To Hon. James G. Blaine, Speaker of the House of Representatives.

The undersigned, one of the justices of the Supreme Judicial Court, in response to the order of the House of Representatives,加盖February 13th, 1861, would remark that the order in its terms, is exceedingly broad and comprehensive, and would necessarily involve such an amount of labor as to preclude the possibility of its being performed "forthwith." Looking however at the provisions of our statute referred to in the order, I presume that it was the intention of the House that the examination should extend further than to that provision of the constitution having reference to the return of fugitives from service or labor, and the statute passed by Congress to carry it into operation. Thus far only will my examination extend.

The Constitution of the United States, Art. 4, § 2, clause 3, provides that "no person held to service or labor in any State under the laws thereof escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

Historically, it is well known that the "persons" referred to in the above provision were slaves.
Under this provision of the Constitution the Congress of the United States, on the 12th of February 1793, passed an act providing among other things that in case of the escape of such person, the person to whom such service or labor may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor and to take him or her before any judge of the Circuit or District Court of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made; and upon proof to the satisfaction of such judge or magistrate, either by oral testimony, or affidavits taken before and certified by a magistrate of any such State or territory, that the person so seized did, under the laws of the State or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the State or territory from which he or she fled.

It will be observed that under this statute the only State officers who are authorized to act are magistrates of a county, city or town corporate, and that these magistrates are only authorized to grant
a certificate on certain proofs being made before them. The statute continued in force without modification until 1850.

In 1842, the constitutionality of certain statutes of the State of Pennsylvania, designed to facilitate the restoration of fugitives from service, came under the examination of the Supreme Court of the United States in the case of Prigg v. G. of Penn. 16 Pet. 539. In that examination, the act of 1793, for the rendition of fugitives from service, was also made the subject of careful consideration by the Court. In delivering the opinion of the court, Mr Justice Story, speaking of this statute, said "we hold the act to be clearly constitutional in all its leading provisions, and indeed, with the exception of that part which confers authority upon State magistrates, to be free from reasonable doubt and difficulty upon the grounds already stated.

As to the authority conferred upon State magistrates, while a difference of opinion has existed and may still exist on the point, in different States, whether State magistrates are bound to act under it, some is entertained by this Court, that such State magistrates may, if they choose, exercise that authority, unless prohibited by State legislation."

The view of the constitutionality of the act of 1793 has been distinctly affirmed by the Supreme Court of Pennsylvania, New York, and Massachusetts, and reaffirmed
by the Supreme Court of the United States; and has been acquiesced in by all departments of the national government, and has long been deemed settled law both by courts and judges.

The court also express the opinion in the case of Prigg, above cited, that the jurisdiction of the United States, under that clause of the Constitution, is exclusive; and that the States have no constitutional authority to legislate upon the subject.

In 1847 Pennsylvania revised her legislation upon this subject, and (manifestly in view of the suggestion of the court in Prigg's case) provided that no judge, alderman or justice of the peace in the State should have jurisdiction, or take cognizance of a case of a fugitive from labor, or grants any certificate or warrants of removal of any such fugitive from labor under the Act of 1793.

In 1850 Congress passed an act to amend, and supplementary to the act of February 12, 1793. By this statute the whole subject of the former act is revised. Commissioners, appointed by the United States Court, are substituted for State magistrates, and Marshals and their deputies are made ministerial officers for the execution of the law; and detailed and specific provisions are made to carry into practical operation the article in the Constitution for the rendition of fugitives from labor.
Is this act constitutional? Though more full, minute and particular in its details, and also more harsh and highly penal in some of its provisions than the statute of 1793, its general character is substantially the same.

Objection has been made that the act of 1860 does not provide for trial by jury, and that it denies the privilege of the writ of habeas corpus, and is therefore, in those respects, unconstitutional.

These objections, in my opinion, rest upon a misapprehension of the object and design of the provision of the constitution referred to, and of the office or function of the writ of habeas corpus.

One of the most prominent and important elements of that invaluable common law right, trial by jury, is that the party shall be entitled to a trial by a jury of his vicinage; that his rights shall not be determined by strangers, but by men of his own county, in his own neighborhood.

Citizens and slaves are amenable to the laws of the State in which they live, and the questions, whether a citizen has committed a crime, in one instance, or a person is a slave in the other, can only be determined by the laws of the State in which the parties live. By a principle of comity, civil contracts, entered into in one State or nation, are ordinarily enforced by the judicial tribunals of other States or nations. This
principle, however, does not extend to the enforcement of the penal laws of other States, nor to the determination of the status of persons therein, whether bond or free. Such questions are determined by each State or nation for itself, within its own jurisdiction.

But it sometimes happens that persons charged with crimes, or claimed as slaves, flee or escape from the jurisdiction in which they are thus charged or claimed. To meet this contingency, on the formation of our constitution, the article for the rendition of fugitives from justice, or from service, was inserted in that instrument. These provisions are found side by side in the constitution, and present the same general characteristics. The fugitive from justice is to be delivered up on demand of the executive authority of the State from which he fled. But how is he to be demanded? On this point the constitution is silent, its terms being general. But the answer is found in the statute enacted to carry into effect that provision of the constitution.

So too the fugitive from service or labor is to be given up on claim of the party to whom the service or labor may be due. But how claimed? Here again the constitution is silent, its terms, as in the other case, being general. But here also the statute, made in pursuance of the constitution, answers, and points out in detail the manner in which the claim must be made.
The object of the constitution, and of the laws designed to carry it into effect, is not to try and determine the question of guilt or innocence in one case, or of freedom or slavery in the other, but simply to arrest and bring within the jurisdiction parties who had fled or escaped therefrom, to the end that they may be disposed of according to the laws of that jurisdiction. In other words, these provisions of the constitution, and the laws made to carry them into operation, were designed to afford process for the arrest of parties demanded or claimed, which should not, like ordinary state process, be confined to state or county lines, but which should extend over the whole territory of the United States. The process is in its character preliminary. Just as reasonable would it be for a party arrested on a warrant, within the limits of a state, to demand a trial by jury at the place of his arrest, to determine the question whether he was legally arrested. Such a course would paralyze the arm of the best organized and most efficient civil government existing.

The law for the return of fugitives from service, like the law for the return of fugitives from justice, between the States, and like the treaty stipulations between this country and England and France for the return of fugitives from justice, does not provide for the manner in which the parties returned shall be dis-
posed of after they have been returned to the state or nation from which they escaped or fled. Each and all of these laws and treaty stipulations have a common object, which is to return the fugitive to the jurisdiction from which he may have fled or escaped, and then leave them subject to the local law.

Nor is the provision in the constitution for the return of fugitives from service new. In the articles of confederation between the "United Colonies of New England" adopted Sept. 5th, 1672, was the following provision: "It is also agreed that if any servant run away from his master into any other of these confederated jurisdictions, that in such case upon certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant shall be delivered either to his master or any other that PURCHASES and brings such certificate or proof. Act. Char. 724."

This ancient New England fugitive slave law contains no provision for trial by jury, but leaves the returned fugitive to be dealt with according to the laws of the jurisdiction from which he fled. Like the fugitive slave law under the constitution, and for which it furnished a copy, it simply provided for a return of the fugitive.

It is not easy to perceive wherein thefail-
promise to provide for trial by jury constitutes a stronger objection to the law for the return of fugitives from service under the constitution, than in the other cases already referred to. It cannot, unless we impugn the integrity of the governments to which the fugitives are returned, and charge them with failing to provide laws by which their condition can be determined and their rights protected.

Then as to the denial of the writ of habeas corpus. The protection against unlawful restraint afforded by this prerogative writ is justly deemed of the highest importance. Its character however is not always fully understood. Its office is to examine and determine whether parties under arrest are unlawfully detained. On the principal question of guilt or innocence, bond or free, is not determined, but whether the proofs by which the party is held has been issued by competent authority, in conformity with law, and is sufficient in form.

There is no provision in the act of 1850 which contravenes this right. The statute points out the manner in which the claim for the return of a fugitive shall be made; the proofs required to establish the claim, and the form of the certificate which shall be given; and then provides that such certificate shall be conclusive of the right of the person or persons in whose favor it is granted to remove the fugitive.
to the state or territory from which he escaped, and shall presume all molostitutio of such person or persons by any process issued by any court, judge, magistrate, or other person whatever.

A person, therefore, who is held lawfully for the purpose of being returned, could not have been discharged on habeas corpus, if the law had been silent upon the subject. The only question to be settled in this case is, was the person claiming to hold the alleged fugitive, such process as the law prescribes, as matter of fact. That question may be examined in this class of cases in the same manner as other cases where parties are claimed to be held under process issued by the United States. If an examination of the return to the writ, it appears that he has not the certificate prescribed by the act, the fugitive must be discharged, because he would then be unlawfully held; if, on the other hand, the process is found to be in conformity with law, the fugitive must be demanded to custody as in other cases.

It is not, however, my purpose to examine the constitutionality of the statute in detail. The general features of the law of 1850, as has already been remarked, are similar to those of the act of 1790. The constitutionality of the statute has been settled beyond all doubt. This fact, where of itself, so far as the statute are in legal effect the same, settles the constitu-
finality of the act of 1850. In addition to this, however, its constitutional nature distinctly affirmed by the highest judicial authority. 1 Cush. 285; S. McLean C. C. R. 4169; 1 Blatchford C. C. R. 635, 22 Howard U. S. R. 506.

Assuming then that the act of 1850, C. 60, for the rendition of fugitives from service, is constitutional, I propose to compare some of the provisions of this act, with those provisions in our statute to which the order of the House has called the attention of the Court.

The act of the U. S. of Sept. 18, 1850, authorizes the courts of the United States to appoint commissioners with authority to take cognizance of cases arising under that statute. In the 5th section of the act of 1850 is found the following provision: "And the better to enable the said commissioners when thus appointed to execute their duties faithfully and efficiently, in conformity with the constitution of the United States, and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint in writing under their hands, any one or more suitable persons from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; and with authority to such commissioners, or the persons to be appointed by them, to execute process
as aforesaid, to summon and call to their aid the
bystanders, or res ser to comitatus, of the proper county,
when necessary to ensure a faithful observance of
the clause of the constitution referred to, in conform-
ity with the provisions of this act; and all good
citizens are hereby commanded to aid and assist
in the prompt and efficient execution of this law
whenever their services may be required as afo-
said for that purpose."

The duty of citizens to aid the civil officers
when necessary for the execution of legal process is
neither novel nor unreasonable, but is as old as
civil government, and in many cases absolutely
necessary to preserve the public peace, and main-
tain the supremacy of the laws. The statutes of all
civilized nations are full of such requirements.

Article 6, § 2, of the constitution of the United
States provides that "the constitution, and the laws
of the United States, made in pursuance thereof, and
all treaties made, or which shall be made, under
the authority, of the United States, shall be the supreme
law of the land; and the judges in every State
shall be bound thereby, any thing in the constitu-
tion or laws of the State to the contrary notwithstanding."

The allegiance which every American citizen owes
to government is duplex—being due to the government
of the United States and to some particular State.
Within its jurisdiction his allegiance to the United States is paramount and absolute. From his obligations to obey all laws made in pursuance of the Constitution of the United States, no State can absolve him, and for rendering obedience to such laws, no State can rightfully subject him to punishment. When any law of the United States, made in pursuance of the Constitution, commands, it is his duty to obey, and any law of any State which commands to the contrary is repugnant to the Constitution and of no binding effect.

Outside of the jurisdiction which the Constitution confers upon the government of the United States, the allegiance of the citizens of the citizen is due to the government of his particular State. Between these jurisdictions, theoretically at least, there can be no conflict.

"Section 53 of Chap. 80 of the Revised Statutes of this State reads as follows:

"No sheriff, deputy sheriff, coroner, constable, justice of the peace, or other officer of this State, shall building, arrest or detain, or aid in so doing, in any prison or belonging to this State, or to any County or Town, any person on account of any claim upon him as a fugitive slave. Any of said officers violating any of the above-said provisions, or aiding or abetting any person claiming, arresting or detaining any person as a fugitive slave, shall forfeit a sum not exceeding one thousand..."
dollars for each offence, to the use of the county where it is committed, or to be imprisoned not less than one year in the county jail.

Thus it will be perceived that while good citizens are, in certain contingencies, commanded to aid and assist in the execution of the law of the United States, in the section of our own statute above cited, whole classes of citizens — all the officers of this state, without distinction or exemption, are forbidden under severe penalties to do the very act which the law of the United States commands them to do. In terms, these laws are in direct and irreconcilable conflict.

But it has been suggested that the provisions of our statute above cited were originally based upon the suggestion of Judge Story in Peiris's case, that it was competent for the legislature of states to prohibit their own officers from discharging the duties assigned them by the law of the United States of February 12, 1793, and that the prohibition in the 55th section of C. 80 of the R. S. refers to the action of our state officers "in their official capacity" only, and not to them as private citizens.

In my opinion the act of this state, can not properly receive such a construction.

The act of Congress of 1793 authorized one class only of state officers to participate in its execution,
to wit: magistrates of a county, city, or town corporate. By the amendatory act of 1830, the act of 1793 was wholly revised, as has been already stated, and commisioners substituted for the magistrates of counties, cities, and towns.

A subsequent statute revising the whole subject matter of a former one, and evidently intended as a substitute for it, although it contains no express words to that effect, must on principles of law, as well as in reason and common sense, operate to repeal the former. 7 Mass. R. 142; 12 id. 536; 10 Pick. R. 39.

This was then, when our Revised Statutes were enacted, no existing law of the United States which authorized the officers of this State, in their official capacity, to take cognizance of, or any way to aid or assist in the execution of the law for the restoration of fugitive slaves. Nor had the legislature of this State ever conferred upon the officers of the State such authority.

In such a state of things, to prohibit our State officers under severe penalties from doing what they had no authority to do, and what I am not aware that they had manifested any particular desire voluntarily to do, without authority, would certainly be a work of supererogation on the part of the legislature.
It is undoubtedly competent for the legislature to limit and define the jurisdiction of the officers of the State. But the language of section 53 C. 80, unlike that of Pennsylvania Rev. cited, R.S., is not appropriate for that purpose, but is appropriate language when applied to individual citizens, and designed to prohibit them from performing, or participating in acts deemed improper and criminal. To speak of a ministerial or judicial officer as abetting in his official capacity, would be a gross and palpable misapplication of terms; while to speak of an individual as abetting the commission of a crime would be a legitimate and appropriate use of language.

But the prohibition in the 53 section is not limited to judicial and executive officers, such as judges and magistrates, sheriffs and marshalls, but include all other officers of the State, whatever may be their functions. As applied to judicial and executive officers, the construction contended for, as I have already shown, is wholly inappropriate. But when applied as the statute would require, to all other officers of the State, the impropriety of the language becomes still more glaring. Thus, to say that in addition to the offices specifically named in the statute, any minister of the gospel duly appointed and commissioned to solemnize marriages, any selectman or officer, any inspector of beef and pork, lime and lime casks, pot and peal oleos, pickles and shortening fish and
the like, aiding and abetting "in his official capacity" any person claiming, arresting any person as a fugitive slave, shall forfeit a sum not exceeding a thousand dollars &c. would present an incongruity of language and of ideas so strong as to preclude any such construction as is contended for.

But should it be said that the words "or other officer of this State" should be stricken out, or continued to mean other offices whose official functions are similar to those specifically named in the statute, the objection already named is not obviated, as with these additional amendments, by construction, the section would be simply insensible and aimless; while without such amendments and such constructions it has a plain and obvious meaning.

That such is not the true construction of §52, C. 80, is still further apparent from the fact that the act of 1858 C. 182, of which the 58th section is a revision, contained in express terms the precise qualifications which are now sought to be engrrafted upon this section by construction; and also a distinct additional section, providing that nothing in the act should be construed to hinder or obstruct the Marshal of the United States, his deputy, or any officer of the United States from executing or enforcing the laws of the United States of September 19, 1860.

Those qualifying terms were most material,
and rendered that act innocuous at least, if not

irrepealable. They were wholly omitted in the revision.

It is a well settled rule that when any statute
is revised, or one act framed from another, some
part being omitted, the parts omitted are not re-
quired by construction, but are to be considered as
annulled. To hold otherwise would be to impute
to the legislative gross carelessness, or ignorance;
which is altogether inadmissible. 1 Pick. 43.

The prohibitory and penal provisions in section
58, of Chapter 80, of the Revised Statutes, and more
especially those in the last clause of the section,
applying as they do to persons in their individual,
and not in their official capacity, are, in my
opinion, clearly in contravention of the provisions
of the act of Congress of Sept. 18, 1850, C. 60. The
section referred to (553, C. 50) contains no provision
for the prevention of kidnapping, or to secure the
rights of freemen, but was manifestly intended
to obstruct and hinder the restoration of fugitive
slaves, and is in both its letter and spirit repug-
nant to sect. 2, clause 3, of the Constitution of the
United States.

As to section 20, of chapter 79, and section
37, of chapter 80, of the Revised Statutes, I perceive
nothing therein which renders them obnoxious to
the charge of being in contravention of any law
of Congress, or repugnant to the constitution of
the United State.

The last clause of section 4, C. 132 of the R. S.
20 has as it relates to the jurisdiction of justices
of the peace, in cases relating to persons claimed
as fugitive slaves, is simply nugatory, there
being no existing statute which gives them
such jurisdiction, and it being a well settled
principle of law, that nothing is to be presumed
in favor of the jurisdiction of justices of the peace.
So far as it prohibits them from rendering aid as
a private citizen, it is open to the same objections
which exist against the provisions of section 58,
C. 80.

Respectfully yours, etc.

Augusta Feb. 20, 1861.  Richard D. Rice
MARCH 6, 1842

Laid a the table a note of Mrs. M. C. Hillis of Bangor, & $337.00 to be paid for the use of the Legislature.

Walter A. Miller, Clerk.