tend to the case of commitments by the circuit court.

As to the power in general, of issuing the great remedial writ of Habeas Corpus, I contend that it is possessed by this court, as a power incident to its existence and nature as a supreme court of record. This power, I contend, is conferred by the common law. That every court, however created, possesses necessarily certain incidental powers as a court, cannot be denied or doubted. We can no more form an idea of a court without incidental powers, than of a stone without weight, or a surface without extension. The practice of every day proves the correctness of this theory. Does this court possess no powers but those expressly given to it by statute or the constitution? Can it not protect itself from insult or outrage? Can it not inforce obedience to its immediate orders? Can it not imprison for contempts committed in its presence? In cases where it has original jurisdiction, can it not imprison a witness for refusing to attend, when summoned, or for refusing to answer? Can it not punish jurors, by fine or imprisonment, for refusing to attend, or for contumacy or other improper conduct after they have attended? No doubt can be entertained of its possessing these powers. Whence does it derive them? From the constitution? No: the constitution is silent on the subject. From the acts of Congress? No, the acts of Congress are equally silent. Whence then? I answer, from the common law.

I do not wish, may it please your honors, nor intend, to agitate here a question which has been much discussed in this country, and very little understood, respecting a common law jurisdiction in the courts of the United States, to punish offences against the government of the United States. The question is unnecessary. It has no connection with the present case. The power to punish offences against the government has never been considered, and cannot be considered, as an incidental power, in any court. But I contend that the power of issuing writs of Habeas Corpus, for the purpose of relieving from illegal imprisonment, is one of those inherent powers, bestowed by the law on every superior court of record, as incidental to its nature, for the protection of the citizen.

It being clear then that incidental powers belong to this in common with every other court, where, I ask, are we to look for the definition, the enumeration and the extent of those powers? I answer in the common law: in that code from whence we derive all our legal definitions, terms and ideas, which forms the substratum of all our juridical systems, of all our legislative and constitutional provisions. I ask, may it please your honors, whether it be possible to move a single step in any judicial or legislative proceeding, to expound, to understand, or to execute any part of our statutes or of our constitution, without having recourse to the common law? The constitution uses, for instance, the terms "trial by jury," and "Habeas Corpus." How do we ascertain what is meant by these terms? By reference, I answer, to the common law. This court has power, in some cases, to summon jurors, and examine witnesses. If an objection be made to the competency of a witness, or a juror be challenged, how do you proceed in order to ascertain the competency of the witness or the juror? You look into the common law. The common law, in short, forms an essential part of all our ideas; it has grown into the very constitution of our minds; and we can no more think on legal subjects without referring to it, than we can see without eyes, or live without breathing.

What then does the common law, this great interpreter of our constitution, this guide of our legal thoughts, this mighty and beneficent protector of our rights and liberties; what does she say respecting the power of issuing the great remedial and constitutional writ of Habeas Corpus? She informs us, with an authoritative voice, that this guardian power belongs incidentally to every superior court of record—that it is part of their inherent rights and duties, thus to watch over and protect the liberty of the individual.

Accordingly we find that the court of common pleas, in England, though possessing no criminal jurisdiction of any kind, original or appellate, has power to issue this writ of Habeas Corpus. This power it possessed by the common law as an incident to its existence, before it was expressly given by the Habeas Corpus act.

This appears from Bushell's case, reported in Sir Thomas Jones, 13, and stated in Wood's case, 3 Wilson 175, by the chief justice, in delivering the opinion of the court.

Bushell's case was shortly this. A person was indicted at the Old Bailey in London, for holding an unlawful conventicle. The jury acquitted him, contrary to the direction of the court on the law. For this some of the jurors and Bushell among them, were fined and imprisoned by the court at the Old Bailey. Bushell then moved the court of common pleas for a writ of Habeas Corpus, which after solemn argument and consideration was granted by three judges against one. Bushell was brought up, and the cause of his imprisonment appearing insufficient he was discharged.

This took place before the Habeas Corpus act was passed, and is a conclusive authority in favor of the doctrine for which we contend. Wood's case, 3 Wilson 175, and 3 Bac. Abr. 3. are clear to the same point.

Whence does the court of Common Pleas derive this power? Not from its criminal jurisdiction; for it has none. Not from any statute; for when Bushell's case was decided there was no statute on the subject. Not from any idea that such a power is necessary for the exercise of its ordinary functions; for no such necessity exists or has ever been supposed to exist. But from the great protective principle of the common law, which in favor of liberty gives this power to every superior court of record, as incidental to its existence.

The court of chancery in England possesses the same power, by the common law, as appears from 3 Bac. Abr. 5. This is a still stronger illustration of the principle; for the court of chancery is still further removed, if possible, than the court of common pleas, from all criminal jurisdiction, still more exempt from the necessity of such a power, for the exercise of its peculiar functions.

The court of exchequer also, as appears from the same authorities, though wholly destitute of criminal jurisdiction, possesses the power of relieving, by Habeas Corpus, from illegal restraint.

Hence it appears that all the superior courts of record in England are invested by the common law with the beneficial power, as incident to their existence. The reason assigned for it in the English law books is, that the king has always a right to know, and by means of these courts to enquire, what has become of his subjects. That is, that he is bound to protect the personal liberty of his people, and that these courts are the instruments with which the law has furnished him for discharging this high duty with effect.

And let me ask, may it please your honors, whether the same reasons do not apply to our situation, and to this court? Have the United States, in their collective capacity as sovereign, less right to know what has become of their citizens, than the king, or government of England to enquire into the situation of his subjects? Are they under an obligation less strong, to protect individual liberty? Have not the people of this country as good a right as those of England, to the aid of a high and responsible court for the protection of their persons? Is our situation less advantageous in this respect, than that of the English people? Or have we no need of a tribunal, for such purposes, raised by its rank in the government, by its independence, by the character of those who compose it, above the dread of power, above the seductions of hope and the influence of fear, above the sphere of party passions, factious views, and popular delusion? Of a tribunal whose members, having attained almost all that the constitution of their country permits them to aspire to, are exempted, as far as the imperfection of our nature allows us to be exempted, from all those sinister influences that blind and swerve the judgments of men; have nothing to hope, and nothing to fear, except from their own consciences, the opinion of the public, and the awful judgment of posterity? It is in the hands of such a tribunal, and of such a tribunal alone, that in times of faction or oppression, the liberty of the citizen can be safe. Such a tribunal has our constitution created in this court; and can it be imagined that this wise and beneficent constitution, intended to deny to the citizens the invaluable privilege of resorting to this court, for the protection of their dearest rights.

On this ground then I might safely rest the power of this court, to grant the writ of Habeas Corpus; but fortunately we have another, not stronger indeed, but perhaps less liable to question. For I contend, in the second place, that Congress has expressly conferred this power on the supreme court.

In the act of September 24th, 1789, commonly called the judiciary act, section 14, Congress, after organizing various courts of the United States, and among them the supreme court, goes on to enact "that all the before mentioned "courts of the United States, shall have "power to issue writs of *scire facias*, "*Habeas Corpus*, and all other writs not "specially provided for by statute, "which may be necessary for the exercise of their respective jurisdictions, "and agreeable to the principles and "usages of law."

This section, according to its true grammatical construction, and its apparent intent, contains two distinct provisions. The first relates to writs of Habeas Corpus and Scire Facias; the second to such other writs as the courts might find necessary for the exercise of their jurisdiction.

As to writs of Scire Facias and Habeas Corpus, which are of the most frequent and the most beneficial use, Congress seems to have thought it proper to make a specific and positive provision. It was clearly and obviously necessary that such writs should be issued, not merely for aiding the courts in the exercise of their ordinary jurisdiction, but for the general purposes of justice and protection. The authority therefore to issue these writs is positive and absolute; and not dependent on the consideration whether they might be necessary for the ordinary jurisdiction of the courts. To render them dependent on that consideration, would have been to deprive the courts of many of the most beneficial and important powers which such courts usually possess.

But the legislature foresaw that many other writs might in the course of proceedings be found necessary, for enabling the courts to exercise their ordinary jurisdiction; such as subpoenas, writs of venire facias, writs of certiorari, fieri facias, and many others known to our law. To attempt a specific enumeration of these writs, might have been productive of inconvenience: for it any had been omitted, there would have been doubts of the power to issue them. Congress, therefore, instead of a specific enumeration, wisely chose to employ a general description. This description is contained in the words "all other writs—which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law."

The true grammatical construction of the sentence accords with this construction. The words of restriction or description, "which may be necessary for the exercise of their respective jurisdictions," &c. stand here as a relative, and must refer to the next antecedent. There are two antecedents. 1. writs of scire facias and Habeas Corpus—and 2. all other writs: and 'all other writs" make the next antecedent, to which, of course, the relative terms "which may be necessary, &c." must relate and be confined. These words, therefore, cannot, either in grammatical construction or according to the plain object of the legislature, be considered as restricting the grant of power in the first part of the sentence; but merely as explaining the extent of the power given in the second part.

Taking it then as clear that this section bestows on the supreme court the power to grant writs of Habeas Corpus without restriction, it is next to be enquired whether this power extends to the application now before the court. And here it is to be remembered that the term 'Habeas Corpus' is a generic term, which embraces all sorts of writs of Habeas Corpus, as completely as could be done by the most particular enumeration; in the same manner as the term 'tree' or the term 'animal,' embraces all sorts of trees or animals, how much soever they may differ among themselves. There are various writs of Habeas Corpus, which differ entirely from each other, in their nature and their objects; but they are all writs of Habeas Corpus, and the power extends to all or any of them. The great remedial and constitutional writ of Habeas Corpus, to relieve from illegal imprisonment, is surely as much a writ of *Habeas Corpus*, as completely embraced by the generic term used in the statute, as a writ of Habeas Corpus Cum Certa to remove a suit from an inferior court; or as any other of those writs of Habeas Corpus which this section, according to every construction, gives power to issue.

It is, moreover, a rule in the construction of statutes, as of every other written instrument, that the whole instrument is to be taken together, and all its parts considered as explanatory of each other. This rule extends even to different statutes, made at remote periods, where they relate to the same subject matter; because the legislature, in making the subsequent statutes, is correctly supposed to have in view the provisions and expressions, and to refer to them. But its application to different parts of the same statute, which treat of the same subject, is much more clear and strong.

The 33d section of this statute contains provisions on the same subject with the 14th section, which I rely on as strongly supporting my construction. That section, after providing for arrests and commitments, goes on to enact, that "upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death; in which cases it shall not be admitted, but by the *supreme* or a circuit court, or by a justice of the supreme court, or a judge of the district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usages of law."

It may well be contended that by this section the power to bail, and of course to issue writs of Habeas Corpus, is expressly given to the supreme court. The words, "who SHALL use their discretion therein," are certainly strong enough to convey a grant of power. But admitting this to be doubtful, the provision amounts to a clear and positive declaration, that the legislature considered the supreme court as having this power, under the former provisions of the act. It speaks of the supreme court as possessing the power, confines it, in certain cases, to that court and some other enumerated authorities; and directs on what principles it shall be exercised. Surely if there be a doubt concerning the meaning of the legislature, in the 4th section, this express declaration in the 33d section of what it meant, must remove the doubt.

There is a subsequent clause in the 14th section itself, which has a very strong bearing upon this construction. That section, after giving power to the courts, to issue writs of Habeas Corpus, and others, in the words already quoted, goes on to add these words, "And "that either of the justices of the su"preme court, as well as the judges "of the district courts, shall have pow"er to grant writs of Habeas Corpus, "for the purpose of enquiring into the "cause of commitment." This is as plain and positive a description of the writ for which we now apply, the writ of Habeas Corpus ad subjiciendum as if it had been named in technical terms. The power to issue this writ is expressly given, in the same section, and in the next sentence, to the individual judges of this court. Can it be imagined that the legislature intended to give to each judge singly a power which it had denied to the court, in its collective capacity? That it confided more in the individual members of the court, than in the court itself? That it considered the weight, dignity, character and independence of each individual member, as a more firm barrier against oppression, than those of the tribunal itself, sitting for the exercise of the highest functions known to our law? Surely so great an inconsistency ought not to be lightly attributed to the legislature! Surely a doubt about construction, even if much more strong, should not be allowed to produce such effects!

Let it be also remembered, may it please your honors, that the statute now under consideration, is, in this part of it, a remedial, a beneficial statute; and that by one of the best established maxims of our laws, such statutes are to be construed liberally, in favour of liberty. When this consideration is added to those, which arise out of the case, I hope and trust that no doubt can remain, concerning the correctness of that construction for which we contend.

(Mr. Harper's remarks to be concluded in our next.)

"Letters from Berlin, 28th Nov. received here (Paris Dec. 7) this instant' announce a first engagement, in Prussian Poland, between the French and Russians, in which the latter have been most horribly beaten, and completely routed, and have lost a world of men in killed and wounded. The French are received with enthusiasm by the Poles; and by the 1st of Dec. there will be 100,000 men of that nation incorporated into our armies. Letters from the frontiers of Poland say, that already the Russian columns are retreating by long marches, in consequence of the good reception which the French have given them. These details come from a good source."

From Rio Janeiro.

The ship Criterion, capt. Chase, has arrived at Nantucket, from Rio Janeiro, which place he left the 27th Nov. Capt. C. informs, that admiral Sterling, touched at that place about the middle of November on his way to the river Plate; in coming out of Rio, capt. C. spoke an English vessel in 8 days from the fleet off Montevedo, who informed him that the English had possession of a small place called Montenada. It was said sir Hope Popham was to be sent home under arrest for disobedience of orders.

HAGUE, Dec. 17.

WE, Louis Napoleon by the Grace of God and the Constitution of the Kingdom of Holland, have decreed and do decree as follows:

Art. I. No vessel shall depart until further orders from the ports of the kingdom without special authority from us, which shall be granted only after a warrantee and security have been given that the cargo shall not be discharged at any enemy's ports. The authorization for sailing shall be signed with our hand.

Art. II. All vessels entering any of the ports of the kingdom, shall be immediately arrested, without the possibility of being released unless by special authority from us, and signed with our hand.

Art. III. Every fishing boat shall be examined before leaving and after returning into port by the police and custom house officers.

Art. IV. No fishing boat shall be permitted to sail out unless the master has previously made oath that he will have no voluntary communication with any ships or vessels whatever, or if forced thereto, to declare it without fail.

Art. V. The postmasters and other officers in their employ are responsible for all letters coming from or going to England. They will remit them instantly to the minister of justice and police.

Art. VI. Our ministers are charged with the execution of the present decree, &c.

LAST OF MIRANDA!

Accounts from Trinidad, as late as the 26th of December, state, that Miranda's ship the Leander, had been libelled, for the wages of the crew, and was to be sold on the 14th January.

By virtue of an order of the Orphan's court of Prince George's county the subscriber will expose to public sale at the residence of the subscriber all the personal estate of Wilkinson Brashears, late of Prince George's county, deceased, consisting of one Horse, Cattle, Sheep, and Hogs, some Bacon, Pork, and plantation utensils. The terms of sale are six months credit for all sums above ten DOLLARS and all sums to the amount of Ten dollars and under for cash, the purchaser giving bond and security with interest from the day of sale. The sale to commence on Monday the 9th day of March next at 11 o'clock.

JOHN BRASHEARS, Administrator.

February 18—6t

This is to give notice, That the subscriber of Prince George's county and state of Maryland, hath obtained from the Orphans' court of said county, letters of administration on the personal estate of Richard Cramphin late of said county deceased. All persons having claims against the said deceased are hereby warned to exhibit the same, with the vouchers thereof to the subscriber on or before the 10th day of September next, they may otherwise by law be excluded from all benefit of the said estate. And all persons indebted to the said deceased are requested to make immediate payment to the subscriber.

Given under my hand this 12th day of February, 1807.

THOMAS BOWIE, Admr. of Richard Cramphin.

Feb. 18—w6t

Robert Welford,

Is now opening, in Bridge Street, a few doors below High Street,

A Choice and Fashionable Assortment of
LONDON, BIRMINGHAM, AND SHEFFIELD HARDWARE, CUTLERY, JAPANNED GOODS, &c. &c.

Which he will sell at very reduced prices, Wholesale or Retail, for cash, viz.

Duck guns, half stocked, brass mounted chequer breech, roller locks, 4 feet 6 inches barrel, and 3 4 to 7-8 bores.
Do. do. as above, but 5 feet in barrels.
D. do. elegantly finished barrels and stocks with skeleton roller locks, and handsomely engraved barrels from 4 feet, 6 inches to 5 feet, 3 4 to 7 8 bores princess metal mounting.
Bird guns stub twist barrels, skeleton roller, locks, and otherwise highly finish'd with Steel, tentabia, and other mountings.
Do. do. common and low priced.
Elegant Japanned Tea Trays and Waiters, with gold borders and centres.
Common do. do.
Elegant Japanned Fenders, scarlet and black, with rich borders.
Brass do.
Elegant Scarlet and Cream Coloured Plate Warmers, with rich borders and centres.
—— —— and black japanned Bellows, Morocco leathered.
Highly finished Pistols, in cases complete.
Common Holsters.
Pocket Pistols, good.
Elegant Plated Mantle Lamps, with one and two branches.
——Plated and Silver Castors, with rich cut glass.
Common do.
Highly finished Case Hardened Shovels and Tongs with Pokers.
Common do.
Highly finished Ivory Handled Knives and Forks.
—— —— Bone do. do.
—— —— Pen and Sportsman's Knives
Wedgwood Pitchers, with plated and gilt Rims
Elegant gilt mounted Small Swords, Hangers and Dirks.
—— Steel do. do. do.
Epaulettes, common and good.
Satin Wood and Mahogany Knife cases, &c.

It is R. W's intention to remain here but a few weeks.

George Town, Feb. 12 1807—3t

The sale of BARWISE'S property owing to the badness of the weather has been postponed to this day at 11 o'clock, at which time it will recommence if fair, if not at the same hour next fair day.

February 18.

Extract from the "Act for licensing and regulating auctions in the city of Washington."

"*Provided always*, That the license of auctioneer shall, after the expiration of the first year, be annually let by the Mayor, by public advertisement, to the highest bidder, on approved security according to the provisions of this act; and the person or persons thereupon licenced, shall in manner aforesaid, pay to the treasurer for the use of the city such further additional rate per cent. on the amount of all sales made by him or them, as he or they shall have publicly bidden or offered to pay for the said licence of an auctioneer."

I shall attend at Myer's Hotel, on Pennsylvania Avenue, on Monday the 23d inst. to let to the highest bidder, according to the provisions of the aforesaid act, the places of two auctioneers for the ensuing year, at the hour of eleven o'clock in the forenoon.

ROBERT BRENT,
Mayor.

February 18—3t.

PUBLIC SALE.

BY order of the Orphan's court of Prince George's county, will be exposed at Public Sale, to the highest bidder, at the farm lately occupied by Mr. Richard Cramphin, and at his late dwelling in the town of Bladensburg, on Tuesday the 10th day of March next, if fair, if not the next fair day.

All the Personal estate

of the said deceased (except the crop of Tobacco) consisting of a number of valuable servants, among whom are some excellent house and kitchen servants, the stock of horses, two of which are very pleasant saddle horses, mules, cattle, sheep and hogs, plantation utensils of every kind, about 160 barrels of corn, 150 bushels of clean rye, upwards of 20,000 weight of hay, a large crop of well saved straw, &c &c. Likewise the unexpired term in a lease for 150 acres of land, granted on the 31st day of May 1714 for ninety nine years, being six years after the 31st day of May next. This property lies about one mile west of Bladensburg, directly on the old road to George-town and contiguous to the fine property of Wm. D. Digges. The improvements are sufficient for the accommodation of a family of middling size and for the advantageous cultivation thereof; there are twenty six bushels of wheat seeded upon it and about 8 or 10 acres in thrifty clover, and a sufficiency of wood it is believed for its support—a further description is deemed unnecessary, as it is presumed that those who wish to buy will view the property previous to the sale. An indisputable title will be given. And at the dwelling in Bladensburg, a variety of articles of Household & kitchen Furniture, several volumes of valuable books, prints, maps and other articles too tedious to mention. The sale will commence on the farm, at 10 o'clock in the morning and continue from day to day, till all is sold. Terms of sale are a credit of twelve months for all sums above ten pounds, the purchaser or purchasers to give bond, with two good and sufficient securities, carrying interest from the day of sale, and for all purchases to the amount of ten pounds and under the cash is to be paid. No property will be delivered until previously paid, or bonded for as above.

THOMAS BOWIE,
Administrator of Richard Cramphin.

February 12—9t