

Ex Parte Yerger

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SooperKanoon Citation : sooperkanoon.com/81676

Court : US Supreme Court

Decided On : 1868

Appeal No. : 75 U.S. 85

Appellant : Ex Parte Yerger

Judgement :

Ex Parte Yerger - 75 U.S. 85 (1868)

U.S. Supreme Court Ex Parte Yerger, 75 U.S. 8 Wall. 85 85 (1868)

Ex Parte Yerger

75 U.S. (8 Wall.) 85

ON MOTION AND PETITION FOR WRITS

OF HABEAS CORPUS AND CERTIORARI

SYLLABUS

1. In all cases where a circuit court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it and has, after inquiring into the cause of detention, remanded him to the custody from which he was taken, this Court, in the exercise of its appellate jurisdiction, may, by the writ of habeas corpus, aided by the writ of certiorari, revise the decision of the circuit

court, and if it be found unwarranted by law, relieve the prisoner from the unlawful restraint to which he has been remanded.

2. The second section of the Act of March 27, 1868, repealing so much of the Act of February 5, 1867, as authorized appeals from the circuit courts to the Supreme Court, does not take away or affect the appellate jurisdiction of this Court by habeas corpus under the Constitution and the acts of Congress prior to the date of the last-named act.

The Constitution ordains in regard to the judiciary as follows:

"The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judicial power shall extend to all cases in law or equity arising under this Constitution, the laws of the United States,"

&c.;

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make. "

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It makes provision, also, in regard to the writ of habeas corpus, thus:

"The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

With these provisions in force as fundamental law, the first Congress, by the 14th section of the Act of September 24, 1789, [[Footnote 1](#)] to establish the judicial courts of the United States, after certain enactments relating to the Supreme Court, the circuit courts, and the district courts of the United States, enacted:

"That all the before-mentioned courts shall have power to issue writs of *scire facias*, habeas corpus, and all other writs not especially 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 judges of the district courts, shall have power to grant writs of habeas corpus for the purpose of and inquiry into the cause of commitment, *provided* that writs of habeas corpus shall in *no case extend to prisoners in jail unless 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.* "

By statute of 1833, [[Footnote 2](#)] the writ was extended to prisoners confined under any authority, whether state or national, for any act done or omitted in pursuance of a law of the United States, or of any order, process, or decree of any judge or court of the United States, and by an act of 1842 [[Footnote 3](#)] to prisoners, being subjects or citizens of foreign states, in custody under national or state authority for acts done or omitted by or under color of foreign authority, and alleged to be valid under the law of nations.

The writ was, however, much further extended by an Act of the 5th February, 1867, [[Footnote 4](#)] entitled "An act to *amend*' the

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Judiciary Act of 1789, above quoted." This act of 1867 provided:

"That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdictions, *in addition to the authority already conferred* by law, shall have power to grant writs of habeas corpus *in all cases where any person may be restrained of his or her liberty, in violation of the Constitution, or of any treaty or law of the United States,* "

&c.;

And after providing for the awarding and hearing of the writ, the act proceeds:

"From the final decision of any judge, justice, or courts inferior to the circuit court, *appeal* may be taken to the circuit court of the United States for the district in which the said cause is heard, and from the judgment *of said circuit court to the Supreme Court of the United States.* "

Finally, by an Act of March 27, 1868, [[Footnote 5](#)] passed after an appeal in a particular case the subject of much party discussion under the above-quoted act of 1867, from the circuit court to the Supreme Court of the United States, had been argued before this latter Court had been taken into advisement by it -- a history more particularly set forth in *Ex Parte McCardle* [[Footnote 6](#)] -- Congress passed an act providing by its second section:

"That *so much of the Act* approved February 5, 1867, entitled 'An act to amend an Act to establish the judicial courts of the United States, approved September 24, 1789,' *as authorized an appeal* from the judgment of the circuit court to the Supreme Court of the United States or the exercise of any such jurisdiction by said Supreme Court *on appeals* which have been or may hereafter be taken, be, and the same is hereby, repealed."

In this state of constitutional and statutory provisions, a writ of habeas corpus upon the prayer of one Yerger addressed to the Circuit Court of the United States for the Southern District of Mississippi was directed to certain military officers

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holding the petitioner in custody, commanding them to produce his body, and abide the order of the court.

In obedience to this writ, the petitioner was brought into court by Major General R. S. Granger, who made return in due form, certifying the cause of detention to be that the petitioner had been arrested and was held for trial, upon a charge of murder, by a *military commission* under the Act of Congress of the 2d of March, 1867, "to provide for the more efficient government of the rebel states."

Upon this return, the petitioner was ordered into the custody of the marshal, and the court proceeded to hear argument. It was admitted on the part of the United States that the petitioner was a private citizen of the State of Mississippi; that he was being tried by the military commission, without a jury and without presentment or indictment by a grand jury, and that he was not and never had been connected with the army and navy of the United States or with the militia in active service in time of war or invasion.

Upon this case, the circuit court adjudged that the imprisonment of the petitioner was lawful and passed an order that the writ of habeas corpus be dismissed and that the prisoner be remanded to the custody of the military officer by whom he had been brought into court, to be held and detained for the purposes and to answer the charge set forth in the return.

To obtain the reversal of that order and relief from imprisonment, the petitioner now asked for a writ of certiorari to bring here for review the proceedings of the circuit court, and for a writ of habeas corpus to be issued under the authority of this Court to the officers to whose custody he was remanded.

The questions therefore were:

1. Whether the action of the circuit court was to be regarded as the cause of the commitment, to which the act of 1789 applies the writ of habeas corpus and whether, if found unlawful, relief might be granted, although the original imprisonment was by military officers for the purpose of a trial before a military commission.

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2. If the court possessed this jurisdiction, had it been taken away by the 2d section of the act of March, 1868?

Upon the suggestion of the Attorney General, made in view of the importance of the questions which would probably arise if the case was brought to hearing, the Court ordered preliminary argument upon the jurisdiction of the court to issue the

writ prayed for -- the only question, therefore, raised in the present stage of the case.

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THE CHIEF JUSTICE delivered the opinion of the Court.

The argument, by the direction of the Court, was confined to the single point of the jurisdiction of the court to issue the writ prayed for. We have carefully considered the reasonings which have been addressed to us, and I am now to state the conclusions to which we have come.

The general question of jurisdiction in this case resolves itself necessarily into two other questions:

1. Has the court jurisdiction, in a case like the present, to inquire into the cause of detention, alleged to be unlawful, and to give relief if the detention be found to be in fact

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unlawful, by the writ of habeas corpus under the Judiciary Act of 1789?

2. If, under that act, the court possessed this jurisdiction, has it been taken away by the second section of the act of March, 27, 1868, [[Footnote 7](#)] repealing so much of the Act of February 5, 1867, [[Footnote 8](#)] as authorizes appeals from circuit courts to the Supreme Court?

Neither of these questions is new here. The first has on several occasions received very full consideration and very deliberate judgment.

A cause so important as that which now invokes the action of this Court seems however to justify a reconsideration of the grounds upon which its jurisdiction has been heretofore maintained.

The great writ of habeas corpus has been for centuries esteemed the best and only sufficient defense of personal freedom.

In England, after a long struggle, it was firmly guaranteed by the famous Habeas Corpus Act of May 27, 1679, [[Footnote 9](#)] "for the better securing of the liberty of the subject," which, as Blackstone says, "is frequently considered as another Magna Charta." [[Footnote 10](#)]

It was brought to America by the colonists and claimed as among the immemorial rights descended to them from their ancestors.

Naturally, therefore, when the confederated colonies became United States and the formation of a common government engaged their deliberations in convention, this great writ found prominent sanction in the Constitution. That sanction is in these words:

"The privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it."

The terms of this provision necessarily imply judicial action. In England, all the higher courts were open to applicants

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for the writ, and it is hardly supposable that, under the new government founded on more liberal ideas and principles, any court would be intentionally closed to them.

We find accordingly that the first Congress under the Constitution, after defining, by various sections of the Act of September 24, 1789, the jurisdiction of the district courts, the circuit courts, and the Supreme Court in other cases, proceeded in the 14th section to enact,

"That all the beforementioned courts of the United States shall have power to issue writs of *scire facias*, habeas corpus, and all other writs, not specially provided by statute, which may be necessary for the exercise of their respective

jurisdictions and agreeable to the principles and usages of law. [[Footnote 11](#)]"

In the same section, it was further provided

"that either of the Justices of the Supreme Court, as well as 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 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."

That this Court is one of the courts to which the power to issue writs of habeas corpus is expressly given by the terms of this section has never been questioned. It would have been, indeed, a remarkable anomaly if this Court, ordained by the Constitution for the exercise in the United States of the most important powers in civil cases of all the highest courts of England, had been denied, under a constitution which absolutely prohibits the suspension of the writ except under extraordinary exigencies, that power in cases of alleged unlawful restraint which the Habeas Corpus Act of Charles II expressly declares those courts to possess.

But the power vested in this Court is, in an important particular, unlike that possessed by the English courts. The jurisdiction of this Court is conferred by the Constitution,

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and is appellate, whereas that of the English courts, though declared and defined by statutes, is derived from the common law and is original.

The judicial power of the United States extends to all cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under their authority, and to large classes of cases determined by the character of the parties or the nature of the controversy.

That part of this judicial power vested in this Court is defined by the Constitution in these words:

"In all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

If the question were new one, it would perhaps deserve inquiry whether Congress might not, under the power to make exceptions from this appellate jurisdiction, extend the original jurisdiction to other cases than those expressly enumerated in the Constitution, and especially, in view of the constitutional guaranty of the writ of habeas corpus, to cases arising upon petition for that writ.

But in the case of *Marbury v. Madison* [[Footnote 12](#)] it was determined upon full consideration that the power to issue writs of mandamus given to this Court by the 13th section of the Judiciary Act is, under the Constitution, an appellate jurisdiction, to be exercised only in the revision of judicial decisions. And this judgment has ever since been accepted as fixing the construction of this part of the Constitution.

It was pronounced in 1803. In 1807, the same construction was given to the provision of the 14th section relating to the writ of habeas corpus, in the case of *Bollman and Swartwout*. [[Footnote 13](#)]

The power to issue the writ had been previously exercised

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in *Hamilton's Case* [[Footnote 14](#)] (1795), and in *Burford's Case* [[Footnote 15](#)] (1806), in neither of which cases does the distinction between appellate and original jurisdiction appear to have been made.

In the case of *Bollman and Swartwout*, however, the point was brought distinctly before the Court, the nature of the jurisdiction was carefully examined, and it was declared to be appellate. The question then determined has not since been drawn into controversy.

The doctrine of the Constitution and of the cases thus far may be summed up in these propositions:

(1) The original jurisdiction of this Court cannot be extended by Congress to any other cases than those expressly defined by the Constitution.

(2) The appellate jurisdiction of this Court, conferred by the Constitution, extends to all other cases within the judicial power of the United States.

(3) This appellate jurisdiction is subject to such exceptions and must be exercised under such regulations as Congress, in the exercise of its discretion, has made or may see fit to make.

(4) Congress not only has not excepted writs of habeas corpus and mandamus from this appellate jurisdiction, but has expressly provided for the exercise of this jurisdiction by means of these writs.

We come, then, to consider the first great question made in the case now before us.

We shall assume upon the authority of the decisions referred to what we should hold were the question now for the first time presented to us, that in a proper case this Court, under the act of 1789, and under all the subsequent acts, giving jurisdiction in cases of habeas corpus may, in the exercise of its appellate power, revise the decisions of inferior courts of the United States and relieve from unlawful imprisonment authorized by them except in cases within some limitations of the jurisdiction by Congress.

It remains to inquire whether the case before us is a

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proper one for such interposition. Is it within any such limitation? In other words, can this Court inquire into the lawfulness of detention, and relieve from it if found unlawful, when the detention complained of is not by civil authority under a commitment made by an inferior court, but by military officers, for trial before a

military tribunal, after an examination into the cause of detention by the inferior court, resulting in an order remanding the prisoner to custody?

It was insisted in argument that

"to bring a case within the appellate jurisdiction of this Court in the sense requisite to enable it to award the writ of habeas corpus under the Judiciary Act, it is necessary that the commitment should appear to have been by a tribunal whose decisions are subject to revision by this Court."

This proposition seems to assert not only that the decision to be revised upon habeas corpus must have been made by a court of the United States, subject to the ordinary appellate jurisdiction of this Court, but that having been so made, it must have resulted in an order of commitment to civil authority subject to the control of the court making it.

The first branch of this proposition has certainly some support in *Metzger's Case*, [[Footnote 16](#)] in which it was held that an order of commitment made by a district judge at chambers cannot be revised here by habeas corpus. This case, as was observed by MR. JUSTICE NELSON in *Kaine's Case*, [[Footnote 17](#)] stands alone, and it may admit of question whether it can be entirely reconciled with the proposition, which we regard as established upon principle and authority, that the appellate jurisdiction by habeas corpus extends to all cases of commitment by the judicial authority of the United States not within any exception made by Congress.

But it is unnecessary to enter upon this inquiry here. The action which we are asked to revise was that of a tribunal whose decisions are subject to revision by this Court in ordinary modes.

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We need consider, therefore, only the second branch of the proposition -- namely that the action of the inferior court must have resulted in a commitment for trial in a civil court, and the inference drawn from it that no relief can be had here by

habeas corpus from imprisonment under military authority to which the petitioner may have been remanded by such a court.

This proposition certainly is not supported by authority.

In *Kaine's Case*, all the judges except one asserted directly or indirectly the jurisdiction of this Court to give relief in a case where the detention was by order of a United States commissioner. The lawfulness of the detention had been examined by the Circuit Court for the Southern District of New York upon a writ of habeas corpus, and that court had dismissed the writ and remanded the prisoner to custody. In this Court, relief was denied on the merits, but the jurisdiction was questioned by one judge only. And it is difficult to find any substantial ground upon which jurisdiction in that case can be affirmed and in this denied.

In *Wells' Case*, [[Footnote 18](#)] the petitioner was confined in the penitentiary under a sentence of death, commuted by the President into a sentence of imprisonment for life. He obtained a writ of habeas corpus from the Circuit Court of the District of Columbia, was brought before that court, and was remanded to custody. He then sued out a writ of habeas corpus from this Court, and his case was fully considered here. No objection was taken to the jurisdiction, though there, as here, it was evidence that the actual imprisonment, at the time of the petition for the writ, was not under the direction of the court by whose order the prisoner was remanded, but by a different and distinct authority.

In this case of *Wells*, Mr. Justice Curtis again dissented, and on the point of jurisdiction Mr. Justice Campbell concurred with him. The other judges, though all except one were of opinion that the relief asked must be denied, agreed in maintaining the jurisdiction of the court. Judge Curtis,

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who regarded the question as left undetermined in *Kaine's Case*, admitted that the jurisdiction was asserted in this, and stated the ground of judgment affirming jurisdiction to be that

"as the circuit court had had the prisoner before it and has remanded him, this Court, by a writ of habeas corpus, may examine that decision and see whether it be erroneous or not."

Since this judgment was pronounced, the jurisdiction in cases similar to that now before the court has not hitherto been questioned.

We have carefully considered the argument against it made in this case, and are satisfied that the doctrine heretofore maintained is sound.

The great and leading intent of the Constitution and the law must be kept constantly in view upon the examination of every question of construction.

That intent, in respect to the writ of habeas corpus, is manifest. It is that every citizen may be protected by judicial action from unlawful imprisonment. To this end, the act of 1789 provided that every court of the United States should have power to issue the writ. The jurisdiction thus given in law to the circuit and district courts is original; that given by the Constitution and the law to this Court is appellate. Given in general terms, it must necessarily extend to all cases to which the judicial power of the United States extends other than those expressly excepted from it.

As limited by the act of 1789, it did not extend to cases of imprisonment after conviction under sentences of competent tribunals, nor to prisoners in jail unless in custody under or by color of the authority of the United States or committed for trial before some court of the United States or required to be brought into court to testify. But this limitation has been gradually narrowed, and the benefits of the writ have been extended, first in 1833 [[Footnote 19](#)] to prisoners confined under any authority, whether state or national, for any act done or omitted in pursuance of a law of the United

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States or of any order, process, or decree of any judge of court of the United States; then in 1842 [[Footnote 20](#)] to prisoners being subjects or citizens of

foreign states, in custody under national or state authority for acts done or omitted by or under color of foreign authority and alleged to be valid under the law of nations, and finally, in 1867, [[Footnote 21](#)] to all cases where any person may be restrained of liberty in violation of the Constitution or of any treaty or law of the United States.

This brief statement shows how the general spirit and genius of our institutions has tended to the widening and enlarging of the habeas corpus jurisdiction of the courts and judges of the United States, and this tendency, except in one recent instance, has been constant and uniform, and it is in the light of it that we must determine the true meaning of the Constitution and the law in respect to the appellate jurisdiction of this Court. We are not at liberty to except from it any cases not plainly excepted by law, and we think it sufficiently appears from what has been said that no exception to this jurisdiction embraces such a case as that now before the Court. On the contrary, the case is one of those expressly declared not to be excepted from the general grant of jurisdiction. For it is a case of imprisonment alleged to be unlawful and to be under color of authority of the United States.

It seems to be a necessary consequence that if the appellate jurisdiction of habeas corpus extends to any case, it extends to this. It is unimportant in what custody the prisoner may be if it is a custody to which he has been remanded by the order of an inferior court of the United States. It is proper to add that we are not aware of anything in any act of Congress, except the act of 1868, which indicates any intention to withhold appellate jurisdiction in habeas corpus cases from this Court or to abridge the jurisdiction derived from the Constitution and defined by the act of 1789. We agree that it is given subject to exception and regulation by Congress, but it is too plain for argument that the denial

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to this Court of appellate jurisdiction in this class of cases must greatly weaken the efficacy of the writ, deprive the citizen in many cases of its benefits, and seriously hinder the establishment of that uniformity in deciding upon questions of personal

rights which can only be attained through appellate jurisdiction, exercised upon the decisions of courts of original jurisdiction. In the particular class of cases of which that before the court is an example, when the custody to which the prisoner is remanded is that of some authority other than that of the remanding court, it is evident that the imprisoned citizen, however unlawful his imprisonment may be in fact, is wholly without remedy unless it be found in the appellate jurisdiction of this Court.

These considerations forbid any construction giving to doubtful words the effect of withholding or abridging this jurisdiction. They would strongly persuade against the denial of the jurisdiction even were the reasons for affirming it less cogent than they are.

We are obliged to hold, therefore, that in all cases where a circuit court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it and has, after inquiring into the cause of detention, remanded him to the custody from which he was taken, this Court, in the exercise of its appellate jurisdiction, may, by the writ of habeas corpus, aided by the writ of certiorari, revise the decision of the circuit court, and if it be found unwarranted by law, relieve the prisoner from the unlawful restraint to which he has been remanded.

This conclusion brings us to the inquiry whether the 2d section of the Act of March 27, 1868, takes away or affects the appellate jurisdiction of this Court under the Constitution and the acts of Congress prior to 1867.

In *McCardle's Case*, [[Footnote 22](#)] we expressed the opinion that it does not, and we have now reexamined the grounds of that opinion.

The circumstances under which the act of 1868 was passed were peculiar.

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On the 5th of February, 1867, Congress passed the act to which reference has already been made, extending the original jurisdiction by habeas corpus of the

district and circuit courts and of the several judges of these courts to all cases of restraint of liberty in violation of the Constitution, treaties, or laws of the United States. This act authorized appeals to this Court from judgments of the circuit court, but did not repeal any previous act conferring jurisdiction by habeas corpus, unless by implication.

Under this act, one McCardle, alleging unlawful restraint by military force, petitioned the Circuit Court for the Southern District of Mississippi for the writ of habeas corpus. The writ was issued and a return was made, and upon hearing, the court decided that the restraint was lawful, and remanded him to custody. McCardle prayed an appeal, under the act, to this Court, which was allowed and perfected. A motion to dismiss the appeal was made here and denied. The case was then argued at the bar, and the argument having been concluded on the 9th of March, 1869, was taken under advisement by the court. While the cause was thus held, and before the Court had time to consider the decision proper to be made, the repealing act under consideration was introduced into Congress. It was carried through both houses, sent to the President, returned with his objections, repassed by the constitutional majority in each house, and became a law on the 27th of March, within eighteen days after the conclusion of the argument.

The effect of the act was to oust the Court of its jurisdiction of the particular case then before it on appeal, and it is not to be doubted that such was the effect intended. Nor will it be questioned that legislation of this character is unusual and hardly to be justified except upon some imperious public exigency.

It was doubtless within the constitutional discretion of Congress to determine whether such an exigency existed, but it is not to be presumed that an act, passed under such circumstances, was intended to have any further effect than that plainly apparent from its terms.

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It is quite clear that the words of the act reach not only all appeals pending, but all future appeals to this Court under the act of 1867, but they appear to be limited to

appeals taken under that act.

The words of the repealing section are

"That so much of the Act approved February 5, 1867, as authorizes an appeal from the judgment of the circuit court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said Supreme Court on appeals which have been or may be hereafter taken be, and the same is hereby, repealed."

These words are not of doubtful interpretation. They repeal only so much of the act of 1867 as authorized appeals or the exercise of appellate jurisdiction by this Court. They affected only appeals and appellate jurisdiction authorized by that act. They do not purport to touch the appellate jurisdiction conferred by the Constitution or to except from it any cases not excepted by the act of 1789. They reach no act except the act of 1867.

It has been suggested, however, that the act of 1789, so far as it provided for the issuing of writs of habeas corpus by this Court, was already repealed by the act of 1867. We have already observed that there are no repealing words in the act of 1867. If it repealed the act of 1789, it did so by implication, and any implication which would give to it this effect upon the act of 1789 would give it the same effect upon the acts of 1833 and 1842. If one was repealed, all were repealed.

Repeals by implication are not favored. They are seldom admitted except on the ground of repugnancy, and never, we think, when the former act can stand together with the new act. It is true that exercise of appellate jurisdiction under the act of 1789 was less convenient than under the act of 1867, but the provision of a new and more convenient mode of its exercise does not necessarily take away the old, and that this effect was not intended is indicated by the fact that the authority conferred by the new act is expressly declared to be "in addition" to the authority conferred by the former acts. Addition is not substitution.

The appeal given by the act of 1867 extended, indeed, to cases within the former acts, and the act, by its grant of additional authority, so enlarged the jurisdiction by habeas corpus that it seems, as was observed in the *McCardle* case, "impossible to widen" it. But this effect does not take from the act its character of an additional grant of jurisdiction and make it operate as a repeal of jurisdiction theretofore allowed.

Our conclusion is that none of the acts prior to 1867 authorizing this Court to exercise appellate jurisdiction by means of the writ of habeas corpus was repealed by the act of that year, and that the repealing section of the act of 1868 is limited in terms, and must be limited in effect to the appellate jurisdiction authorized by the act of 1867.

We could come to no other conclusion without holding that the whole appellate jurisdiction of this Court, in cases of habeas corpus, conferred by the Constitution, recognized by law, and exercised from the foundation of the government hitherto, has been taken away, without the expression of such intent and by mere implication, through the operation of the acts of 1867 and 1868.

The suggestion made at the bar that the provision of the act of 1789 relating to the jurisdiction of this Court by habeas corpus, if repealed by the effect of the act of 1867, was revived by the repeal of the repealing act, has not escaped our consideration. We are inclined to think that such would be the effect of the act of 1868, but having come to the conclusion that the act of 1789 was not repealed by the act of 1867, it is not necessary to express an opinion on that point.

The argument having been confined, by direction of the Court, to the question of jurisdiction, this opinion is limited to that question. The jurisdiction of the court to issue the writ prayed for is

Affirmed.

[[Footnote 1](#)]

1 Stat. at Large 81.

[[Footnote 2](#)]

4 *id.* 634.

[[Footnote 3](#)]

5 *id.* 539.

[[Footnote 4](#)]

14 *id.* 385.

[[Footnote 5](#)]

15 Stat. at Large 44.

[[Footnote 6](#)]

[74 U. S. 7](#) Wall. 509.

[[Footnote 7](#)]

15 Stat. at Large 44.

[[Footnote 8](#)]

14 *id.* 385.

[[Footnote 9](#)]

3 British Stat. at Large 397; 3 Hallam's Constitutional History 19

[[Footnote 10](#)]

3 Commentary 135.

[[Footnote 11](#)]

1 Stat. at Large 81.

[[Footnote 12](#)]

[5 U. S. 1](#) Cranch 137.

[[Footnote 13](#)]

[8 U. S. 4](#) Cranch 100.

[[Footnote 14](#)]

[3 U. S. 3](#) Dall. 17.

[[Footnote 15](#)]

[7 U. S. 3](#) Cranch 448.

[[Footnote 16](#)]

[46 U. S. 5](#) How. 176.

[[Footnote 17](#)]

[55 U. S. 14](#) How. 103.

[[Footnote 18](#)]

[59 U. S. 18](#) How. 308.

[[Footnote 19](#)]

4 Stat. at Large 634.

[[Footnote 20](#)]

5 Stat. at Large 539.

[[Footnote 21](#)]

14 *id.* 385.

[[Footnote 22](#)]

[74 U. S. 7](#) Wall. 508.

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