Statement of the case.

TARBLE'S CASE.

1. The government of the United States and the government of a State are distinct and independent of each other within their respective spheres of action, although existing and exercising their powers within the same territorial limits. Neither government can intrude within the jurisdiction, or authorize any interference therein by its judicial officers with the action of the other. But whenever any conflict arises between the enactments of the two sovereignties, or in the enforcement of their asserted authorities, those of the national government have supremacy until the validity of the different enactments and authorities are determined by the tribunals of the United States.
2. A State judge has no jurisdiction to issue a writ of *habeas corpus*, or to continue proceedings under the writ when issued, for the discharge of a person held under the authority, or claim and color of the authority, of the United States by an officer of that government. If upon the application for the writ it appear that the party, alleged to be illegally restrained of his liberty, is held under the authority, or claim and color of the authority, of the United States, by an officer of that government, the writ should be refused. If this fact do not thus appear, the State judge has the right to inquire into the cause of imprisonment, and ascertain by what authority the person is held within the limits of the State; and it is the duty of the marshal, or other officer having the custody of the prisoner, to give, by a proper return, information in this respect. But after he is fully apprised by the return that the party is held by an officer of the United States, under the authority, or claim and color of the authority of the United States, he can proceed no further.
3. These principles applied to a case where a *habeas corpus* was issued by a court commissioner of one of the counties of Wisconsin to a recruiting officer of the United States, to bring before him a person who had enlisted as a soldier in the army of the United States, and whose discharge was sought on the alleged ground that he was a minor under the age of eighteen years at the time of his enlistment, and that he enlisted without the consent of his father. The petition for the writ alleging that the prisoner had enlisted as a soldier and been mustered into the military service of the national government, and was detained by the officer as such soldier—this court held that the court commissioner had no jurisdiction to issue the writ for the discharge of the prisoner, as it thus appeared upon the petition that the prisoner was detained under claim and color of the authority of the United States by an officer of that government; and that if he was illegally detained, it was for the courts or judicial officers of the United States and for those courts or officers alone to grant him release.

ERROR to the Supreme Court of Wisconsin.

This was a proceeding on *habeas corpus* for the discharge

of one Edward Tarble, held in the custody of a recruiting officer of the United States as an enlisted soldier, on the alleged ground that he was a minor, under the age of eighteen years at the time of his enlistment, and that he enlisted without the consent of his father.

The writ was issued on the 10th of August, 1869, by a court commissioner of Dane County, Wisconsin, an officer authorized by the laws of that State to issue the writ of *habeas corpus* upon the petition of parties imprisoned or restrained of their liberty, or of persons on their behalf. It was issued in this case upon the petition of the father of Tarble, in which he alleged that his son, who had enlisted under the name of Frank Brown, was confined and restrained of his liberty by Lieutenant Stone, of the United States army, in the city of Madison, in that State and county; that the cause of his confinement and restraint was that he had, on the 20th of the preceding July, enlisted, and been mustered into the military service of the United States; that he was under the age of eighteen years at the time of such enlistment; that the same was made without the knowledge, consent, or approval of the petitioner; and was, therefore, as the petitioner was advised and believed, illegal; and that the petitioner was lawfully entitled to the custody, care, and services of his son.

The writ was directed to the officer thus named, commanding him to have Tarble, together with the cause of his imprisonment and detention, before the commissioner, at the latter's office, in the city of Madison, immediately after the receipt of the writ.

The officer thereupon produced Tarble before the commissioner and made a return in writing to the writ, protesting that the commissioner had no jurisdiction in the premises, and stating, as the authority and cause for the detention of the prisoner, that he, the officer, was a first lieutenant in the army of the United States, and by due authority was detailed as a recruiting officer at the city of Madison, in the State of Wisconsin, and as such officer had the custody and command of all soldiers recruited for the army at that city;

that on the 27th of July preceding, the prisoner, under the name of Frank Brown, was regularly enlisted as a soldier in the army of the United States for the period of five years, unless sooner discharged by proper authority; that he then duly took the oath required in such case by law and the regulations of the army, in which oath he declared that he was of the age of twenty-one years, and thereby procured his enlistment, and was on the same day duly mustered into the service of the United States; that subsequently he deserted the service, and being retaken was then in custody and confinement under charges of desertion, awaiting trial by the proper military authorities.

To this return the petitioner filed a reply, denying, on information and belief, that the prisoner was ever duly or lawfully enlisted or mustered as a soldier into the army of the United States, or that he had declared on oath that he was of the age of twenty-one years, and alleging that the prisoner was at the time of his enlistment under the age of eighteen years, and on information and belief that he was enticed into the enlistment, which was without the knowledge, consent, or approval of the petitioner; that the only oath taken by the prisoner at the time of his enlistment was an oath of allegiance; and that the petitioner was advised and believed that the prisoner was not, and never had been, a deserter from the military service of the United States.

On the 12th of August, to which day the hearing of the petition was adjourned, the commissioner proceeded to take the testimony of different witnesses produced before him, which related principally to the enlistment of the prisoner, the declarations which he made as to his age, and the oath he took at the time, his alleged desertion, the charges against him, his actual age, and the absence of any consent to the enlistment on the part of his father.

The commissioner, after argument, held that the prisoner was illegally imprisoned and detained by Lieutenant Stone, and commanded that officer forthwith to discharge him from custody.

Afterwards, in September of the same year, that officer

applied to the Supreme Court of the State for a *certiorari*, setting forth in his application the proceedings before the commissioner and his ruling thereon. The *certiorari* was allowed, and in obedience to it the proceedings had before the commissioner were returned to the Supreme Court. These proceedings consisted of the petition for the writ, the return of the officer, the reply of the petitioner, and the testimony, documentary and parol, produced before the commissioner.

Upon these proceedings the case was duly argued before the Supreme Court, and in April, 1870, that tribunal pronounced its judgment, affirming the order of the commissioner discharging the prisoner. This judgment was now before this court for examination on writ of error prosecuted by the United States.

The opinion of the court below was sent up with the transcript of the record in the case. It went largely and elaborately into the grounds of its judgment. The sacredness of the right to personal liberty, and "the high, searching, and imperative character" of the writ of *habeas corpus* were presented and enforced. The right of any State court to liberate a party in custody under sentence of the Federal courts, when such Federal court had jurisdiction, was not, indeed, asserted, even where the Federal court might err in what it did; but, contrariwise, such right by any State court was disclaimed. But the right of the State courts to decide whether the Federal court had *jurisdiction* to pass upon the subject *at all*, was considered by the court below as perfectly within its competence to pass upon; and, if on full consideration of the case, the State court was satisfied that the Federal court had no jurisdiction at all in the matter, in such a case the court below asserted that the duty of the State court was to disregard what the Federal court had done. The court below, in illustration of its position, said:

"This court (the Supreme Court of Wisconsin), in a civil suit, recently passed on the jurisdiction of the Federal court to render a decree for the sale of a railroad on the foreclosure of a mortgage. There was no suggestion from any quarter that in

doing so it was exercising any unwarrantable or unusual power, or assuming any authority to control, revise, or annul the judgments of that court. Nor was it. It is a power constantly exercised by all courts. But it is precisely the same power that is exercised in a proceeding by *habeas corpus* when the validity of a judgment under which the party is imprisoned is drawn in question. A judgment in a civil suit disposes of the title to property. A judgment in a criminal suit disposes of the prisoner's right to liberty. A civil suit involving the title to that property is the appropriate proceeding in which the jurisdiction of the court to render the one judgment may be drawn in question collaterally. A proceeding by *habeas corpus* may appropriately have the same effect as to the other. But the right of the State court to decide on the validity of the judgment in the latter case is as clear as its right in the former. It rests upon the same principles and stands or falls by the same reasoning."

Mr. B. H. Bristow, Solicitor-General, contra, and for the United States, cited as conclusive the cases of *Ableman* v. *Booth* and *United States* v. *Booth*, in this court,* in which cases the action of the Supreme Court of Wisconsin—the same court to which the writ of error in the present case had gone—in disregarding the action of the Federal courts or their officers under the act of Congress known as the Fugitive Slave Law —because, as the Wisconsin court held, the act was unconstitutional and void, and could therefore give the Federal court no jurisdiction—was overruled, and itself held unconstitutional and void.

The present case, Mr. Bristow argued, was covered in principle by the decisions cited, and those decisions had been applied in instance by several State courts to the case of an enlisted soldier in the army of the United States.†

Mr. Justice FIELD, after stating the case, delivered the opinion of the court, as follows:

The important question is presented by this case, whether

* 21 Howard, 506.

† In re Spangler, 11 Michigan, 299; State *v.* Zulich, 5 Dutcher, 409; In re Hopson, 40 Barbour, 43; In re Jordan, 11 American Law Register, 749.

a State court commissioner has jurisdiction, upon *habeas corpus*, to inquire into the validity of the enlistment of soldiers into the military service of the United States, and to discharge them from such service when, in his judgment, their enlistment has not been made in conformity with the laws of the United States. The question presented may be more generally stated thus: Whether any judicial officer of a State has jurisdiction to issue a writ of *habeas corpus*, or to continue proceedings under the writ when issued, for the discharge of a person held under the authority, or claim and color of the authority, of the United States, by an officer of that government. For it is evident, if such jurisdiction may be exercised by any judicial officer of a State, it may be exercised by the court commissioner within the county for which he is appointed; and if it may be exercised with reference to soldiers detained in the military service of the United States, whose enlistment is alleged to have been illegally made, it may be exercised with reference to persons employed in any other department of the public service when their illegal detention is asserted. It may be exercised in all cases where parties are held under the authority of the United States, whenever the invalidity of the exercise of that authority is affirmed. The jurisdiction, if it exist at all, can only be limited in its application by the legislative power of the State. It may even reach to parties imprisoned under sentence of the National courts, after regular indictment, trial, and conviction, for offences against the laws of the United States. As we read the opinion of the Supreme Court of Wisconsin in this case, this is the claim of authority asserted by that tribunal for itself and for the judicial officers of that State. It does, indeed, disclaim any right of either to interfere with parties in custody, under judicial sentence, when the National court pronouncing sentence had jurisdiction to try and punish the offenders, but it asserts, at the same time, for itself and for each of those officers, the right to determine, upon *habeas corpus*, in all cases, whether that court ever had such jurisdiction. In the case of Booth, which subsequently came before this court,

it not only sustained the action of one of its justices in discharging a prisoner held in custody by a marshal of the United States, under a warrant of commitment for an offence against the laws of the United States, issued by a commissioner of the United States; but it discharged the same prisoner when subsequently confined under sentence of the District Court of the United States for the same offence, after indictment, trial, and conviction, on the ground that, in its judgment, the act of Congress creating the offence was unconstitutional; and in order that its decision in that respect should be final and conclusive, directed its clerk to refuse obedience to the writ of error issued by this court, under the act of Congress, to bring up the decision for review.

It is evident, as said by this court when the case of Booth was finally brought before it, if the power asserted by that State court existed, no offence against the laws of the United States could be punished by their own tribunals, without the permission and according to the judgment of the courts of the State in which the parties happen to be imprisoned; that if that power existed in that State court, it belonged equally to every other State court in the Union where a prisoner was within its territorial limits; and, as the different State courts could not always agree, it would often happen that an act, which was admitted to be an offence and justly punishable in one State, would be regarded as innocent, and even praiseworthy in another, and no one could suppose that a government, which had hitherto lasted for seventy years, "enforcing its laws by its own tribunals, and preserving the union of the States, could have lasted a single year, or fulfilled the trusts committed to it, if offences against its laws could not have been punished without the consent of the State in which the culprit was found."

The decision of this court in the two cases which grew out of the arrest of Booth, that of *Ableman* v. *Booth*, and that of *The United States* v. *Booth*,* disposes alike of the claim of

* 21 Howard, 506.

jurisdiction by a State court, or by a State judge, to interfere with the authority of the United States, whether that authority be exercised by a Federal officer or be exercised by a Federal tribunal. In the first of these cases Booth had been arrested and committed to the custody of a marshal of the United States by a commissioner appointed by the District Court of the United States, upon a charge of having aided and abetted the escape of a fugitive slave. Whilst thus in custody a justice of the Supreme Court of Wisconsin issued a writ of *habeas corpus* directed to the marshal, requiring him to produce the body of Booth with the cause of his imprisonment. The marshal made a return, stating that he held the prisoner upon the warrant of the commissioner, a copy of which he annexed to and returned with the writ. To this return Booth demurred as insufficient in law to justify his detention, and, upon the hearing which followed, the justice held his detention illegal, and ordered his discharge. The marshal thereupon applied for and obtained a *certiorari*, and had the proceedings removed to the Supreme Court of the State, where, after argument, the order of the justice discharging the prisoner from custody was affirmed. The decision proceeded upon the ground that the act of Congress respecting fugitive slaves was unconstitutional and void.

In the second case, Booth had been indicted for the offence with which he was charged before the commissioner, and from which the State judge had discharged him, and had been tried and convicted in the District Court of the United States for the District of Wisconsin, and been sentenced to pay a fine of $1000, and to be imprisoned for one month. Whilst in imprisonment, in execution of this sentence, application was made by Booth to the Supreme Court of the State, for a writ of *habeas corpus*, alleging in his application that his imprisonment was illegal, by reason of the unconstitutionality of the fugitive slave law, and that the District Court had no jurisdiction to try or punish him for the matter charged against him. The court granted the application, and issued the writ, to which the sheriff, to whom the prisoner had been committed by the marshal, returned that he

held the prisoner by virtue of the proceedings and sentence of the District Court, a copy of which was annexed to his return. Upon demurrer to this return, the court adjudged the imprisonment of Booth to be illegal, and ordered him to be discharged from custody, and he was accordingly set at liberty.

For a review in this court of the judgments in both of these cases, writs of error were prosecuted. No return, however, was made to the writs, the clerk of the Supreme Court of Wisconsin having been directed by that court to refuse obedience to them; but copies of the records were filed by the Attorney-General, and it was ordered by this court that they should be received with the same effect and legal operation as if returned by the clerk. The cases were afterwards heard and considered together, and the decision of both was announced in the same opinion. In that opinion the Chief Justice details the facts of the two cases at length, and comments upon the character of the jurisdiction asserted by the State judge and the State court; by the State judge to supervise and annul the proceedings of a commissioner of the United States, and to discharge a prisoner committed by him for an offence against the laws of the United States; and by the State court to supervise and annul the proceedings and judgment of a District Court of the United States, and to discharge a prisoner who had been indicted, tried, and found guilty of an offence against the laws of the United States and sentenced to imprisonment by that court.

And in answer to this assumption of judicial power by the judges and by the Supreme Court of Wisconsin thus made, the Chief Justice said as follows: If they "possess the jurisdiction they claim, they must derive it either from the United States or the State. It certainly has not been conferred on them by the United States; and it is equally clear it was not in the power of the State to confer it, even if it had attempted to do so; for no State can authorize one of its judges or courts to exercise judicial power, by *habeas corpus* or otherwise, within the jurisdiction of another and independent govern ment. And although the State of Wis-

consin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other, within their respective spheres. And the sphere of action appropriated to the United States, is as far beyond the reach of the judicial process issued by a State judge or a State court, as if the line of division was traced by landmarks and monuments visible to the eye. And the State of Wisconsin had no more power to authorize these proceedings of its judges and courts, than it would have had if the prisoner had been confined in Michigan, or in any other State of the Union, for an offence against the laws of the State in which he was imprisoned."

It is in the consideration of this distinct and independent character of the government of the United States, from that of the government of the several States, that the solution of the question presented in this case, and in similar cases, must be found. There are within the territorial limits of each State two governments, restricted in their spheres of action, but independent of each other, and supreme within their respective spheres. Each has its separate departments; each has its distinct laws, and each has its own tribunals for their enforcement. Neither government can intrude within the jurisdiction, or authorize any interference therein by its judicial officers with the action of the other. The two governments in each State stand in their respective spheres of action in the same independent relation to each other, except in one particular, that they would if their authority embraced distinct territories. That particular consists in the supremacy of the authority of the United States when any conflict arises between the two governments. The Constitution and the laws passed in pursuance of it, are declared by the Constitution itself to be the supreme law of the land, and the judges of every State are bound thereby, "anything in the constitution or laws of any State to the contrary not-

withstanding." Whenever, therefore, any conflict arises between the enactments of the two sovereignties, or in the enforcement of their asserted authorities, those of the National government must have supremacy until the validity of the different enactments and authorities can be finally determined by the tribunals of the United States. This temporary supremacy until judicial decision by the National tribunals, and the ultimate determination of the conflict by such decision, are essential to the preservation of order and peace, and the avoidance of forcible collision between the two governments. "The Constitution," as said by Mr. Chief Justice Taney, "was not framed merely to guard the States against danger from abroad, but chiefly to secure union and harmony at home; and to accomplish this end it was deemed necessary, when the Constitution was framed, that many of the rights of sovereignty which the States then possessed should be ceded to the General government; and that in the sphere of action assigned to it, it should be supreme and strong enough to execute its own laws by its own tribunals, without interruption from a State, or from State authorities." And the judicial power conferred extends to all cases arising under the Constitution, and thus embraces every legislative act of Congress, whether passed in pursuance of it, or in disregard of its provisions. The Constitution is under the view of the tribunals of the United States when any act of Congress is brought before them for consideration.

Such being the distinct and independent character of the two governments, within their respective spheres of action, it follows that neither can intrude with its judicial process into the domain of the other, except so far as such intrusion may be necessary on the part of the National government to preserve its rightful supremacy in cases of conflict of authority. In their laws, and mode of enforcement, neither is responsible to the other. How their respective laws shall be enacted; how they shall be carried into execution; and in what tribunals, or by what officers; and how much discretion, or whether any at all shall be vested in their officers,

are matters subject to their own control, and in the regulation of which neither can interfere with the other.

Now, among the powers assigned to the National government, is the power "to raise and support armies," and the power "to provide for the government and regulation of the land and naval forces." The execution of these powers falls within the line of its duties; and its control over the subject is plenary and exclusive. It can determine, without question from any State authority, how the armies shall be raised, whether by voluntary enlistment or forced draft, the age at which the soldier shall be received, and the period for which he shall be taken, the compensation he shall be allowed, and the service to which he shall be assigned. And it can provide the rules for the government and regulation of the forces after they are raised, define what shall constitute military offences, and prescribe their punishment. No interference with the execution of this power of the National government in the formation, organization, and government of its armies by any State officials could be permitted without greatly impairing the efficiency, if it did not utterly destroy, this branch of the public service. Probably in every county and city in the several States there are one or more officers authorized by law to issue writs of *habeas corpus* on behalf of persons alleged to be illegally restrained of their liberty; and if soldiers could be taken from the army of the United States, and the validity of their enlistment inquired into by any one of these officers, such proceeding could be taken by all of them, and no movement could be made by the National troops without their commanders being subjected to constant annoyance and embarrassment from this source. The experience of the late rebellion has shown us that, in times of great popular excitement, there may be found in every State large numbers ready and anxious to embarrass the operations of the government, and easily persuaded to believe every step taken for the enforcement of its authority illegal and void. Power to issue writs of *habeas corpus* for the discharge of soldiers in the military service, in the hands of parties thus disposed, might be used, and often would be

used, to the great detriment of the public service. In many exigencies the measures of the National government might in this way be entirely bereft of their efficacy and value. An appeal in such cases to this court, to correct the erroneous action of these officers, would afford no adequate remedy. Proceedings on *habeas corpus* are summary, and the delay incident to bringing the decision of a State officer, through the highest tribunal of the State, to this court for review, would necessarily occupy years, and in the meantime, where the soldier was discharged, the mischief would be accomplished. It is manifest that the powers of the National government could not be exercised with energy and efficiency at all times, if its acts could be interfered with and controlled for any period by officers or tribunals of another sovereignty.

It is true similar embarrassment might sometimes be occasioned, though in a less degree, by the exercise of the authority to issue the writ possessed by judicial officers of the United States, but the ability to provide a speedy remedy for any inconvenience following from this source would always exist with the National legislature.

State judges and State courts, authorized by laws of their States to issue writs of *habeas corpus*, have undoubtedly a right to issue the writ in any case where a party is alleged to be illegally confined within their limits, unless it appear upon his application that he is confined under the authority, or claim and color of the authority, of the United States, by an officer of that government. If such fact appear upon the application the writ should be refused. If it do not appear, the judge or court issuing the writ has a right to inquire into the cause of imprisonment, and ascertain by what authority the person is held within the limits of the State; and it is the duty of the marshal, or other officer having the custody of the prisoner, to give, by a proper return, information in this respect. His return should be sufficient, in its detail of facts, to show distinctly that the imprisonment is under the authority, or claim and color of the authority, of the United States, and to exclude the suspicion of imposition

or oppression on his part. And the process or orders, under which the prisoner is held, should be produced with the return and submitted to inspection, in order that the court or judge issuing the writ may see that the prisoner is held by the officer, in good faith, under the authority, or claim and color of the authority, of the United States, and not under the mere pretence of having such authority.

This right to inquire by process of *habeas corpus*, and the duty of the officer to make a return, "grows necessarily," says Mr. Chief Justice Taney, "out of the complex character of our government and the existence of two distinct and separate sovereignties within the same territorial space, each of them restricted in its power, and each within its sphere of action, prescribed by the Constitution of the United States, independent of the other. But, after the return is made, and the State judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. They then know that the prisoner is within the dominion and jurisdiction of another government, and that neither the writ of *habeas corpus* nor any other process issued under State authority can pass over the line of division between the two sovereignties. He is then within the dominion and exclusive jurisdiction of the United States. If he has committed an offence against their laws, their tribunals alone can punish him. If he is wrongfully imprisoned, their judicial tribunals can release him and afford him redress."

Some attempt has been made in adjudications, to which our attention has been called, to limit the decision of this court in *Ableman* v. *Booth*, and *The United States* v. *Booth*, to cases where a prisoner is held in custody under undisputed lawful authority of the United States, as distinguished from his imprisonment under claim and color of such authority. But it is evident that the decision does not admit of any such limitation. It would have been unnecessary to enforce, by any extended reasoning, such as the Chief Justice uses, the position that when it appeared to the judge or officer issuing the writ, that the prisoner was held under undis-

puted lawful authority, he should proceed no further. No Federal judge even could, in such case, release the party from imprisonment, except upon bail when that was allowable. The detention being by admitted lawful authority, no judge could set the prisoner at liberty, except in that way, at any stage of the proceeding. All that is meant by the language used is, that the State judge or State court should proceed no further when it appears, from the application of the party, or the return made, that the prisoner is held by an officer of the United States under what, in truth, purports to be the authority of the United States; that is, an authority, the validity of which is to be determined by the Constitution and laws of the United States. If a party thus held be illegally imprisoned it is for the courts or judicial officers of the United States, and those courts or officers alone, to grant him release.

This limitation upon the power of State tribunals and State officers furnishes no just ground to apprehend that the liberty of the citizen will thereby be endangered. The United States are as much interested in protecting the citizen from illegal restraint under their authority, as the several States are to protect him from the like restraint under their authority, and are no more likely to tolerate any oppression. Their courts and judicial officers are clothed with the power to issue the writ of *habeas corpus* in all cases, where a party is illegally restrained of his liberty by an officer of the United States, whether such illegality consist in the character of the process, the authority of the officer, or the invalidity of the law under which he is held. And there is no just reason to believe that they will exhibit any hesitation to exert their power, when it is properly invoked. Certainly there can be no ground for supposing that their action will be less prompt and efficient in such cases than would be that of State tribunals and State officers.*

It follows, from the views we have expressed, that the court commissioner of Dane County was without jurisdiction

* In the matter of Severy, 4 Clifford. In the matter of Keeler, Hempstead, 306.

to issue the writ of *habeas corpus* for the discharge of the prisoner in this case, it appearing, upon the application presented to him for the writ, that the prisoner was held by an officer of the United States, under claim and color of the authority of the United States, as an enlisted soldier mustered into the military service of the National government; and the same information was imparted to the commissioner by the return of the officer. The commissioner was, both by the application for the writ and the return to it, apprised that the prisoner was within the dominion and jurisdiction of another government, and that no writ of *habeas corpus* issued by him could pass over the line which divided the two sovereignties.

The conclusion we have reached renders it unnecessary to consider how far the declaration of the prisoner as to his age, in the oath of enlistment, is to be deemed conclusive evidence on that point on the return to the writ.

JUDGMENT REVERSED.

The CHIEF JUSTICE, dissenting

I cannot concur in the opinion just read. I have no doubt of the right of a State court to inquire into the jurisdiction of a Federal court upon *habeas corpus*, and to discharge when satisfied that the petitioner for the writ is restrained of liberty by the sentence of a court without jurisdiction. If it errs in deciding the question of jurisdiction, the error must be corrected in the mode prescribed by the 25th section of the Judiciary Act; not by denial of the right to make inquiry.

I have still less doubt, if possible, that a writ of *habeas corpus* may issue from a State court to inquire into the validity of imprisonment or detention, without the sentence of any court whatever, by an officer of the United States. The State court may err; and if it does, the error may be corrected here The mode has been prescribed and should be followed.

To deny the right of State courts to issue the writ, or, what amounts to the same thing, to concede the right to

issue and to deny the right to adjudicate, is to deny the right to protect the citizen by *habeas corpus* against arbitrary imprisonment in a large class of cases; and, I am thoroughly persuaded, was never within the contemplation of the Convention which framed, or the people who adopted, the Constitution. That instrument expressly declares that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it."

KITCHEN *v.* BEDFORD.

1. Where a person acknowledged the receipt of "the *sum* of $119,000 in *bonds*" of a railroad company, and of "50,405 *dollars* of coupons," amounting in the aggregate to "the *sum* of $169,405," "which said *sum* he promised to expend in the purchase of lands" of that same railroad company, "at or near the average price of $5 per acre;" *held*, that this was a trust to buy the lands with the bonds at or near the price of $5 an acre; and not to buy them with the proceeds of the bonds after they were sold at a nominal price.
2. Purchasers who fraudulently purchased, in breach of the trust, *held* liable in trover.
3. The statute law of Arkansas has not changed the common law rule, that a husband cannot legally make a gift to his wife during coverture.
4. Where a husband has not parted with the legal title to bonds of which he may have made an equitable gift for his wife's benefit, he can call any person to account who unlawfully converts them.

ERROR to the Circuit Court for the District of Missouri.

Kitchen, a citizen of Arkansas, brought trover in the court below against a certain Bedford and one Webber, for the conversion of one hundred and nineteen bonds of the Cairo and Fulton Railroad Company, for $1000 each, dated October 1st, 1857, and payable in New York in 1882, with semi-annual interest represented by interest warrants annexed to the bonds. The conversion was laid as on the 1st of December, 1866. Plea, "Not guilty." A jury being waived, the cause was tried by the court in May, 1870, and