corpus & thus an opportunity would be afforded of at once trying the constitutionality of the Act of Assembly. If then lost by the State, she would have the appearance that the other proceedings were correct; and if gained, it would be the means of bringing an offender to justice who would otherwise escape. - It seems singular that this question was not discussed in Allegany, which I am assured is the fact. Yet it cannot fail to be observed in the trial to take place this fall, and then if the verdict be against the prisoner our entire proceedings may be set aside. There are other important questions that must be determined if my views in this letter should be incorrect, but for the present I'll let them alone. It would be well to consult with Mr. May in reference to the law and the course to be pursued for the future, and therefore I have written him. For the purpose of throwing all the facts and proceedings before you, I herewith append a copy of Judge Perry's declension, a copy of agreement of Counsel and Swan's approval of the same.

Very Respectfully

Yours &c.

(Signed) Thos. Harbme

His Excellency
Gov. Lowe,
Annapolis.

The following are copies of the several papers referred to in the preceding letter, and which accompanied the same, to wit;
Judge Perry's declension.

State of Maryland }
vs. } Now in confinement & charged with the murder of William O. Spriggs.
Robert Swan }