the section requiring escaped slaves to be returned to their masters, Art. IV, § 1, cl. 3, was held by Chief Justice Taney in *Scott v. Sandford*,[1773] to show conclusively that such persons and their descendants were not embraced within the term "citizen" as used in the Constitution. Today this ruling is interesting only as an historical curiosity.

Clause 2. 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.

IN GENERAL

This clause is the only place in the Constitution in which the Great Writ is mentioned, a strange fact in the context of the regard with which the right was held at the time the Constitution was written[1774] and stranger in the context of the role the right has come to play in the Supreme Court's efforts to constitutionalize federal and state criminal procedure.[1775]

Only the Federal Government and not the states, it has been held obliquely, is limited by the clause.[1776] The issue that has always excited critical attention is the authority in which the clause places the power to determine whether the circumstances warrant suspension of the privilege of the Writ.[1777] The clause itself does not specify, and although most of the clauses of § 9 are directed at Congress not all of them are.[1778] At the Convention, the first proposal of a suspending authority expressly vested "in the legisla-

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[1773] 60 U.S. (19 How.) 393, 411 (1857).

[1774] R. Walker, The American Reception of the Writ of Liberty (1961).

[1775] See discussion under Article III, Habeas Corpus: Scope of Writ.

[1776] Gasquet v. Lapeyre, 242 U.S. 367, 369 (1917).

[1777] In form, of course, clause 2 is a limitation of power, not a grant of power, and is in addition placed in a section of limitations. It might be argued, therefore, that the power to suspend lies elsewhere and that this clause limits that authority. This argument is opposed by the little authority there is on the subject. 3 M. Farrand, The Records of the Federal Convention of 1787 213 (Luther Martin ed., 1937); *Ex parte* Merryman, 17 Fed. Cas. 144, 148 (No. 9487) (C.C.D. Md. 1861); *but cf.* 3 J. Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution 464 (Edmund Randolph, 2d ed. 1836). At the Convention, Gouverneur Morris proposed the language of the present clause: the first section of the clause, down to "unless" was adopted unanimously, but the second part, qualifying the prohibition on suspension was adopted over the opposition of three states. 2 M. Farrand, op. cit., 438. It would hardly have been meaningful for those states opposing any power to suspend to vote against this language if the power to suspend were conferred elsewhere.

[1778] *Cf.* Clauses 7, 8.