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The Matter of David Neagle

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T H E M A T T E R

O F

D A V I D N E A G L E.

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BURT A. SMITH.

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C o r n e l l U n i v e r s i t y

School of Law.

-1890-

STATEMENT OF THE CASE.

This was an application for the discharge of David Neagle, a Deputy United States Marshal.

The facts of the case may be divided into two stages, the first as follows:-

On the third of September, 1888, certain cases were pending in the Circuit Court of the Northern District of California, between Frederick W. Sharon, as executor, against David S. Terry and Sarah Althea Terry, his wife, and between Francis G. Newlands, as trustee, and others, against the same parties, on demurrers to bills to revive, and carry into execution, the final decree of the Court, in the suit of William Sharon v. Sarah Althea Hill, and were decided on that day. That suit was brought to have an alleged marriage contract between the parties adjudged a forgey, and obtain its surrender and cancellation. The decree rendered adjudged the alleged marriage contract to be a forgery, and ordered it to be surrendered and canceled.

In deciding the cases, the Court gave an elaborate opinion upon the questions involved, and whilst it was being read, certain disorderly proceedings took place, for which the defendants, David S. Terry and his wife, were adjudged guilty of contempt and ordered to be imprisoned. See In Re Terry, 36 Fed. Repr. 419.

The second stage of the case began upon the release, of Terry and his wife who made various threats of personal violence to Justice Field and the Circuit Judge. These threats were that they would take the lives of both judges; those against Justice Field were sometimes that they would take his life directly; at other times that they would subject him to great personal indignities and humiliations, and if he resented it they would kill him.

In consequence of this general belief and expectation, and the fact that the Attorney-General of the United States had given instructions to the Marshal to see that the person of Justice Field and of the Circuit Judge, should be protected from violence, the Marshal of the Northern District appointed the petitioner in this case, David Neagle, to accompany Mr. Justice Field while engaged in the performance of his duties and while passing from one district to another within his circuit, so as to guard him against the threatened attacks.

On the 8th, of August, 1889, Justice Field left SanFrancisco for Los Angeles, in order to hear a habeas corpus casewhich was returnable before him at that city on the 10th of August, and also to be present at the opening of

the Court on the I2th. Returning, he took the train on Tuesday, the I3th, at I:30 o'clock in the afternoon, for San Francisco, where he was expected to hear a case then awaiting his arrival, immediately upon his return, being accompanied by Deputy Marshal Neagle. On the morning of the I4th, between the hours of seven and eight, the train arrived at Lathrop, in San Joaquin County, which is in the Northern District of California, a station at which the trin stopped for breakfast. Field and the Deputy Marshal at once entereed the dining room, there to take their breakfast, and took their seats at the third table in the middle row of tables. Justice Field seated himself at the extreme end, on the side looking toward the door. The Deputy Marshal took the next seat on the left of the Justice. What subsequently occured is thus stated in the testimony of Justice Field:-

"A few minutes afterward, Judge Terry and his wife entered. When Mrs. Terry saw me, which she did directly she got diagonally opposite me, she wheeled around suddenly and went out in great haste. I afterwards understood, as you heard here, that she went after her satchel. Judge Terry walked past, opposite to me, and took his seat at the second table below. The only remark I made to Mr.

Neagle was,'There is Judge Terry and his wife.' He remarked,'I see him.' Not another word was said. I commenced eating my breakfast. I saw Judge Terry take his seat. In a moment or two afterwards,I looked around and saw Judge Terry leave his seat. I supposed at the time he was going out to meet his wife,as she had not returned, so I went on with my breakfast. It seems,however,that he came round back of me--I did not see him--and he struck me a violent blow in the face,followed instantaneously by another blow. Coming so immediately together,the two blows seemed like one assault. I heard,'Stop! Stop!' cried by Neagle. Of course I was for a moment dazed by the blows. I turned my head round and I saw that great form of Terry's,with his right arm raised and his fist clenched to strike me. I felt that a terrific blow was coming,and his arm was descending in a curved way,as though to strike the side of my temple,when I heard Neagle cry out, 'Stop ! Stop!I am an officer.' Instantly two shots followed I can only explain the second shot from the fact that he did not fall instantly. I did not get up from my seat,although it is proper for me to say that a friend of mine thinks I did;but I did not. I looked around and saw Terry on the floor. I looked at him and saw that

peculiar movement of the eyes that indicates the presence of death. Of course it was a great shock to me. It is impossible for any one to see a man in the full vigor of life, with all those faculties that constitute life, instantly extinguished, without being effected, and I was. I looked at him for a moment, then rose from my seat, went around and looked at him again and passed on. Great excitement followed. I must say here that, dreadful as it is to take life, it was only a question of seconds whether my life or Judge Terry's life should be taken. I am firmly convinced that had the Marshal delayed two seconds both he and myself would have been the victims of Terry."

Mr. Neagle in his testimony stated that, before the train arrived at Fresno, he got up and went out on the platform, leaving the train, and there saw Terry and his wife get on the cars; that when the train arrived at Merced, he spoke to the conductor, Woodward, and informed him that he was a Deputy United States Marshal; that Judge Field was on the train, and also Terry and his wife, and that he was apprehensive that when the train arrived at Lathrop, there would be trouble between those parties, and inquired whether there was any officer at that Station, and was informed in reply that there was a constable there; that he

then requested the conductor to send word to the officer to be at Lathrop on the arrival of the train,and that he also applied to other parties to induce them to endeavor to secure assistance for him at that place in case it should be needed.

The facts thus stated in the testimony of Justice Field and the petitioner,were corroberated by the testimony of all the witnesses to the transaction. The petitioner soon afterwards accompanied Justice Field to the car,and whilst in the car,he was arrested by a constable,and at the station below Lathrop he was taken by that officer from the car to Stockton,the county seat of San Joaquin County, where he was lodged in the County jail. Mr. Justice Field was obliged to journey on to San Francisco without the protection of an officer. On the evening of that day, Mrs. Terry,who did not see the transaction,but was at the time outside of the dining room,made an affidavit that the killing of Terry was murder,and charged Justice Field and Deputy Marshal Neagle with the commission of the crime. Upon this affidavit,a warrant was issued by a Justice of the Peace at Stockton against Neagle and also against Justice Field. Subsequently,after the arrest of Justice

Field,and after his being released by the United States Circuit Court on habeas Corpus upon his own recognizance,the proceeding against him before the Justice of the Peace was dismissed,the Governor of the State having written a letter to the Attorney-General of the state,declaring thet the proceeding,if persisted in,would be a brning disgrace to the state,and the Attorney-General having advised the District Attorney of San Joaquin County to dismiss it. Therewas no other testimony whatever before the Justice of the Peace,except the affidavit of Sarah Althea Terry, upon which it was issued.

The petition was accordingly presented on behalf of Neagle,to the Circuit Court of the United States for a writ of habeas corpus in this case,alleging,among other things,that he was arrested and confined in prison for an act done by him in the performance of his duty,namely the protection of Mr. Justice Field,and taken away from the further protection,which he was ordered to give him. The writ was issued,and upon its return,the Sheriff of San Joaquin County produced a copy of the warrant issued by the Justice of the Peace of that county,and of the affidavit of Sarah Althea Terry,upon which it was issued.

A traverse to that return was then filed in this case, presenting various grounds why the petitioner should not be held, the most important of which were:-

That an officer of the United States specially charged with a particular duty; that of protecting one of the justices of the Supreme Court of the United States, whilst engaged in the performance of his duty, could not, for an act constituting the very performance of that duty, be taken from the further performance of his duty and imprisoned by the state authorities, and ---

That, when an officer of the United States, in the discharge of his duties, is charged with an offence consisting in the performance of those duties, and is sought to be arrested, and taken from the further performance of them, he can be brought before the tribunals of the nation of which he is an officer, and the fact then inquired into.

THE MATTER OF DAVID NEAFLE.

CONTENTS.

THE MATTER OF DAVID NEAGLE.

Great cases have been important landmarks in the history of jurisprudence. Laws have regulated the principles of justice and noted cases, construing these laws, have stereotyped those principles on the minds of men. It has not been a matter of small importance for jurists in all ages to pass upon the questions involved in important cases, and to apply the results of their investigations in future discussions. Therefore it will perhaps not be amiss to consider a few of the more important questions involved in the case of In Re Neagle (Cir. Court Am. Law Reg., 585; 39 Fedr. Rep., 833) as few cases have attracted public attention more of late than this one, covering as it does so many practical as well as universal and National questions, which are well worth a careful investigation.

The first point that demands our attention is: was the killing of Terry by Neagle excusable, and, if excusable was it also justifiable? This will compel us to discuss and point out the general principles of homicide applicable to this case. At common law homicide was either excusable, justifiable, or felonious. Excusable homicide included

among its features the killing of a person done by one in defence of himself or of another. This right of self defence originated in necessity, but was not the outgrowth of it. Stanley v. Comm., 6 S.W. (Ky), 155. This doctrine of self defence extends to the right which one person has to protect the life of another when he has a bona fide belief that the other's life is en-dangered by the deadly assault of a third person, and can only be protected by taking the life of the assailant. Mr. Bishop in speaking of the right to assist others in the defence of person and property, says: "The doctrine here is that whatever one may do for himself he may do for another; - - - and, on the whole though distinctions have been taken and doubts expressed, the better view plainly is that one may do for another whatever the other may do for himself." I Bish. Cr. L., Sec. 877. A person can only act in defence of himself or another when the attack is made suddenly, when there is reasonable ground to believe that the assault will terminate in the death of the person attacked, and when he has no apparent means of escape. Whart. L. of Hom., 36; U.S. v. Kane, 34 Fedr. 302. Surely, the facts in this case bring it within the category of the law of excusable homicide. Even though Neagle was acting

as a private person,,nevertheless,he was acting in the defence of Justice Field,who having no means of protecting his person was driven to the "wall" of the law,that is the table,by the brutal and determined assault of Terry;and who can say,that Deputy Marshall Neagle acted a moment too soon. For it was only a question of a moment, whether he should take the life of the assailant or allow justice Field and perhaps himself to fall a victim to his deadly assault.

Having determined that the killing of Terry was excusable,if Neagle was acting as a private citizen,and that any person killing Terry&thus preserving the life of Justice Field,could not be punished for the act;we must now push our investigations further and determine whether the act of Neagle was justifiable as well as excusable homicide. Justifiable homicide at common law covered that which was committed in the advancement of public justice and under this class fall all cases of homicide committed by officers in the lawful pursuit of their duty, after due notice has been given to the offender to desist from his unlawful acts. Davis v. State,4 S.E.,3I8. Then,if Neagle was acting in his officieal capacity as

a deputy marshal,within his jurisdiction,and without any unreasonable haste,the Killing of Terry was a justifiable act, and Neagle was undoubtedly amenable to the courts of the United States as an officer of those courts.

It,therefore,becomes necessary for us to determine, whether the homicide now in question was committed by Neagle while acting in his official capacity,and while in discharge of the duty imposed upon him by the constitution and laws of the United States; for if he was not then so acting,the act was commited without jurisdiction and he was alone amenable to the state Courts for the consequences of that act. This brings us to the principal point in the discussion which is,how far does the jurisdiction of the Officers of the United States Courts extend,and what are the duties of those offices?

It has been urged by the strict constructionists of the federal constitution,that there is no statute or provision in that constitution which gives to the Marshals and their deputies the right to protect a federal judge, when not within the structure provided for holding a session of the United States Court,and while he is travelling from one place of holding court to another in his circuit. For they argue that the states have through their courts and

officers,the absolute control of the territory of the United States that lies within their boundaries,except where jurisdiction has been conferred by the states on the Nation by the constitution and laws as pursuant thereto. By the constitution, Art. Ist. (Sec. 8) Congress was given exclusive authority to legislate in all cases arising in the district of Columbia and over all places purchased for the erection of Courts,arsenals,magazines,dock-yards, and other needful buildings. But it was never intended by those illustrious patriots and statesmen who framed the great bulwark of American Liberty,that our national judiciray should be confined in its sphere of action to a small portion of the territory which it was designed to govern and protect. While it can be claimed that the authority of the United States Officers to execute their duties on every foot of American soil,is not given by any express grant of the states and the Constitution; nevertheless,subsequent acts of Congress passed pursuant thereto and sustained by the highest tribunals in our land,have prescribed duties and conferred authority upon such courts and officials,and these laws have carried with them all powers essential to execute those duties and carry out that authority. The Statutes have provided that, "It shall be the duty of the

marshall of each district to attend the district and circuit courts when sitting therein, and to execute, throughout the district all lawful precepts directed to him, and issued under the authority of the United States." (U.S.R.S., Sec. 787); that, "the marshalls and their deputies shall have, in each state, the same powers, in executing the laws of the United states as the Sheriffs and their deputies in such states may have, by law in executing the laws thereof." (U.S.R.S., Sec.788.) ; and it is further provided that, "every marshall may appoint one or more deputies. " U.S.R.S., Sec., 780).

These statutes certainly constituted Neagle a peace officer, for inasmuch as the statutes provide that he shall have like powers with the sheriffs in the states who act as peace officers in those states, and was therefore bound to keep the peace of the United States when it was broken by the violent attack on Mr. Justice Field. That under such circumstances or similar ones, there is such a thing as the "peace" of the United States; and that the marshall or his deputies are the proper officers of the government to sustain it, seems to have been definitely settled in Siebold's case (I00, U.S., 37I), where certain judges of election were arrested by United States marshalls for a violation of

certain provisions of the revised statutes of the United States,(Secs 5515,5522) relating to the manner of conducting elections. It was claimed that the marshalls acted without jurisdiction; but the right of the marshalls to keep the "peace" of the United States was clearly sustained in the following terms: "We hold it to be an uncontrovertible principle that the government of the United States may,by means of physical force,exercised through its official agents,execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent; " (Ib. 394) and though Justice Field dissented,he was careful to say: "It was the purpose of the framers of the Constitution to create a government which could enforce its own laws,through its own officers and tribunals,without reliance upon those of the states,and thus avoid the principal defect of the government of the confederation,and they fully accomplished their purpose." (Id.,413)

But from whence do the marshalls and deputy-marshalls receive their authority to execute the laws of the United States,and the decrees of its courts? What department of the government has the power to constitute marshalls and

deputy marshalls as the lawful officers of the government to preserve, protect and defend its constitution laws, and treaties. Surely not the Judiciary department, for it would be contrary to the principles of a republican government to confer on that body which interprets the laws, power of executing them. Surely not the Legislative Department who make those laws and who would thus have to pass an act providing for a person to execute them in each separate case, and would thus have the power of detirmining whether its laws should be executed or not. But the duty of appointing these offic ials must fall within the executive department of the nation, for it is the power and duty of the president "to take care that the laws are faithfully executed." (Const. Art II.); and can it be denied that he has authority to execute those laws throughout the length and breadth of the nation through the person of his officers. This was in fact all that was being done by Neagle while protecting Justice Field on his journey from Los Angeles to San Francisco; and while he was in fact carrying out the laws of the United States in going to and fro between places for holding tribunals, to determine causes arising under the constitution and laws of the United States, just as much as when he sat upon the bench and passed

upon that constitution and those laws. For how can there be any security to the constitutional rights of any person from a national tribunal if the judges who are to hold that tribunal are liable to be subjected to the mob law of a country, and are bound to rely for their protection upon the scanty means of the executive authority of the states to protect them. Clearly it is the duty of the executive department of the nation to protect the judicial department, and thus to promote justice and carry out the grand principles of the government confided to it by the constitution. Therefore, it must have the right to execute its decrees on every spot of American soil by means of Federal Officers and Federal Judges, and it must have the right to protect them while in the lawful service of the United States (Tenn. vs. Davis, 100 U.S., 257); While it must execute those decrees as far as possible without interference with the sovereignty of the state, yet when they come in conflict the law of th United States must be supreme; and in the language of Chief-Justice Marshall in McCullough v. Maryland (4 Wheat, 316); "The government of the United States, then, though limited in its powers, is supreme, and its laws, made in pursuance of the constitution, form the supreme law of the land 'anything in the constitution or laws of any state to the contrary notwithstanding' ". (Id. sec. 402)

It may be said,however,in this case that Marshall Neagle was not appointed by the President to execute the laws of the United States;but that he was appointed by the marshal of the Northern District of California,acting under the orders of the Attorney-General. He did not receive the express sanction of his appointment from the President;and,therefore,was not lawfully constituted to act as a deputy marshall. Nevertheless,the acts of congress have provided for a department of justice with an Attorney-General at its head with powers to control the marshalls and deputy marshalls in their several districts. The specification of the powers must be under the control of the president and can be executed by the Attorney-General as his agent in his direction to the marshall under that section of the Revised Statutes which enacts that,"The head of each department (of the executive)is authorized to prescribe regulations not inconsistent with the laws,for the government of his department and the conduct of its officers." (U.S.R.S,I6I) All rules and regulations established in accordance with this section have the force of law and the court takes judicial notice of them. Long v. Hanson,72 N.E.,I04; Gratiot v. U.S ,4 How.,80;Ex parte Reed,Ioo U.S.,I3; U.S. v. Barrows,I Abb (U.S.),35I. That the President has

the right to delegate his authority, there can be no doubt, for the heads of the various executive departments are but the agents of the President, when they are acting in their official capacity; and it has been held many times in the Supreme Court of the United States that the acts of the head of an executive department are but those of the President. Runkle v. U.S., 122 U.S. 543; Wilcox v. Jackson, 13 Pet. 498, 513; U.S. v. Eliason, 16 Pet 291, 302; Confiscation cases 20 Wall, 92, 109; U.S. v. Farden, 99 U.S. 10, 19; Wolsey v. Chapman, 101 U.S., 755, 769.

The authority of the Attorney-General to appoint marshalls and deputies to execute the laws of the nation having been sustained; we must now determine what protection is afforded to federal officers in carrying out the provisions of the constitution and laws of the United States; and, herein, of the power of the national courts to inquire by Writ of Habeas Corpus into the detention of any prisoner and to discharge him from custody if he is held in violation of the constitution, laws, and statutes.

The right of any person to have a restraint of his liberty inquired into, was a fundamental principle of the common law of England from the earliest times, and became statute law by Magna Charta in the famous words: "We will

sell to no man,we will not deny to any man,either justice or right." Creasy's Eng. Const. Hist.,I35,Note. Howeve owing to the constant aversion of this right during the reigns prior to that of Charles II,this principle was reenacted and a more speedy method of securing that right of liberty was provided for and made final in the famous Habeas Corpus Act (3I Char. II Chapt II.),by which this right was reduced to the standard of law and liberty (II. Story on the Const.,Sec. I34I). This statute has now been incorporated into most , if not all,of the state constitutions,and into the National Constitution in the following terms: "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." (Const. Art Ist. Sec. 9 , Sub. II.)

No reference was made to the granting of this writ in that section of the Constitution which conferred jurisdiction upon the Judicial Department in the following terms: "The Judicial power of the United States shall be vested in one Supreme Court,and in such inferior courts as congress may from time to time,ordain and establish." (Const. Art 3, Sec. I) ; or by the next section which granted that, "The judicial power shall extend to all cases of law or

equity, rising under the constitution, the laws of the United States and treatise made or which shall be made under their authority." (Const, Art. 3 Sec. II). Yet from these simple provisions of our national constitution and the acts of congress passed pursuant thereto, has been spelled out by the Supreme Court a right to grant to officers held in custody by state courts, in violation of the constitution and laws of the United States, a writ of Habeas Corpus to inquire into the cause of their ~~commission~~ committment and to discharge them if improperly confined. We must understand at the outset that these acts are not to be construed as diminishing the commmon law jurisdiction of the courts to issue the writ; but they are rather to be regarded as extending their jurisdiction in granting that writ, in increasing the number of officers who are entitled to it; an in guaranteeing the most speedy inquiry into the cause of commitment and discharge therefrom, if held in violation of the constitution and laws of the United States. (28 Cent. L.J., 187). While we must resort to written law for the authority to issue this writ, yet we may undoubtedly look to the common law for the determination of the meaning of the term Habes Corpus. Ex Parte Bollman, 4 Cranch, (8 U.S. 75).

The provisions of the constitution having left the

right of the National Tribunals to issue the writ of Habeas Corpus in such an imperfect state; the first congress which met after its adoption, feeling the necessity of the security of that right, passed the famous judiciary act of 1789, which 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 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." I. Stat at L. , 82; U.S.R.S. Secs. 751 - 753. This act having been passed by congress during that period when the ide as of the American people were just issuing from that state, into which they had been thrown by the tyrannical oppression of the mother country, of believing that each state should be as near absolute as possible and only such powers should be granted to the national government, as were absolutely necessary to its existence; looking as they did with suspicion uponall powers conferred upon any person not under their immediate control lead to a vigorous

discussion as to how far rights of the national courts should extend in enforcing their decrees upon the state courts. For a time the state courts sustained their authority to act even in opposition to the federal authority. Chrisholm v. Georgia 2 Dall.,419; Comm. v. Corbett,3 Dall., 467. Whatever weight these cases had obtained, they were clearly overthrown by the able argument of Chief Justice Marshall in Cohens v. Virginia (6 Wheat.,264) during which he said: "There are certainly nothing in the circumstances under ahich our constitution was formed, nothing in the history of the times,which would justify the opinion that the confidence reposed in the states was so implicit as to leave them and their tribunals,power of resisting,or defeating,in the form of law,the legitimate measures of the union." (Id.,388) This decision and others have amply maintained the view that where the supervising authority is granted,by the constitution, and acts of congress passed pursuant thereto by the courts of the United States,that they have the power to coerce any state or state official which interferes with the action of any of their officers. Martin v. Hunter's Lessee,I Wheat,304; Elicot v. Piersol,I Pet,328; Osborn v. The Bank, 9 Wheat,739 Thus the judiciary had accomplish-

ed the point that the several decrees and mandates of the national Courts were paramount over those of the state courts when there was a conflict. While it could not under the judiciary act establish its authority to issue the writ of Habeas Corpus to inquire into the commitment of a prisoner held in custody upon a civil or criminal process or execution of a state court for some act done in furtherance of the constitution, laws, and treatise of the United States, and thus to protect the officers delegated to execute the decrees of the nation, nevertheless, it served to place the right of the judiciary to issue the writ upon a firmer foundation which was the basis of further legislation that has lead to the ultimate right of the U.S. Courts to protect its officers while acting under the authority of the constitution and laws of Our Union.

The inadequacy of the judiciary act was finally overcome by the Force Bill of 1833 which provided that the justices of the Supreme Court and Judges of the Circuit Court shouldhave the additional power of granting the writ to prisoners in confinement when they were committed by any authority, or law, "For any act done or omitted to be done, in pursuance of a law of the United States, or any

order,process,or decree,of any judge or court thereof anything in any act of Congress to the Contrary notwithstanding.". 4 Stat . At Large,632; U.S.R.S. Sec. 753. This act wasbrought about by the contemplated failure or the ability of the marshalls and their deputies to execute the decree of the nation during the famous Nullification Troubles. More than twenty years,however, elapsed before this statute came up for interpretation in the Supreme Court in the fugitive slave cases.

When the fugitive slave law was passed and the marshalls were opposed to violent opposition and attack by the tribunals of the state,while executing this obnoxious law, they ought as a protection the provisions of the 7th Sec. of the Force Bill. Though that act was passed to prevent certain Southern States from nullifying the acts of Congress,and to protect the officers in the execution of those statutes from state violence; yet it has been upheld by the Supreme Court in several great constitutional causes as not only a protection to Revenue Officers during the pending difficulties,but as a permanent statute and one extending to all officers unlawfully detained by state authority.

This point came up for decision in the U.S.Circuit for the Easter District of Penn.,in Ex Parte Jenkins (2 Wall Jr. 521;S. C. 3 A.N. Law Reg.O.S.,144.), where certain mar-

shalls had been arrested for an assault and battery committed while seeking to arrest a fugitive slave,and they had sued out a writ of Habeas Corpus to the Circuit Court. It was forcibly argued that the marshall could not be discharged under the provisions of the Judiciary Act,but justice Grier discharged them under the provisions of the seven sections of the Force Bill. The marshalls were agin arrested by Thomas the fugitive slave,upon a capias for the same offence,and they were again brought up on a writ of Habeas Corpus and discharged by Judge Kane . 2 Wall. Jr. ,53I. Thereupon,they were arrested a third time by a bench warrant issued by the county court, under an indictment found by the grand jury for assault with an intent to kill,based on the same facts,and they were liberated a third time by judge Kane,who vigorously denied the doctrine urged by certain state rights men,that no authority had been given to the judges of the circuit court by an act of congress, to discharge a marshall held for a crime committed within a state while in the lawful exercise of his duty. Passing over the similar case of U.S ex Rel. v. Morris, (2 Am. L.Reg. O.S.,348),we come to the case of Thomas v. Crossin (3 Am. Reg. 207),which was the hearing in the Penn Sup. Ct.,of a motion for an attachment against the sheriff

for failure to bring in the bodies of the deputy marshalls, discharged by the United States Courts in the Jenkins Cases, (Supra); and in which Judge Lewis uttered a vigorous dissent to this decision on the ground that the Force Bill could not by any method of construing Statutes, be extended beyond the limits for which it was intended by congress, and therefore could only be extended to a case where a state had refused to obey an act of congress. This has been the only dissenting voice to the construction which the Circuit Court put upon this provision of the Force Bill. Whatever favor this opinion obtained among the ardent advocates of State Rights, it has been completely overcome by the later decisions of the Supreme Court. Abelman v. Booth, and U.S. v. Booth, 2I How. 506; U.S.v. Tarble, I3 Wall. 397; Ex Parte Seibaold, I00 U.S., 37I; Tenn. v. Davis, Id. 257; Robb v. Connolly, III U.S., 624; Ex Parte Royal, II7 U.S., 24I.

The Booth cases Supra arose under the fugitive slave law of I850. Booth had been arrested by ABelman, a United States Marshall, under a proper warrant for aiding and abetting a fugitive slave to escape, and had sued out a writ of Habeas Corpus from the State Court, and was discharged on the ground that the fugitive slave law was unconsti-

tutional. Abelman thereupon sued out a writ of error to the United States Supreme Court and it was sustained on the ground that if the Judicial authority passed upon the acts of congress had been reserved to the states, then no offence against the laws and constitution, of the United States could be punished without the consent of the state courts, and, therefore, no protection was in fact given for any act done under them.. This issue was met by ChiefJustice Taney as it had been earlier met by Chief Justice Marshall and he pointed out the fact that many of the rights of soverei nty which the states had possessed were ceded to the general government when the constitution was adopted; and that, therefore, as to those things the national power should be supreme, and "strong enough to execute its own laws, by its own tribunals, without interruption from a state or state authorities."

The case of Tenn. v. Davis, Supra, is one of the most interesting cases decided upon the question ofthe right ofthe United States Courts to grant the writ of Habeas Corpus. Davis had been indicted in the state court for murder, and, before his trial, was permitted to remove the proceedings to the circuit courton the ground that he had committed no crime, but had simply been acting in self de-

fence while in the performance of his duty as an internal revenue collector. U.S.R.S.,Sec,643. The motion of the state Court to reman d was denied and an able opinion by Justice Strong,in which he held that the judicial power of the nation as set forth in the constitution (Art. 3rd. Sec 2) " embraces alike civil and criminal cases arising under the constitution and its laws; "and maintaining the right of the national tribunals to execute the laws of the Union in opposition to the laws of the state in the following terms: "The United States is a government with authority extending over the whole territory ofthe Union,acting upon states and people of the state. While it is limited in the number of its powers,so far as its sovereignty extends it is supreme. No state government can exclude it from the exercise of any authority conferred upon it by the constitution,obstruct its authorized officers against its will,or withhold from it,for a moment the cognizance of any statute which that instrument has committed to it." (Id. 263) Affirmed in Davis V. S. Carolina,I07 U.S., 597.

Thus the right of the National Tribunals to discharge their officers held in custody by the state courts, or an act committed under their authority and in obedience to

the constitution and the laws of the UnitedStates having been settled; it remained for the congress to take but one step farther and extend this power to the granting of 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." Which wastaken by Congress Feb. 5th, I867, and with the revision of the statutes in I870, the power to grant the writ of Habeas corpus was complete.

Two new questions have arisen in the later decisions as to whether the power of the federal courts to issue the writ of Habeas Corpus is discretionery or not; and whether the judges thereof can exercise that right and discharge a person held in custody under state authority before his cause has been heard in the state tribunal, and thus a single judge be enabled to pass upon the facts involved and discharge the prisoner without a jury trial. Ample authority has answered these questions in the affirmative, and has sustainedthe right of the national courts to issue the writ at any time, either before or after trial in a state court. or they may refuse to do so at their discretion. Robb v. Connolly, III U . S. ,624; Ex Parte

Royal, II7 U.S. 24I; Ex Parte Bridges, 2 Woods 498; Ex Parte Fonda, II7 U.S. 5I6; Ex Parte Hanson, 28 Fedr., I27.

At last in support of the propositions stated and cases cited the Supreme Court have, in passing upon the case which is the subject of our remarks, and granting to deputy Marshall Neagle a release from confinement on a writ of habeas Corpus, sustained the right of any officer while executing his duty under the authority of the constitution, laws, and treatise of the national government, to arrest and, if need be, to kill an offender; and have upheld the doctrine that there is a national "peace" which extends to every spot of American territory. Cunningham v. Neagle, decided April I4th, I890. 40 A. L.J., 367. The great right of liberty which has always been dominant in the Anglo-Saxon race, has thus found a firm basis; and may we hope that the national judiciary now just started on the second great era of its existence may maintain its present position, and never again allow that firm foundation to be shaken.

Burke A. Smith