

Lib. C. B. Rousby they would be free to say so, To which they Answered they knew no objection against that Gentⁿ being of very fair Character and Repute And believe him deserving of his Excellenys favour therein Resolve that his Security be one thousand pound Ster.

The Board happening to be very thin His Excellency was pleased to desire the Advice of M^r Philemon Lloyd one of the Iudges of the Provinciaall Court upon an odd Accident in the Case of M^r Thomas Macnemara & his wife.

After which was read M^r Cheif Iustice Smithsons Letter to his Ex^{ncy} in Iustification of bayling the said Macnemara. Which being Communicated to the Lawyers present they Offered the following Opinions, And first M^r Wornell Hunt.

May it please your Ex^{ncy}

Having (according to Your Ex^{ncys} Request) had some Consideration on the Case of M^{rs} Marg^{tt} Macnemara against Thomas Macnemara her husband in Chancery before Yo^r Ex^{ncy} humbly on the four following Quer. observe to Yo^r Ex^{ncy} as followeth.

1st Whether a habeas Corpus on the 31st of Char 2^d Cap: ii is to be granted or allowed in Civill as well as Criminall cases and when and by whom a habeas Corpus at the Common Law and a habeas Corpus of the said Statute is to be granted in order to the bayling of any person or persons.

2^{dly} Before whom such habeas Corpus are to be returned who shall be Iudges of such returne and bayle the party or remand him.

3^{dly} Whether Yo^r Ex^{ncy} hath Iurisdiction as Chancell^r or Keeper of the great Seale of this province on petition or
p. 97 Supplicavit of the wife to compell her husband untill cohabitation to allow her Seperate maintenance.

4^{thly} Whether a person Comitted for Contempt in disobeying of the Decree of the Court of Chancery may upon habeas Corpus and Sufficient returne of the Cause of such Committment be bayled or remanded.

As to the first I humbly think that a habeas Corpus Issuing on and marked p Statutu: 31: Car: 2^{di} Cap: ii is to be allowed in Criminall Cases only as will appear to any of an ordinary Skill or knowledge in the Law and that will take paines to read the title preamble Enacting part and provisoe in the said Act, wherein they will find a provisoe that said Act shall not Extend to Civill causes &^{ca}

That an habeas Corpus on said Statute must be allowed in Vacation as well as terme time and that under the penaltys therein mentioned But an habeas Corpus at Common Law in order to the bayling of any person and in a Civill Cause is