

1785. the principal offender. Under such special circumstances, the court of *Oyer and Terminer* clearly possessed the power of continuing the parties under recognizance.

*By the Court.* There can be no difficulty in saying, that if principals, the superior offenders, are intitled to the benefits of the law of 1785, the accessories, who are in inferior grades of criminality, must have the same pretensions.

*Yeates, J.* was of opinion, that the second objection on the part the commonwealth, was well founded. The provisions in the first twelve sections of the law of 1785, all go to the cases of persons committed or detained for any criminal, or supposed criminal matter, to prisoners in actual custody of some officer of justice. The 13th and 14th sections are not to be found in the British statute of 31 Car. 2, c. 2, and are valuable improvements of the rights and liberties of citizens; but they do not respect commitments for criminal matters. The 3d section of the act directs, that the justices of *Oyer and Terminer*, shall, on the last day of the term, next after the commitment of the party, who shall not be indicted and tried, set at liberty the said prisoner, upon bail, &c. This clearly shews, that the legislature did not contemplate a party admitted to bail, as a prisoner under commitment, besides confining the authority and requisition so to act, solely to the court,

before whom the prisoner is to receive his trial. Would not a *habeas corpus* directed to the bail of a supposed offender, be perfectly novel? Could we, or either of us, do an act, which would amount to a legal discharge of the recognizances in the court of *Oyer and Terminer*?

*Smith J.* said, that the inclination of his mind was, that the *habeas corpus* would not lie to the bail, but declined giving any decided opinion on the point.

*By the Court.* We have no doubt of the powers of the court of *Oyer and Terminer* of retaining the defendants under bail, to answer the indictment, if their minds were satisfied, either that the witnesses were kept out of the way by the procurement, or threats of the defendants, or that they had prevented the arrest of the principal. It would be monstrous to suppose, that the parties by their own improper conduct, should elude the punishment for a superior offence, by subjecting themselves to a prosecution for a misdemeanor. We must refer the defendants to the court of *Oyer and Terminer*, who are best acquainted with the circumstances of the case: there they will not be treated with oppression; but if the public interests and safety require it, they will administer that preventive justice, which the laws of the government empower them to exercise. *Motion denied.*

#### CHAPTER MCXXIV.

*An ACT to incorporate the Presbyterian congregation in Abington township, in the county of Montgomery.*

Passed 22d February, 1785.—Private Act.—Recorded in Law Book No. II. page 425.

#### CHAPTER MCXXV.

*An ACT for erecting part of the county of Lancaster into a separate county.*

SECT. I. WHEREAS the inhabitants of the upper parts of Lancaster county have, by petitions, set forth to the General Assembly of this state, that they have long laboured under many inconveniences, from their being situated at so great a distance from the seat of judicature in said county, and have prayed that they may be relieved from the said inconveniences, by erecting them into a separate county. And as it appears but just and reasonable that they should be relieved in the premises;

SECT. II. Be it therefore enacted, and it is hereby enacted, by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same, That all that part of Lancaster county, lying within the bounds and