or remodeled, without pointing out either the character of the obstruction, or the changes deemed necessary to be made in order to meet the views of the secretary. Unless properly notified of what was expected of the company, the latter might make many and costly changes in the bridge, and still be liable to punishment because it had failed to make the changes which the secretary had in mind, but had failed to declare or make known to the company. Thus the company, under a general notice to alter its bridge, might at great expense increase the height thereof, and then be fined for not widening the span between the piers, or *vice versa*. If the action taken by the secretary simply amounts to saying: "This bridge is an obstruction to navigation; alter it,"—it would seem clear that the bridge-owner cannot be charged with the duty of guessing at what is required, and be subjected to a fine by way of punishment because it failed to properly solve the riddle. The notice given to the defendant company in this instance, after the recitals therein, reads as follows:

"I, Wm. C. Endicott, secretary of war, do hereby notify the said Keokuk & Hamilton Bridge Company to so alter the said bridge as to render navigation through or under it free, easy, and unobstructed, and prescribe that said alteration shall be made and completed on or before the 31st day of March, 1889."

This notice requires the bridge company to so alter the bridge as to render navigation under it free, easy, and unobstructed. Literally construed, this would practically require the bridge to be wholly removed, for no bridge having a draw to be passed can exist without placing some obstruction in the way of the free navigation of the stream over which it rests. From such a notice, how is it possible for the bridge company to ascertain what is required of it, except that it must leave the navigation of the river "free, easy, and unobstructed," which is impossible, so long as the structure remains resting on piers built in the river, with a draw for the passage of steam-boats and other like craft through it. If it is said that such a notice must be construed to mean that the obstruction caused by the bridge must be reasonable, and that it must be altered so as to be only a reasonable obstruction, the difficulty still remains that no guide or direction is given to the company for determining how much of an obstruction would be deemed reasonable. The notice does not require that the bridge shall be such a height, or of a given span between the piers, or that the draw shall be placed at a given point, or at a given angle to the current, nor is it declared that the bridge is an obstruction because of insufficient height, width of span, or otherwise, and hence the company is left wholly in the dark as to what is really required of it. Whose judgment is to determine whether the bridge is in fact an unreasonable obstruction? If, under this notice, the company had expended thousands of dollars in remodeling the bridge, and it had then been sued because the navigation of the river was not free, easy, and unobstructed on account of the bridge, what criterion could be appealed to for determining whether the company had met or failed to meet the requirements of the notice served upon it? If the notice itself had pointed

out specifically what was required of the company, then it might be shown that these requirements had or had not been complied with; but the notice, as served, gives no criterion for determining what was expected of the company, except that the navigation of the river must be left free, easy, and unobstructed; which requirement cannot be met except by wholly removing the bridge.

But it may be said that the difficulty sought to be remedied is sufficiently pointed out in the first clause of the notice which is as follows:

"Whereas, the secretary of war has good reason to believe that the bridge across the Mississippi river at Keokuk is an obstruction to the free navigation of the said Mississippi river, * * * by reason of its location, which at stages of water permitting navigation over the Des Moines rapids renders the passage of boats, rafts, etc., through its west draw rest pier difficult."

This recital shows that in the judgment of the secretary of war the location of the bridge is an improper one; and, granting this to be the difficulty sought to be remedied, it still remains true that the notice does not point out any remedy to be applied, except in the removal of the bridge from its present location, which, in effect, means taking it down in whole or in part, and possibly rebuilding it in some other location. If this be the real meaning of the notice, and such was the intent of the secretary of war, then we are again met with the question whether congress can confer upon any other body or person the power to determine whether the public interests demand that a bridge, located and built by express authority of congress, shall be removed or rebuilt at some other location. The situation is simply this: The bridge was built under an act of congress which determined its location. When built at the place it now occupies, it was a legal structure, and the navigation of the river was lawfully subjected to the burden thus imposed thereon, and the company could rely upon the act of congress authorizing its erection as a defense against any suit or proceeding against the company based upon the erection or maintenance of the bridge up to the date of the order issued by the secretary of war. If the act of congress is not now a defense and protection to the company, it is because the order of the secretary has in effect declared the bridge to be an illegal obstruction, and this power cannot in such case be conferred upon the secretary of war. Therefore, if the notice served upon the defendant company be construed to mean that the location of the bridge must be changed, such order would be nugatory for the reason stated; and if it be construed to mean that the company must so alter it as to leave the navigation of the river free and unobstructed, then the notice is so indefinite and uncertain that it cannot be held to impose any duty or obligation upon the bridge company.

It is argued on behalf of the United States that parties undertaking to build bridges across navigable rivers do so at their peril, and, if a given bridge is in fact an obstruction to free navigation, the secretary of war may be authorized to cause its removal, or require it to be so changed as not to prove an obstruction to navigation. As to all bridges not built under proper state or federal authority this may be true. It may be ad-

mitted that the free navigation of a river is not to be interfered with or obstructed by the building of a bridge over the same by any railroad or bridge company, or by any individual citizen acting without governmental authority; and therefore, as claimed, whoever undertakes, without specific authority, to erect a bridge over such a stream, does so at his peril, and if, when erected, it is in fact an obstruction, it may be removed for that reason. Again, congress might determine that as to any given river or water-way the navigation thereof must be left wholly free and unobstructed, and might therefore empower the secretary of war to cause all bridges interfering with the free navigation to be removed, or to be so constructed as not to interfere therewith. In such cases the legislative will is declared to be that the navigation of the river shall be left wholly free and unobstructed, and the secretary of war would only be charged with the duty of executing the legislative will in this particular, —a duty which must of necessity be intrusted to some executive agency. When, however, it becomes necessary to decide whether the public interests demand that the navigation of a river shall be subjected to some burden and obstruction in order that the other public highways of the country may be carried over the same by means of bridges, and to prescribe the nature and extent of the obstruction that may be caused to the navigation of the given water-way, there are presented legislative questions, the decision of which cannot be conferred upon any individual citizen or subordinate authority; and when congress has declared that the public interests require that the navigation of a river may be subjected to the obstruction caused by the erection of a bridge of a defined character at a fixed location, and the bridge is erected accordingly, and is thus legalized, no power short of congress acting in its legislative capacity can deprive the bridge-owner of the protection afforded him by the act of congress authorizing the building and maintenance of the bridge in the first instance. If the action of the secretary of war in the present instance can be sustained, it would follow that he could have ordered the location of every bridge over a navigable river or water-way in the country to be changed, and thereby have rendered the owners thereof liable to fine for not removing the same, and, as a result, would also have rendered them liable to respond in damages to all parties who could show that they had suffered a detention in the navigation of the water-ways, and that, too, without an opportunity being given to the bridge-owner to be heard in defense of his rights. It is apparent that it was quickly perceived that the act of 1888 was open to serious question, for in the act of September 19, 1890, sections 9 and 10 of the former act were amended by adding the word "unreasonable" before obstruction, and providing for a hearing being given to the bridge-owner before action is taken by the secretary, and also requiring the notice served upon the bridge-owner to specify the changes required to be made in the bridge. While these changes remove some of the objections existing under the former statute, it is still made the duty of the secretary to determine what is an unreasonable obstruction to navigation. As the present case was brought before the passage of the amendatory statute, it is not nec-

essary to consider or determine whether the amended statute is or is not open to the same objection that is held fatal to the validity of the first statute.

It is, however, assigned as a further ground of demurrer that the act of 1890 in fact repeals that of 1888, and that consequently this proceeding must fall with the repeal of the act upon which it is based. There would be force in the point thus made were it not for the provision of section 13 of the Revised Statutes of the United States, which enacts that the repeal of a statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred, unless the repealing act shall so provide.

Upon the latter ground, the demurrer is overruled, but, upon the other grounds discussed in the opinion, it is sustained

---

In re MINEAU.

(*Circuit Court, D. Vermont.* February 7, 1891.)

1. HABEAS CORPUS—CONFLICT OF JURISDICTION.
Rev. St. U. S. § 753, which declares that "the writ of *habeas corpus* shall in no case extend to a prisoner in jail," does not oust the federal courts of jurisdiction to release on *habeas corpus*, for the purpose of bringing him before a commissioner for examination, a debtor who is in jail under executions in civil actions, since such debtor is not confined at the suit of the state, but of his creditors.

2. SAME—ISSUANCE—RELATOR—MARSHAL.
A deputy-marshal who has a commissioner's warrant for the arrest of such debtor on extradition proceedings has sufficient interest in the debtor's liberty to authorize him to apply for his release from jail on *habeas corpus*.

3. UNITED STATES COMMISSIONERS—WARRANT—EXTRADITION.
Under the general power given to commissioners by Rev. St. U. S. § 727, to hold persons for security of the peace and good behavior, a commissioner may issue a warrant for the arrest of a person charged with the commission of an extraditable offense in a foreign country.

4. SAME—PLEADING.
It is not necessary to the validity of such warrant that it should appear affirmatively in the first instance that the proceedings are instituted at the request or by the authority of the foreign government.

At Law. On application for *habeas corpus*.

Albert P. Cross, for relator.

J. A. Brown and *D. J. Foster*, for creditors and prisoner.

WHEELER, J. The relator, a deputy-marshal, has a commissioner's warrant for the arrest of the prisoner on extradition proceedings for forgery in Canada. The return of the jailer shows that the prisoner was committed to his custody on two executions and two writs of attachment in civil actions against the body of the prisoner as an absconding debtor. No question is or can be made but that the offense is within the treaty between the United States and Great Britain of 1842 for the surrender of criminals.