September Term 1795.

George Marshall admr. of **Stephen Marshall** Exr. of **Duncan Livingston** dec.d
agt.
Mary Miles Extrx. of **Henry Miles** dec.d

The Defendant by her Attorney impleaded the following writ, to wit. "The State of Maryland, To the Justices and Sheriff of Somerset County Greeting. Whereas a certain Mary Miles Executrix of Henry Miles late of Somerset County is detained in the prison of our said County under the custody of you our said Sheriff, at the suit of a certain Stephen Marshall Executor of Duncan Livingston of a plea of Debt and a plea of Trespass on the Case, as it is said, to the damage of the said Stephen Marshall Executor as aforesaid, as it is said, still depends before you our said Justices, undetermined, and we being willing for divers causes that the plea aforesaid, undetermined as aforesaid, should be heard and determined before the Judges of our General Court, therefore we command you that you have the body of the said Mary Miles Executrix as aforesaid by whatsoever name or names she may be called in the Plea aforesaid, together with the Cause of her caption and detention and all things thereunto relating before the Judges of our General Court, to be held for the Eastern Shore of this State in Talbot County at the Court house in the same County, the second Tuesday of Sept.r next, that our said Judges of our said General Court may further proceed therein as to justice appertains, and so forth. Therefore fail not at your peril, and have you then and there this Writ. Witness the honorable Samuel Chase Esq.r chief Judge of our said Court the 21st day of April Anno Domini 1792. James Earle Clk. (Seal)

Issued the 18th day of May Anno Domini 1792.

By Virtue of an compliance with the aforegoing writ, the Clerk of Somerset County Court by order of the same Court made execution of the same, to wit on the tenth day of September in the year Seventeen hundred and ninety two, with the following Record of proceedings, to wit. "In the Records and proceedings of Somerset County Court it is contained as follows — Somerset County to wit At a County Court held at Princess Ann Town in and for the County of Somerset aforesaid the third Monday in May being the twenty first day of the same month, Anno Domini One thousand seven hundred and ninety two by the Justices of the County Court aforesaid according to an Act of Assembly in such case made and provided &c.

The honorable John Done Esq.r Chief Justice
William Winder Esq.r Associate Justice } George Robertson Shff.
Henry Jackson Esq.r Associate Justice } Thomas Hayward Clk.

G.S. Stephen Marshall Exr. of Duncan Livingston dec.d
agt.
Mary Miles Extrx. of Wm. Henry Miles dec.d

Command was given to the Sheriff of Somerset County that he should take Mary Miles late of Somerset County Executrix of the last Will and Testament of Henry Henry Miles deceased, if she should be found in his bailiwick and he should safe keep so that he might have her body before us at Princess Ann Town the third Monday in May Anno Domini One thousand seven hundred and ninety two, to answer unto Stephen Marshall Executor of the last will and Testament of Duncan Livingston deceased of a plea that she render unto him the sum of six hundred pounds Current Money of Maryland which from him she unjustly detains &c. And that he should have then there this writ &c.

At which said third Monday in May in the year aforesaid came the aforesaid Stephen Marshall Executor as aforesaid by Gustavus Scott his Attorney and the Sheriff to wit John Leatherbury Esq.r Sheriff of the County aforesaid returned that he had taken the aforesaid Mary Miles Extrx. aforesaid whose body he had ready to answer unto the aforesaid Stephen Marshall Exr. as aforesaid of the aforesaid plea unto him it was commanded &c. Whereupon the said Mary Miles Extrx. aforesaid put in her place William Polk Gentleman Attorney at Law against the aforesaid Stephen Marshall Exr. as aforesaid in the aforesaid plea &c. And thereupon at the prayer of the parties aforesaid days is to them now here given until next Court to be held at Princess Ann Town the second Monday in November then next following, in the State that now saveing to the Parties aforesaid &c. At which said second Monday in November came the parties aforesaid by their Attorneys aforesaid and thereupon at the prayer of the parties aforesaid further days to them given until the next Court to be held at Princess Ann Town the third Monday in May then next following in the State that now saveing to the parties aforesaid &c. At which said third Monday in May came the parties aforesaid by their Attorneys aforesaid and thereupon the said Mary Miles Extrx. as aforesaid produced to the Court here a writ of Habeas Corpus the tenor whereof is as follows (viz) "The State of Maryland, S. To the Justices and Sheriff of Somerset County, Greeting. Whereas a certain Mary Miles Executrix of Henry Miles late of Somerset County is detained in the prison of our said County under the custody of you our said Sheriff, at the suit of a certain Stephen Marshall Executor of Duncan Livingston of a plea of Debt and a plea of Trespass on the Case, as it is said, still depends before you our said Justices, undetermined, and we being willing for divers causes that the plea aforesaid undetermined as aforesaid should be heard and determined before the judges of our General Court therefore we command you that you have the body of the said Mary Miles Executrix as aforesaid by whatsoever name or names she may be called in the Plea aforesaid, together with the Cause of her caption and detention and all things thereunto relating before the judges of our General Court to be held for the Eastern Shore of this State in Talbot County, at the Court house in the same County the second Tuesday of Sept.r next that our said Judges of our said General Court may further proceed therein as to justice appertains and so forth. Therefore fail not at your peril, and have you then and there this Writ. Witness the honorable Samuel Chase Esquire Chief Judge of our said Court the 21st day of April Anno Domini 1792. James Earle Clk. (Seal)

Issued the 15th day of May Anno Domini 1792.

Whereupon the Court aforesaid allowed of the writ of Habeas Corpus aforesaid and ordered that the Record and proceedings in the plea aforesaid be transmitted to the next General Court to be held for the Eastern Shore of the State of Maryland &c. Thomas Hayward Clk. Somt. Coty.

Somerset County to wit In Testimony that the above and within record is a true Copy taken from the Records remaining in the Clerks Office of Somerset County I have hereto set my hand and affixed the Seal of my Office this sixteenth day of August Anno Domini One thousand seven hundred and ninety two. Thomas Hayward Clk. Somt. Coty. (Seal)

On the back of the aforesaid writ of Habeas Corpus was also then endorsed, to wit "Somerset County to wit In obedience to the within writ we the Justices and Sheriff within mentioned do hereby humbly certify to the Honble the Judges of the General Court for the Eastern Shore of this State that we have the body of the within named Mary Miles Executrix of Henry Miles dec.d to gether with the Cause of her Caption and detention and all things thereunto relating as appears by a certain Record to this Writ annexed as we are commanded by the within order. Thomas Hayward Clk. Somt. Coty."

At which said second Tuesday in September Anno Domini Seventeen hundred Ninety two, being the day mentioned for the return of the writ aforesaid, there came into our General Court as well the said Stephen Marshall Exr. aforesaid by Gustavus Scott his Attorney as the said Mary Miles Extrx. aforesaid by Thomas J. Bullitt her Attorney whereupon at the prayer of the said Mary by her Attorney it was ordered by the Court that the said Stephen Marshall should affile his Declaration in the plea aforesaid against the said Mary Miles by the second Tuesday of April then next following — The same day was also given to the Parties aforesaid then & there &c. — and the said Stephen Marshall

by his Attorney aforesaid, in compliance with the above mentioned rule of Court, to wit, on the 28th day of February 1793 affiled his Declaration in the plea aforesaid which follows in manner & form following, to wit "Somerset County to wit Mary Miles late of Somerset County Executrix of the last will and Testament of Henry Miles deceased was summoned to answer unto Stephen Marshall Exr. of the last Will and Testament of Duncan Livingston dec.d of a plea that she render unto him the sum of Six hundred pounds Current Money of Maryland which from him she unjustly detains &c. And whereupon the said Stephen by Gustavus Scott his Attorney saith that the said Henry Miles in his life time on the twenty second day of February in the year of our Lord Seventeen hundred & eighty seven at the County aforesaid by his certain Writing obligatory sealed with the Seal of the said Henry & here into Court now brought the date whereof the same day & year aforesaid bound himself to be held & firmly bound unto the said Duncan Livingston in his life time in the sum of Six hundred pounds Current Money of Maryland to be paid unto him the said Duncan when unto the said Henry should be thereunto required. Nevertheless the said Henry in his life time & the said Mary after the death of the said Henry the aforesaid sum of Money or any part thereof unto the said Duncan in his life time or to him the said Stephen after the death of the said Duncan (to which said Stephen the Administration of all & singular the Goods & Chattels, Rights & Credits of the said Duncan on the day of in the year of our Lord Seventeen hundred & was granted) at the County aforesaid was in due form of law committed by Ezra Bozman Gentleman Register of Wills for the County aforesaid duly qualified & Commissioned according to law, yet have not nor hath either of them unbound or paid (all the thereto often required) but the same sum of Money to him the said Duncan in his life time or to the said Stephen after the death of the said Duncan to render or pay the said Henry in his life time and the said Mary after the death of the said Henry hitherto altogether have refused & the said Mary doth still refuse to render or pay the same to the said Stephen to the damage of him the said Stephen Twelve hundred pounds Current Money of Maryland & therefore he brings suit &c. And the said Stephen brings here into Court the Letters Testamentary of him the said Duncan whereby it sufficiently appears to the Court here that he the said Stephen is Exr. of the last Will of him the said Duncan, & to have Administration of the Goods & Chattels of the said Duncan ought &c. Gustavus Scott. Idem & A. Rec. Pledges &c." — The Writing Obligatory mentioned in the aforegoing Declaration follows in form following, to wit "Know all men by these presents that I Henry Miles of the County of Somerset & State of Maryland am held & firmly bound unto Duncan Livingston of the County & State aforesaid in the full & just sum of Six hundred pounds Current Money of the State aforesaid in Specie to be paid unto the said Duncan Livingston or to his certain Attorney his Heirs Executors Administrators or Assigns, for which payment well & truely to be made I bind myself my Heirs Exrs. & Admrs. firmly by these presents, sealed with my Seal & dated this twenty second day of February 1786. The Condition of the above Obligation is such that if the above bound Henry Miles his Heirs Executors or Admrs. do well & truely pay or cause to be paid to the above named Duncan Livingston his Heirs Exrs. Admrs. Assigns or certain Attorney the just & full sum of three hundred pounds Current Money of the State of Maryland in Specie one half thereof paid the first day of June 1786 & on the Condition of a Deed of Alienation & Conveyance of a Tract of Land as by Deed may more fully appear, the other half at or upon the first day of November 1786 at which time peaceable possession is to be given of the said Tract of Land then this Obligation to be void otherwise to remain & be in full force Power & Virtue of Law. — Henry Miles (Seal)

Witness Lazarus Maddux Senr. Joshua Hall." On the back of the Original Bond was the following endorsement viz "March 15th 1786 By cash on Bond given Henry Miles bearing date 12th of February 1777 for £ o.o. with Interest and Principal £18. 9. 6¾ which shall discharge the said sum of the within Bond. And also the same day & date above rec.d of Wm. Moore to Test. Wm. Moore — } the use of the within Bond in behalf Mr. Henry Miles } £ o. o. 10. Jno. Duncan Livingston"

Which said second Tuesday of April Anno Domini One thousand Seven hundred and ninety three came again into Court the said Stephen Marshall Exr. aforesaid, and the said Mary Miles Extrx. aforesaid, by their Attorney aforesaid, whereupon at the prayer of the said Stephen by his Attorney it was ruled by the Court that the said Mary Miles should affile her plea in answer to the said Declaration of the said Stephen Marshall, by the second Tuesday of September then next following. The same day was given the Parties &c. afterwards to wit on the 13 July 1793 the said Mary Miles Extrx. aforesaid by her Attorney, in compliance with the above mentioned rule of Court affiled her plea to the Declaration aforesaid which follows in form following, to wit "And the same Mary Miles by Thomas Jenifer Bullitt her Attorney comes and defends the force & injury when &c. and prays an hearing of the Writing Obligatory aforesaid & it is read to her in these words & figures following, to wit "The bond to be inserted here" She also prays an hearing of the Condition of the same Writing Obligatory & it is likewise read to them in these words & figures following, to wit "Here insert the Condition" Which being so duly read & heard the same Mary Miles says that the same Stephen Marshall his Action aforesaid thereof against her to have & maintain ought not, because she says that after the Execution of the same Writing Obligatory & before the institution of the original writ in this cause, to wit on the day of in the year of our Lord Seventeen hundred & at the County aforesaid he the same Henry Miles in his life time paid to him the said Duncan Livingston, in his life time, the said Principal sum of Three hundred pounds Current Money of Maryland in the said Condition mentioned together with all the Interest thereon due thereon, & this the said Mary Miles is ready to verify whereupon she prays Judgment of the same Stephen Marshall his Action aforesaid thereof against her to have & maintain ought &c. And the said Mary Miles by leave of the Court here first had & obtained according to the form of the Statute in such case made & provided, comes & further says that the same Stephen Marshall his Action aforesaid thereof against her to have & maintain ought not because she says that the said Henry Miles in his life time after the execution of the said Writing Obligatory was at all times ready & willing to pay to him the said Duncan Livingston in his life time a moiety or half of the said three hundred pounds in the said Condition mentioned according to the form & effect of the said Condition on the execution of the deed in the said Condition mentioned for the said Tract of Land therein contained according to the form & effect of the said Condition, to wit at the County aforesaid, of which the said Duncan in his life time, on the day of in the year of our Lord Seventeen hundred & often afterwards there had notice; And the same Mary Miles further says that the said Henry Miles, in his life time, prepared an Instrument of writing, purporting to be such a deed as is contained & intended by the said Condition which said Instrument of writing the said Henry Miles in his life time afterwards to wit on the day of in the year of our Lord Seventeen hundred & at the County aforesaid offered & tendered to the said Duncan in his life time, there & then requiring him the same Duncan to execute the same according to the form & effect of the same Condition; but the said Duncan (all the thereto often required) has altogether refused & denied to execute the said Instrument of Writing as his Deed or any deed whatsoever pursuant to the said Condition, & no such deed for the land aforesaid has ever yet been made or executed as is set forth and mentioned in the said Condition — And the same Mary Miles further says that the said Henry Miles in his life time, even after the execution of the same Writing obligatory, was at all times ready & willing to pay to him the said Duncan Livingston in his life time, the other moiety or half part of the said three hundred pounds in the said Condition mentioned, according to the form & effect of the said Condition, upon the delivery of peaceable possession of the said Tract of Land according to the form & effect of the said Condition, to wit at the County aforesaid, of which the said Duncan, in his life time, then & there on the day of in the year of our Lord Seventeen hundred & often afterwards there had notice; yet the said Duncan,