States. It may be said of them generally, and especially of the last, that they have the effect greatly to enlarge the jurisdiction of the courts and judges of the United States in the use of the writ of *habeas corpus*. They have removed the impediment to its use which formerly existed and which was imposed by the act of 1789, where a prisoner was committed under state authority, provided his imprisonment is contrary to the constitution of the United States or treaties with foreign nations, or the laws of congress.[1]

§ 4. UNDER THE JUDICIARY ACT OF 1789. The judiciary act of 1789, after prescribing the jurisdiction of the district and circuit courts of the United States, and also that of the supreme court, contains the following section: "That all the before-mentioned courts of the United States shall have power to issue writs of *scire facias*, *habeas corpus*, and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as the judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment: provided, that writs of *habeas corpus* shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."[2] For more than 40 years the jurisdiction of the federal courts in the use of the writ of *habeas corpus* was regulated solely by this statute. Under it, not only circuit courts of the United States, but also the judges thereof, were authorized to issue this writ for the purpose of inquiring into causes of commitment, and, except in cases where the privilege of the writ was suspended, to hear and determine the question whether the party was entitled to be discharged.[3] The use of the writ given by this statute extends to all cases of an illegal detention under color of the authority of the United States.[4] It enables a circuit court of the United States to inquire into the jurisdiction of a court martial convened under the authority of the United States, by which a person has been tried for an alleged military offense.[5] Where it appears on return to a *habeas corpus* thus issued by a judge of a federal court, that the prisoner is held under an execution of one of the national courts, under a valid judgment, the court nevertheless has power to discharge him, for any matter arising subsequently to the judgment, which may in law entitle him to his discharge. The court may, therefore, discharge him if it appear that he has been pardoned by the president.[6]

§ 5. REVIEW UNDER THIS ACT OF PROCEEDINGS BEFORE UNITED STATES COMMISSIONERS. The writ of *habeas corpus*, in connection with the writ of *certiorari*, is used by the circuit courts of the United States to review the proceedings of commissioners of those courts when acting as examining magistrates,[7] and also when acting by special appointment of a court of the United States, in a proceeding for the extradition of a fugitive from the justice of a foreign country, under the act of August 12, 1848, § 8.[8] This practice is an-

[1] Ex parte Bridges, 2 Woods, 428.

[2] Act of September 14, 1789, (1 St. at Large, 81.)

[3] Ex parte Milligan, 4 Wall. 2, 110; Ex parte Bollman, 4 Cranch, 75.

[4] Re Winder, 2 Cliff. 89; Ex parte Merryman, Taney, Dec. 246; Matter of McDonald, 9 Amer. Law Reg. (O. S.) 661.

[5] Barrett v. Hopkins, 7 Fed. Rep. 312. Compare Wise v. Withers, 3 Cranch, 331; Dynes v. Hoover, 20 How. (U. S.) 82.

[6] Greathouse's Case, 2 Abb. (U. S.) 382, before HOFFMAN, J.

[7] Re Leszynsky, 23 Int. Rev. Rec. 71.

[8] 9 St. at Large, 302 et seq.; Rev. St. § 5270 et seq. The following are some of the cases in which the writ has been thus used: Re Veremaitre, 9 N. Y. Leg. Obs. 129; Re Kaine, 10 N. Y. Leg. Obs. 257; Re Heilbronn, 12 N. Y. Leg. Obs. 65; Ex parte Kaine, 3 Blatchf. 1; Ex parte Van Aernam, 3 Blatchf. 160; Re Henrich, 5 Blatchf. 414; Re Farez, 7 Blatchf. 34; S. C. Id. 345; Re MacDonnell, 11 Blatchf. 79; S. C. Id. 170; Ex parte Van Hoven, 4 Dill. 414; Ex parte Lane, 6 Fed. Rep. 34; Re Fowler, 4 Fed. Rep. 303; S. C. 18 Blatchf. 430; Re Stupp, 12 Blatchf. 501.

alogous to the well-known use of the writ by state courts in re-examining the commitments of examining magistrates.

§ 6. EFFECT OF THE PROVISO OF THIS STATUTE. The clause of this statute which has been most frequently drawn in question is the proviso which stays the hands of the federal judicatories in the use of the writ of *habeas corpus*, in all cases where prisoners are held in custody under authority of the states. Where a prisoner was confined by process emanating from a state court, no court of the United States could, in consequence of this proviso, bring him up on *habeas corpus* for any purpose save to examine him as a witness; and it was wholly immaterial whether the law of the state under which he had been prosecuted was repugnant to the constitution of the United States or not.[1] An *attache* of a foreign embassy detained under the warrant of a state magistrate for a crime, in manifest violation of the privilege of his sovereign and in contravention of the law of nations, could not be discharged by the circuit court of the United States under this writ.[2] The circuit court of the United States could not issue this writ at the instance of bail in a civil case for the purpose of surrendering their principal and exonerating themselves, where the principal was confined in jail under process of a state court.[3] Although the late war between the states of the American Union was a civil war, and the opposing parties were belligerents,[4] and although an officer of the late confederate army was not rightfully amenable to prosecution for acts done under color and in virtue of his office, and could not, therefore, be rightfully held to answer, in the courts of one of the states, for murder in having been a member of a military court martial, under whose finding and sentence a citizen of such state had been executed for an offense which was a crime under the laws of war,—nevertheless, where such a person was held in the jail of one of the states to answer an indictment for murder, which indictment was based upon the facts stated, it was held that, under the operation of this proviso, a federal court had no power to release him on *habeas corpus*.[5] In order to present the case of an illegal restraint "under or by color of the authority of the United States," within this proviso, it is not necessary to the jurisdiction of the circuit or district courts or judges, that the prisoner should be held under any formal or technical commitment, though ordinarily this is necessary to the jurisdiction of the supreme court. Accordingly, jurisdiction at circuit has been asserted to issue this writ in cases where citizens are held in imprisonment by military officers of the United States.[6] These cases grew out of military arrests of civilians at the outbreak of the late civil war in 1861, and before the passage of the act of congress of 1863, and the proclamation of the president thereunder suspending the writ of *habeas corpus* in certain cases. The decision in the former case was by Chief Justice TANEY at circuit in Maryland, and the latter by Mr. District Judge TREAT in Missouri. In both of these cases, the use of the writ of *habeas corpus ad subjiciendum* as a means of relieving the citizen from arbitrary arrests without warrant, and in relation to the jurisdiction of the national courts, was considered with learning and ability.

§ 7. CASES ARISING WITHIN PLACES OVER WHICH THE UNITED STATES HAS EXCLUSIVE JURISDICTION. The constitution of the United States provides that "the congress shall have power * * * to exercise exclusive legislation in all cases whatsoever over such district (not exceeding 10 miles square) as may, by session of particular states and acceptance of congress, become the seat of the government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in

[1] Ex parte Dorr, 3 How. (U.S.) 103.
[2] Ex parte Cabrera, 1 Wash. C. C. 232.
[3] U. S. v. French, 1 Gall. 2.
[4] The Prize Cases, 2 Black, 635.
[5] Ex parte McCann, 5 Amer. Law Reg. (N. S.) 158.
[6] Ex parte Merryman, Taney, Dec. 246; Matter of McDonald, 9 Amer. Law Reg. (O. S.) 661.

which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings."[1] The true meaning of this clause seems to be that whenever the United States is owner of the land which it uses as a fort, etc., the legislature of the state in which such land is included may *permit* congress to exercise exclusive jurisdiction over it. Where the United States, owning land for the purpose of a military fort within one of its territories, by an act of congress, erects such territory into a state, without making any reservation of exclusive jurisdiction to the United States within the limits of the land which it thus holds for the purpose of a military fort, political jurisdiction over such land passes to the state thus created.[2] But if the legislature of such state subsequently, upon a suggestion of the federal secretary of war, passes an act ceding exclusive jurisdiction over such military reservation to the United States, the act will be effective to vest in the courts of the United States jurisdiction of crimes committed within such reservation, although such jurisdiction has never been formally and expressly assumed by an act of congress. Reasoning thus, it was held by Mr. Justice MILLER that a person committed by a commissioner of the circuit court of the United States to answer for a crime committed within the military reservation of Fort Leavenworth, was not entitled to be discharged by *habeas corpus*.[3] It has also been held that after a state has been admitted into the Union, the fact that within its boundaries there is land, the fee of which is in the United States, which is set apart as an Indian reservation, is not of itself sufficient to give to a court of the United States jurisdiction to try a person for a murder committed within the limits of such reservation. Accordingly, a prisoner held under an indictment in the United States circuit court for the district of Nevada, for a murder alleged to have been committed "at and within the boundaries of the Moapa Indian reservation of the United States of America, in the district aforesaid," was entitled to be discharged on *habeas corpus*.[4] On the other hand, by the very terms of the constitution, the jurisdiction which is acquired by the United States by the cession by a state of land for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings, and by the acceptance of such cession by congress, becomes, by strong inference from the terms of the constitution, an "exclusive" jurisdiction. It becomes subject to the "exclusive legislation" of congress; and, though the courts of the several states are bound by the laws of congress as part of the supreme law of the land, and though it is no doubt competent for congress to vest in the state judicatories the power to hear controversies arising under the laws of the United States, and competent for those judicatories, in the exercise of a comity, though not in pursuance of an obligation, to assume the exercise of such power;[5] yet congress has committed the jurisdiction of crimes within these places exclusively to the federal tribunals, by enacting that "the jurisdiction vested in the courts of the United States, in the causes and proceedings hereafter mentioned, shall be exclusive of the courts of the several states: 1. Of all crimes and offenses cognizable under the authority of the United States."[6] It is accordingly held that federal jurisdiction of crimes committed within the limits of a navy-yard of the United States is exclusive of the state in which such navy-yard is situated, and that a person arrested by state process, on charge of a crime committed within such limits, is arrested in violation of the laws of the United States, within the meaning of section 753 of the Revised Statutes, and is entitled to be discharged upon *habeas corpus* by a court of the United States.[7]

[1] Const. U. S. art. 1, § 9.

[2] U. S. v. Stahl, Woolw. 192.

[3] Ex parte Hebard, 4 Dill. 380.

[4] Ex parte Sloan, 4 Sawy. 330.

[5] The British Prisoners, 1 Woodb. & M.C.C.70, Prigg v. Pennsylvania, 16 Pet. 539, 608.

[6] Act Sept. 24, 1789, c. 20, §§ 9 and 11; 1 St. at Large, 76, 78. The language above given is as the law now stands in the Rev. St. U. S. at § 711.

[7] Ex parte Tatem, 1 Hughes, 588.