

question, as often as it was asked, the same answer was uniformly given, namely, that Robert Swan had no power under the law, to create a court competent to try him in Washington county; he had consented to be tried in Allegany; the State had agreed that he should be tried there, and his Counsel believed that he could not, with or without his consent, be tried elsewhere.

The Counsel for the prosecution chose to put this question so often, and on the last occasion in so formal and public a manner, for reasons which were no doubt satisfactory to themselves; but they certainly knew when propounding the question in Washington county, what the answer to it would be; and they knew, also, the reason why no other answer would be given. The case was removed to Washington county for trial by the State, and against the wishes of the defence, who insisted that the Judge presiding at the trial had no power to change the venue. They insisted, moreover, that after the case was removed to Hagerstown there would be no Court there to try it; and it happened just as they had predicted; for although there was a Court holding its regular Term in Hagerstown, on the day named in the recognizance, there was none, by the admission of all parties, to try this cause.

The undersigned were moreover of opinion, and so distinctly declared, that no Court legally competent to try this case in Washington county, could be constituted even with their consent. They entertain the opinion, that the recognizance entered into by Robert Swan and his sureties, for his appearance at Hagerstown, was without warrant of law, and therefore merely void. But they desire distinctly to say, that whenever this indictment shall be called up before a Court competent to pass a valid judgment upon it, he will appear, not only voluntary, but gladly, to take his trial.

The undersigned beg leave respectfully to say in conclusion, that having fully considered the case of their client, they had chosen for themselves the course to be pursued in making his defence. It was their right to be left to pursue that course freely and without molestation, and without being subjected to ingenious misconstructions, put forth in reports and messages, from any quarter however elevated, or prompted by motives, however honest and patriotic. And whether it be expected that the Legislature shall pass an Act, making that a crime, which was no crime before, or an Act enabling the Counsel for the State to try the case in the mode they prefer to try it, instead of that which is alone authorised by the existing laws, it is equally, as the undersigned respectfully insist, a violation of the great principle, which forbids "the enactment of retroactive laws in criminal cases."

WM. PRICE,
FRANCIS THOMAS,
GEO. A. PEARRE,
J. PHILIP ROMAN.

February 21, 1853.