

Samuel S. Boston

vs

Leah Boston & others

Full Bench

Opinion

Bowie C. J.

To be reported

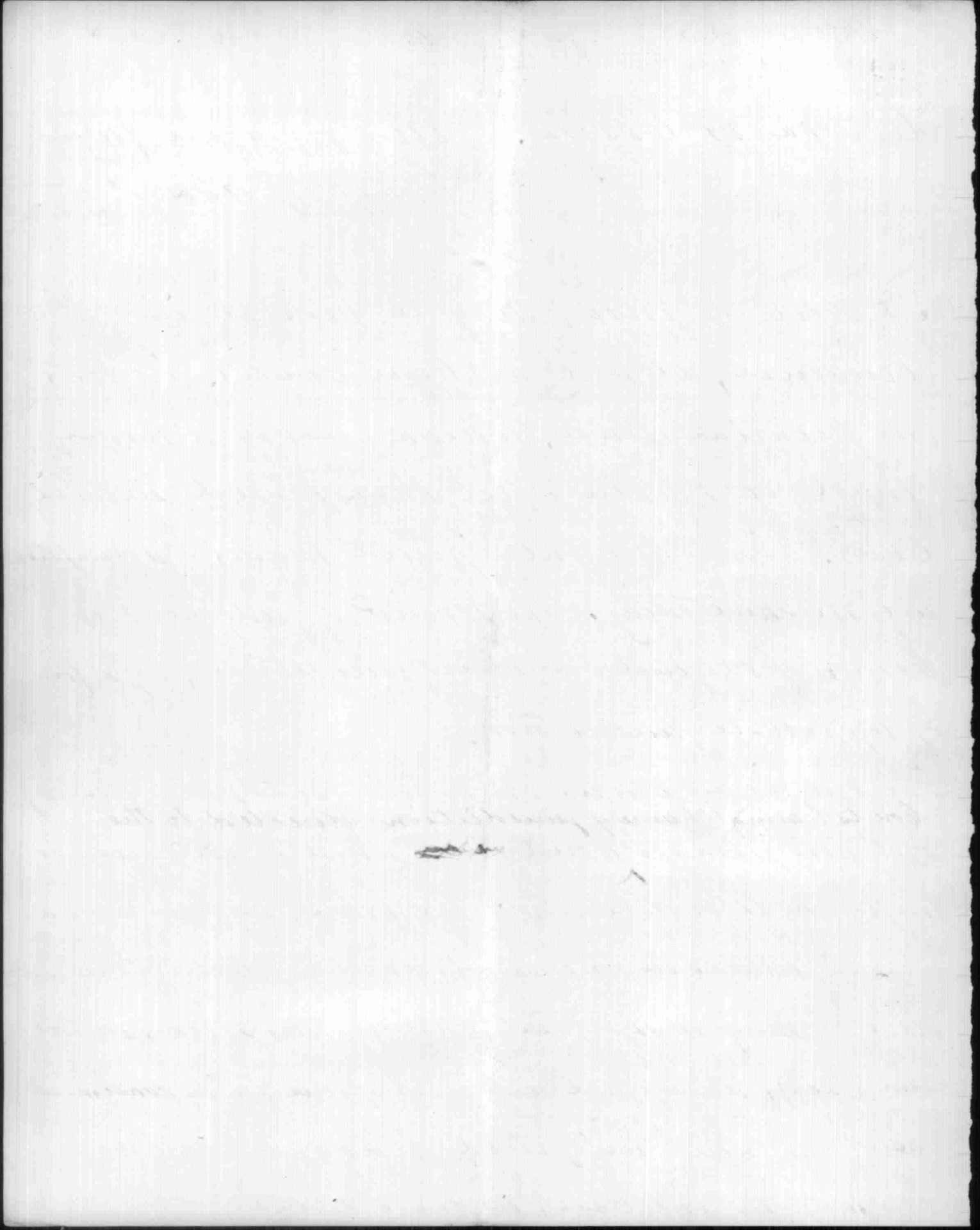
Filed July 17th 1866

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Costa vs Costa. } Error from the Circuit
Court of Balt. City.

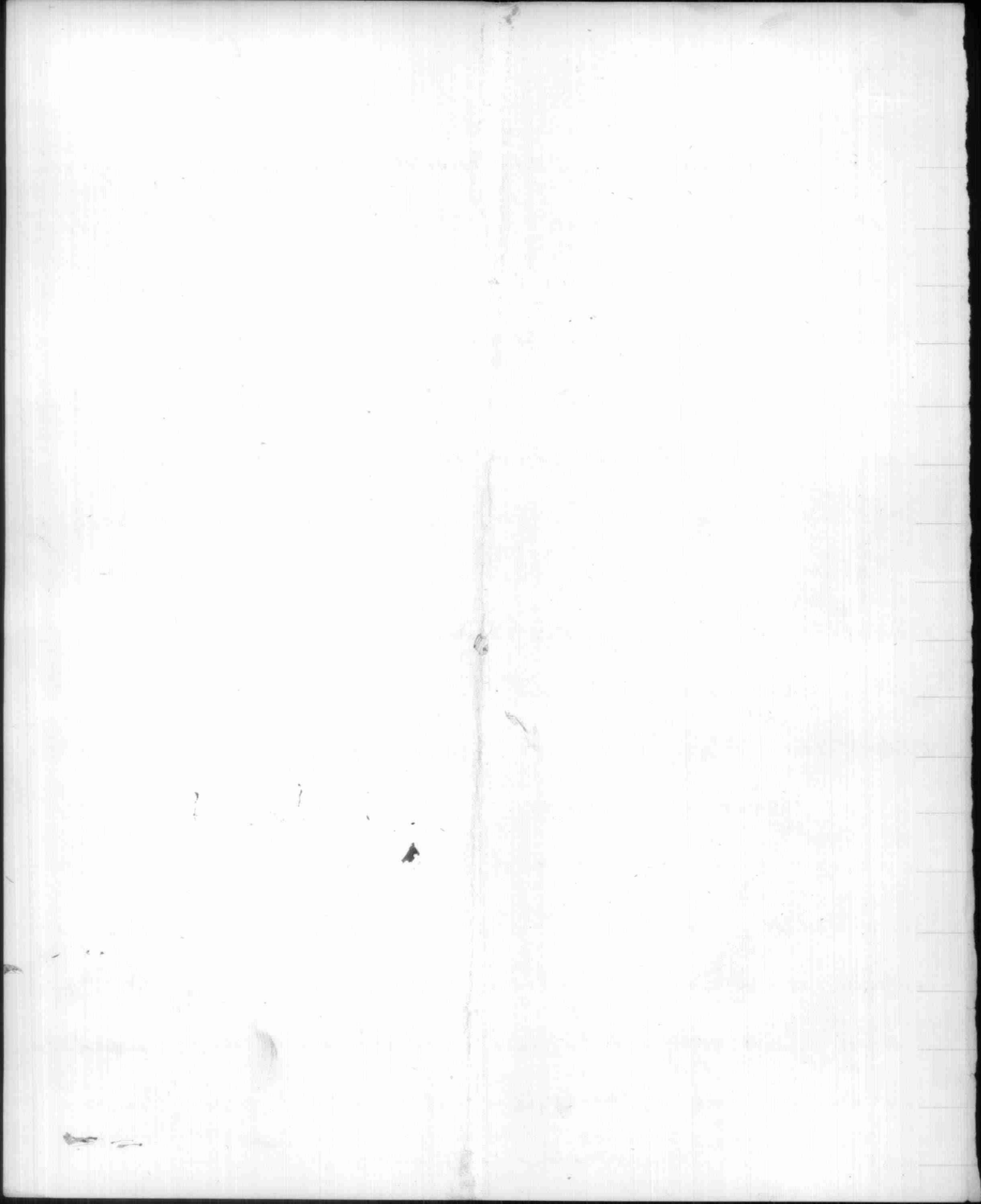
A writ of Error, may be brought in Criminal, as well as Civil Causes. It has no peculiar power, which gives it a wider range, or greater effect, than ^{an} appeal, in ^{the latter} ~~civil~~ ^{cases}. They are but different modes of accomplishing the same thing:—the review of judgments of Courts of original & inferior jurisdiction, by a Court of Appellate jurisdiction.

The one is by a writ originally issued out of Chancery, Courts having Chancery jurisdiction directed to the but now from the Court ~~of~~ whose alleged error is proposed to be reviewed; the other, by prayer for an appeal, entered ^{within} in the time and ^{in the} manner prescribed by law and it may be safely said, that in this State, in all Civil Cases, an appeal and writ of Error lie "in consensu Casu" A final and final judgment is as necessary in one case, as the other.



Admit ~~and final~~ judgment is ~~unlawful~~ to the rule 2.
As the other - D. R. 13. 79.

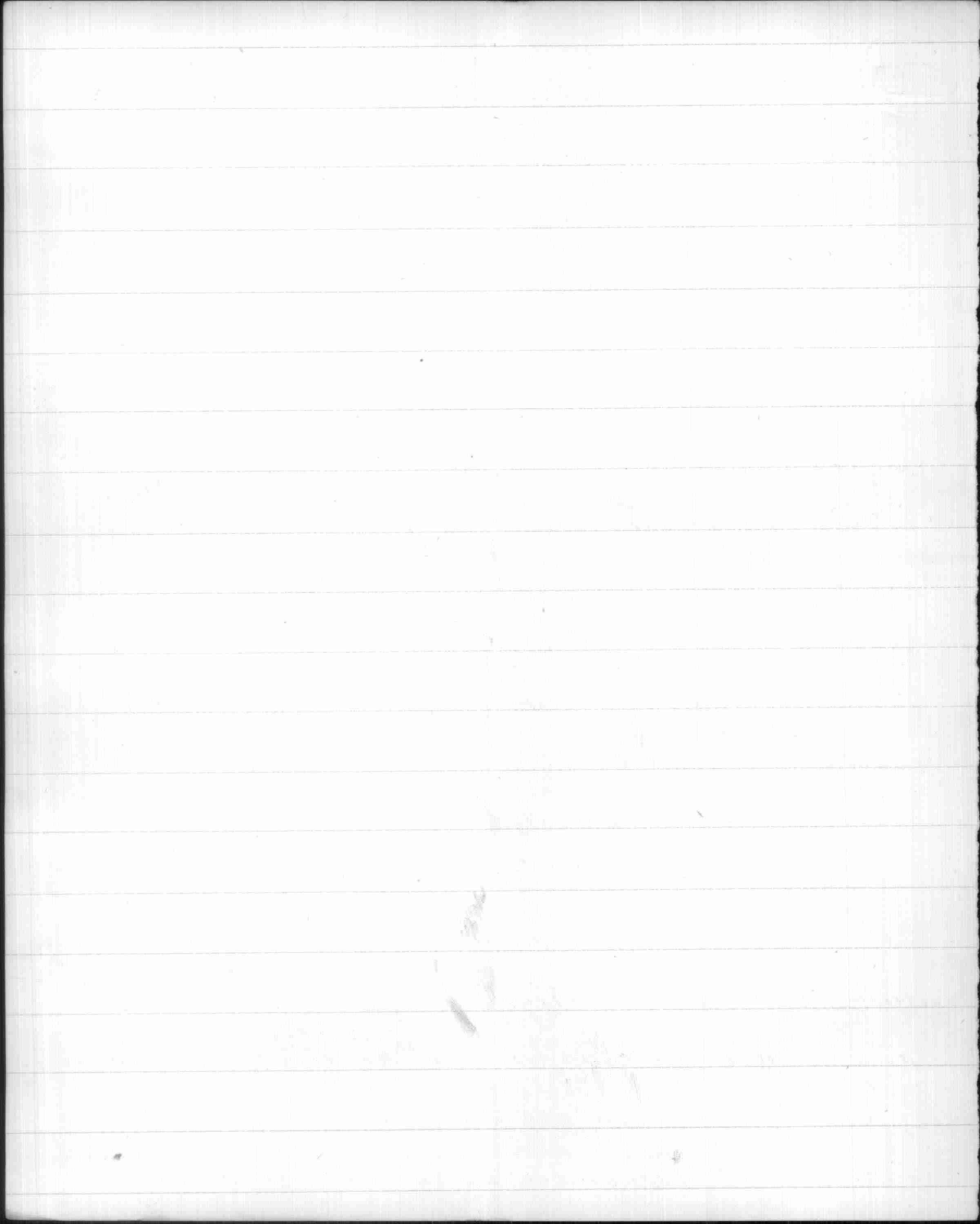
In the U.S. Case of the Matter of the Petition of
Saml. S. Costin decided by this Court at the
(Reports in 24 Md. Rep. 3 L.)
April Term 1845, it was held, that the ~~order~~
~~proceedings~~ of a judge or Court, upon a petition
for a Habeas Corpus, could not be a subject of
Appeal, because ~~it~~ was not in legal acceptance,
"a judgment or determination of any Court of law,
in any Civil Suit or action", from which
alone, appeals would lie. This decision was
founded on a similar ruling in the Case of
Bell vs The State 4 Gill 314. in which this
Court declared, that the writ of Habeas Corpus
was a proceeding, summary in its character;
addressed to the discretion of the judge, or tribunal
to whom the application was made, so far as the
discharge of the party is concerned; a proceeding,
where in many cases, the evidence, upon which the judg-
ment is founded, cannot be presented to the Appellate
Court and is not final and conclusive."



That decision, condemned the reasoning of the
 adjudged cases in England for a Century past;
 was several years subsequent to the Case of
 Holmes & Jemison 14 Pet. relied on by the Appellants,
 and must be assumed to have been settled law,
 since the Court did not deem it necessary
 to refer to authorities to sustain their Conclusion.

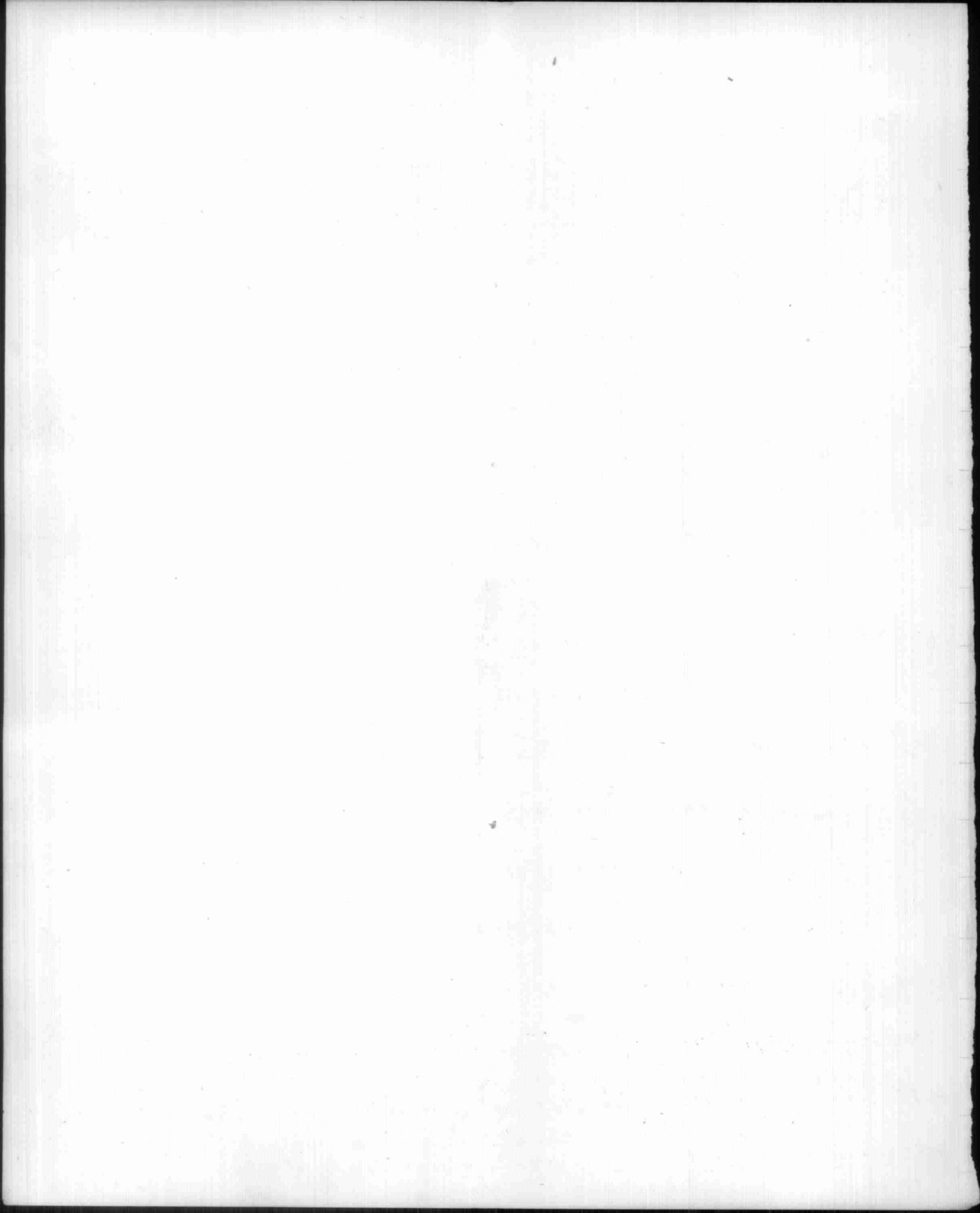
The force of that decision, is not impaired, in
 any degree, by the new mode of mixing
 up the question, as it was not founded on
 matter of form, but matter of substance.

If it were not superfluous to add another, to
 the arguments already urged, it might be said,
 the main object of the writ of "Habeas Corpus ad Subjiciendum"
 as a writ of Right, which is to release immedi-
 ately from unlawful personal restraint, is counteracted,
 by converting it, into a suit, subject to all the delays
 and Expenses incident to such.



Although the Petitioner should be released by the order of the Judge or Court to whom he made application; if that order is subject to revision and reversal by an appellate Court, the final judgment to be of any avail, must deprive the Petitioner of the right of petitioning again. Whereas the right of petitioning for a habeas Corpus is unlimited in its nature, and the application may be renewed "toties, quoties" as long as the Petitioner is confined, and a judge or Court can be found to whom he may address his prayer for relief.

It is conceded by the Appellants Counsel, that no writ of error will lie unless the judgment is final. This Court has said, in the Case of Bell vs The State, the judgment in Habeas Corpus is not final. all the English authorities from Coke to Holt. were reviewed by C. J. Kent, in the Case of Bates vs The People b. Johns. Repⁿ. which he sums up in the following



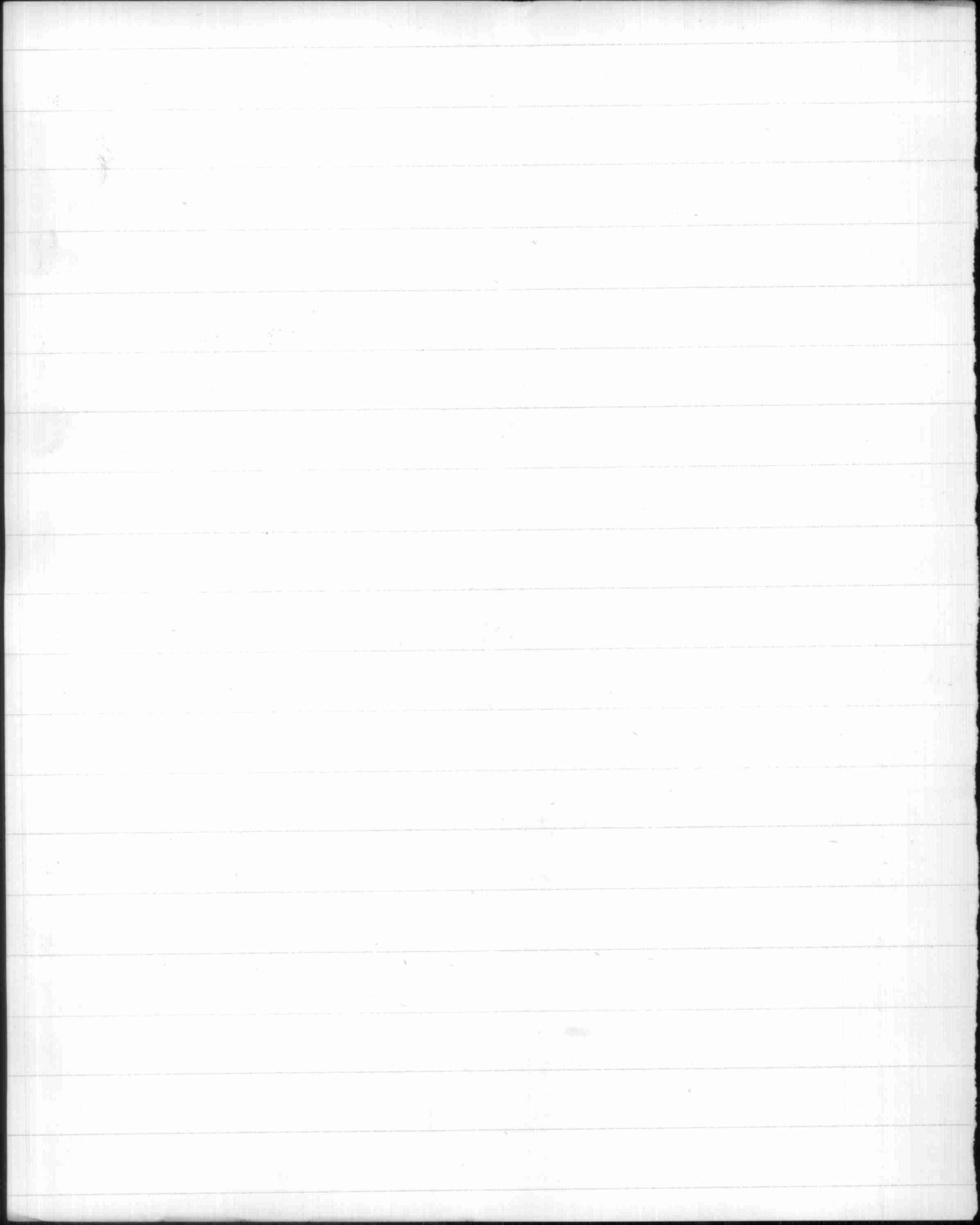
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energetic and eloquent apostrophe.

"I now submit to the Candour and judgment of this Court, whether I have not sufficiently shown that by the English law, a writ of Error will not lie in this Case. We have the unanimous opinion of the Court of C. B. in the time of Lord Coke. We have the Verdict of the House of Commons in the reign of Queen Anne. We have the opinion of the Court of K. B. in the time of Geo. 1. and lastly, we have the Sanction of Lord Ch. B. Cowper; and all this, without a single Case, or decision or precedent, or opinion, to oppose to such a stream of authority." What intelligent person can then doubt of the fact? + + + +

"The doctrine was laid down in Lord Coles day, as of course, as being then the known and established fact. The principle is of immemorial standing. It has become the uncontroverted maxim of Ages."

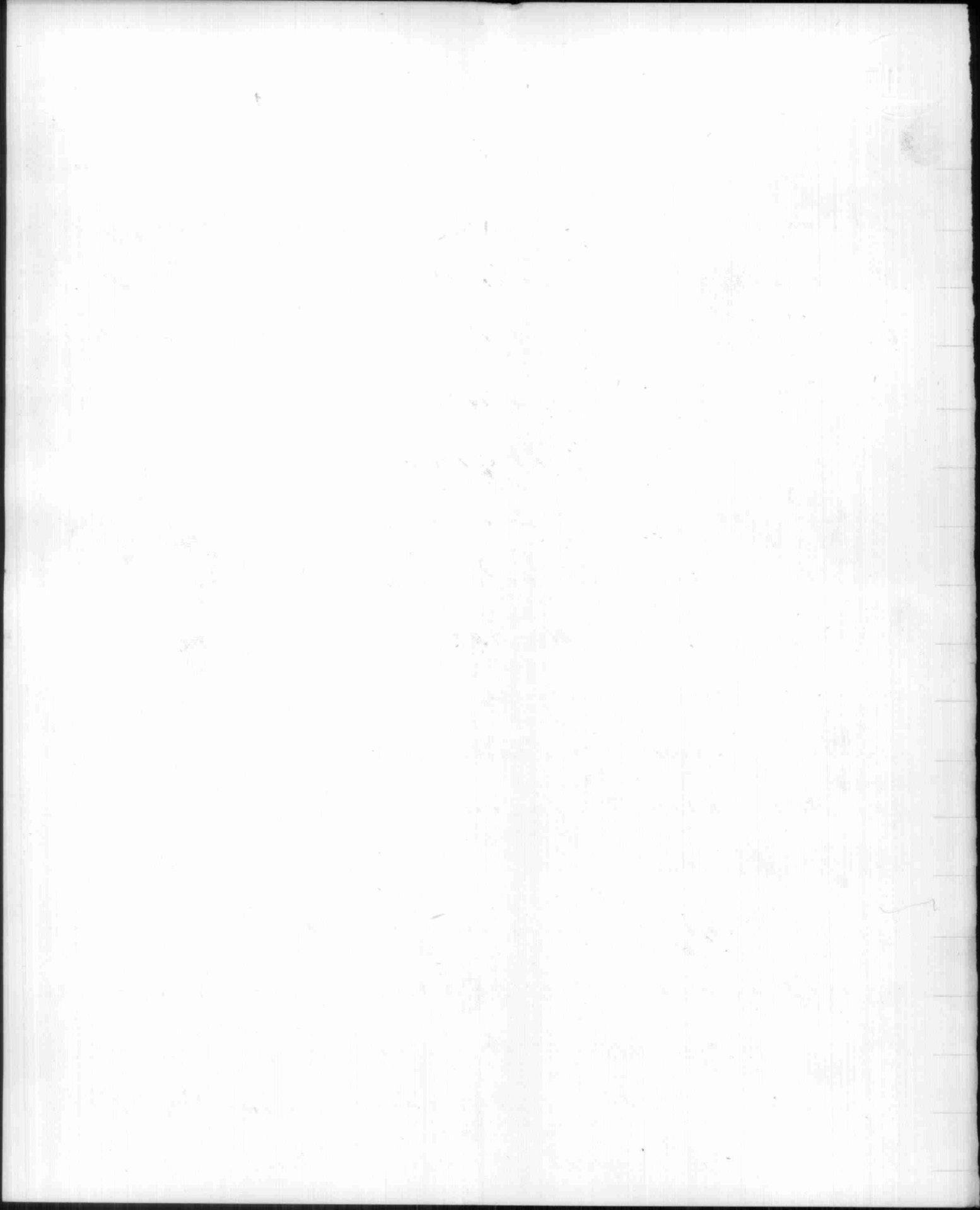
Although this opinion was not sanctioned by a Majority of the Senate of N. Y. they being divided as 12, to 10, yet much the greater portion of the Bench concurred with Ch. Kent -



The Case of Holsmes vs Jamieson 14 Petas 540.
 was a writ of error brought on the order of the
 Supreme Court of Vermont, remanding on habeas
Corpus, the plaintiff in error, who had been committed
 on the Governor's warrant, to be surrendered to the
 Canadian authorities, as a fugitive from justice.
 The Supreme Court of the United States was divided
 on the question of jurisdiction, so that no decision
 was pronounced in the case.

In announcing their opinions, several of the
 judges expressed their views on the question whether
 a writ of error would lie, in such a case.

Taney C. J. Story, McLean, Wayne & Catron concurred
 in favor of a writ of error. Baldwin dissented, others were silent.
 The Chief Justice placed his opinion on the ground, that
 there was a judgment of the highest Court of the State
 of Vermont, formally & fully entered on its records,
 declaring the prisoner was legally held under the
 authority of the State said, which was precisely one

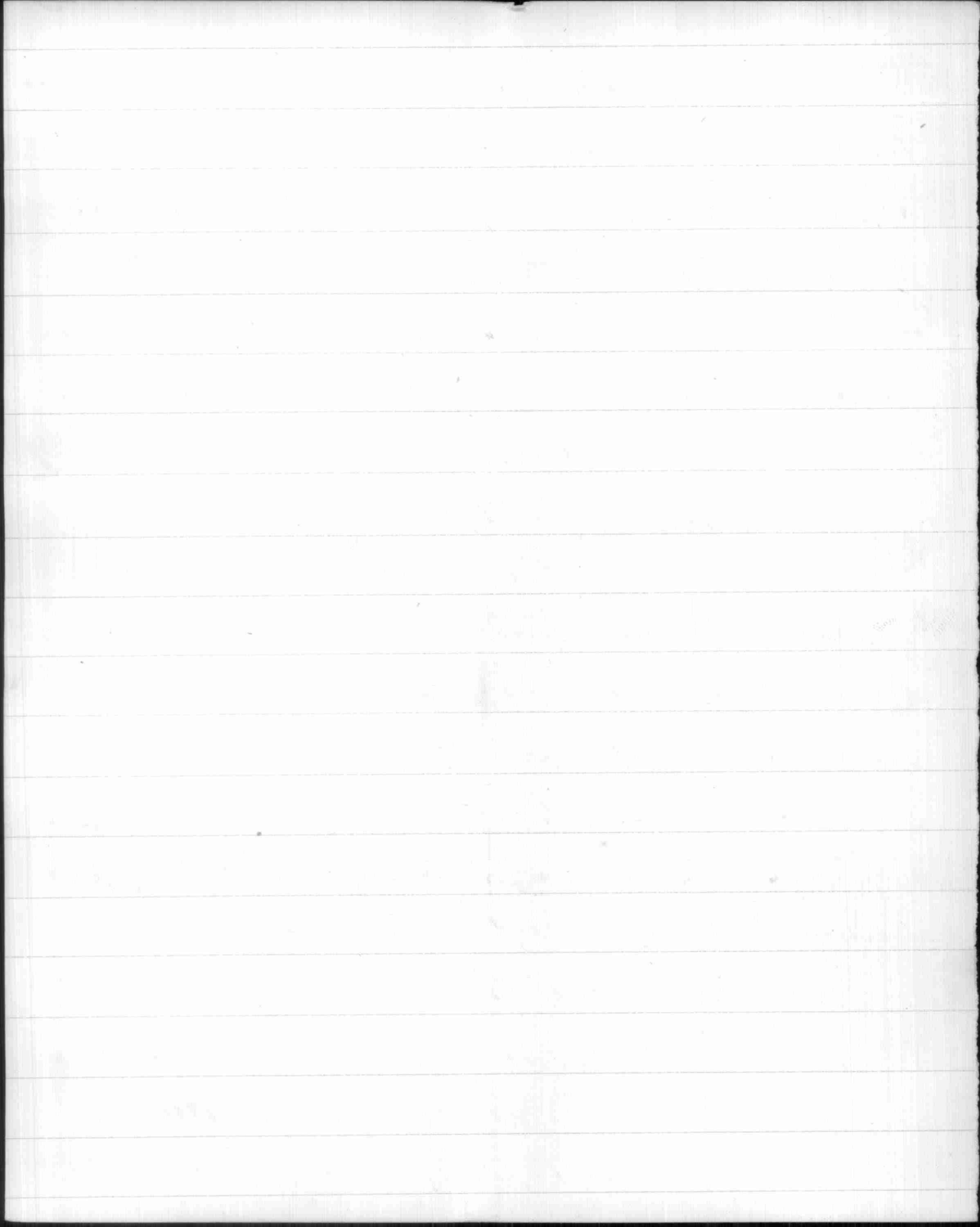


of the Cases, in which the writ of Error is given in the 25th Section of the act 1789. That, "the validity of the Governor's Warrant was the only question before the Supreme Court of Vermont, and that question was certainly finally settled.

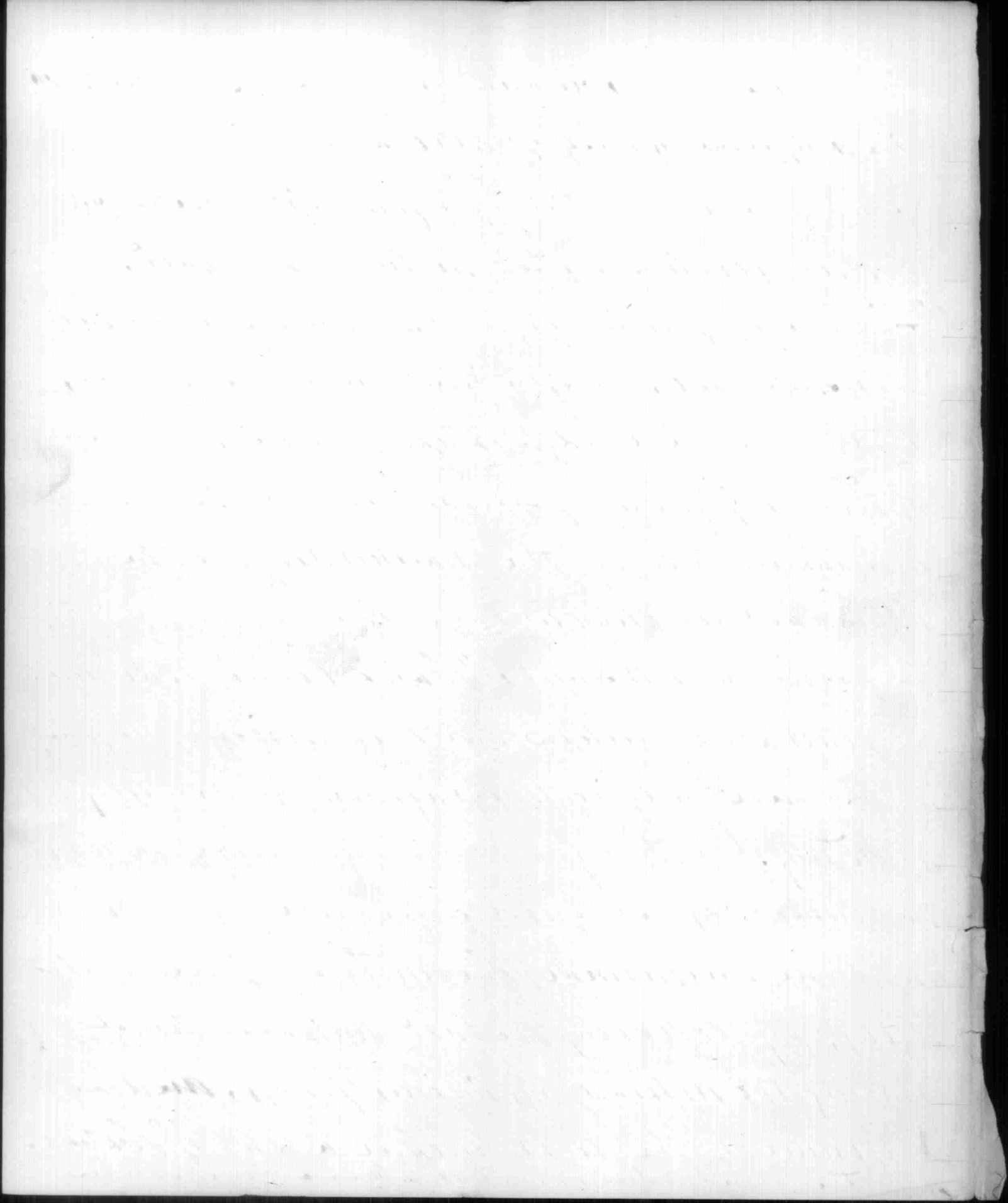
The writ of Error was granted at the instance of the prisoner, "in jurem libertatis" under what was considered the established construction of the act of 1789. in parallel cases, such as petitioning for mandamus and writs of prohibition which were held to stand on the same principles and were construed to be "Suits" in the meaning of the acts of Congress.

No such analogy exists in our legislation.

Appeals in cases of Mandamus, being ^{the subject of express} a separate and distinct provision, without the remotest allusion to the writ of Habeas Corpus, in the provisions for appeal or writ of Error.



In the Case of *Ableman vs Booth*. 21. How. 506.
 The Supreme Court of Wisconsin, discharged
 a prisoner, committed by a Commisr of the U. S.
 for a violation of the Fugitive Slave Law,
 After rendering their judgment, before the writ of *habeas*
 was sued out, the State Court acted on its record,
 that in the final judgment it had rendered, the validity
 of the Act of Congress of Sept. 18. 1850. & Feb. 12. 1793,
 and the authority of the Marshal to hold the
 Defendant in his custody under the process mentioned
 in his return to the writ of "*Habeas Corpus*" were respectively
 by drawn in question, and the decision of the Court
 in the final judgment was against their validity
 respectively. The whole proceedings show, there was
 an attempt upon the part of the State Courts, to
 supersede and annul the authority of the United
 States, by declaring the said unconstitutional, and
 arresting the action of its Officers & Courts, under
 semblance of the right to issue a writ of *Habeas*.
 and the United States, had the supreme jurisdiction

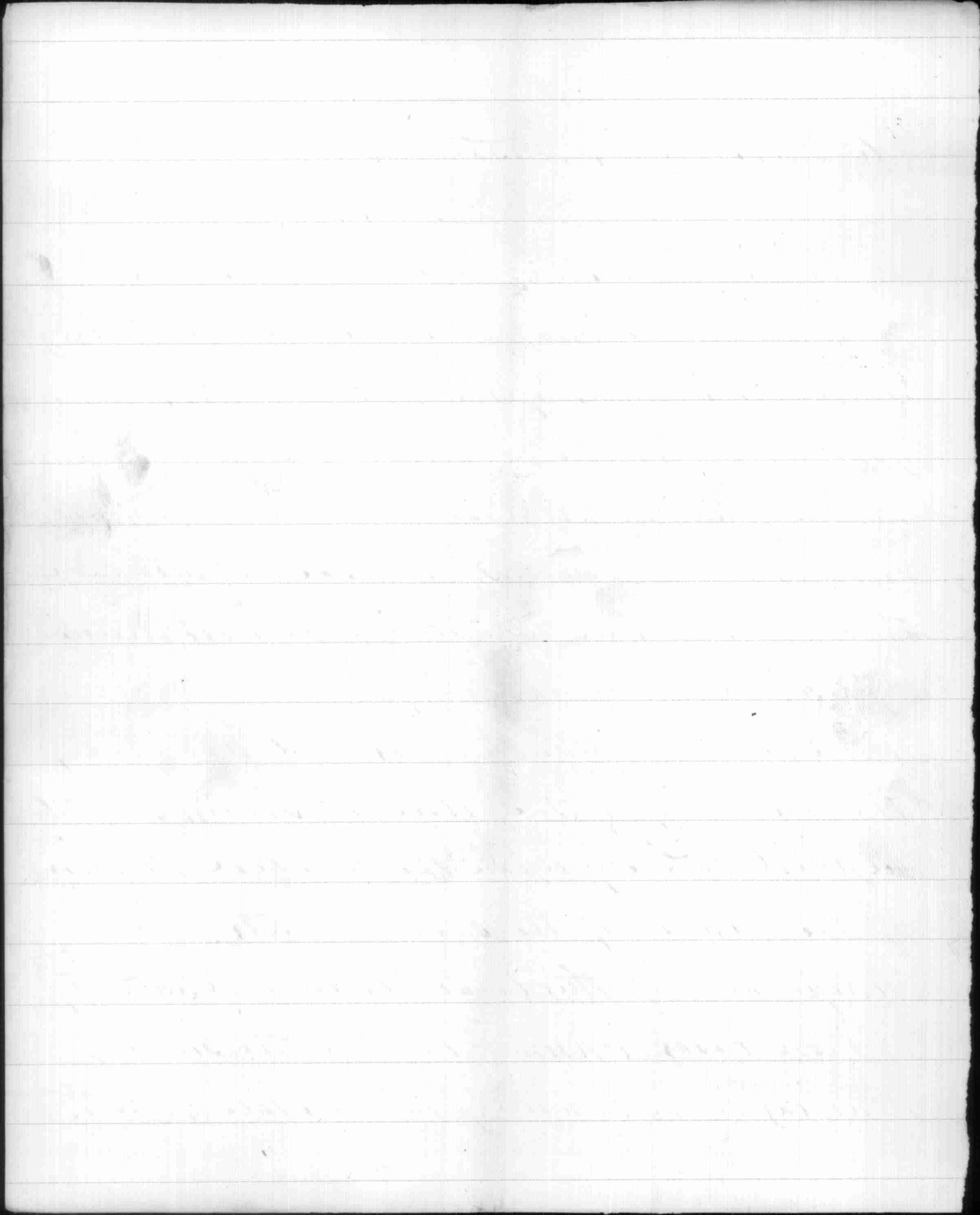


to vindicate its authority,

It is not, ^{to} inappropriate to remark, that the decisions in the Supreme Court of the U. S. above referred to, may be considered, as turning upon the Statutes of the United States, providing for appeals or writs of Error from the decisions of State Courts in all Cases in which the Constitution or Laws of the United States made in pursuance thereof are drawn in question and the decision was against their validity.

If writs of Error in such Cases did not lie, the authority of the United States, would depend entirely upon the judicial decisions of the Judges of the State Courts.

Independently of this Consideration, the authority of these Cases, cannot control the series of decisions to the contrary in the State Courts.



After Collating all the Cases, Howard, a late
 writer on Habeas Corpus says "The Element of
 authority in the State Courts is that a review
 of a decision on Habeas Corpus, independently
 of Statutory provisions cannot be had by writ
 of Error, or appeal, and that on the ground
 that the decision is not a final judgment,
 in which see City. Bell vs The State 4. Gill 304.
 Russell vs The Commonwealth 1. Penrose & Statb, 82.
 Wade vs Judge 5. Ala. 18. Howe vs The State 9.
 Mich. 190. 2. Cal. 424.

This objection constituting the Appellees
 first point, goes to the jurisdiction of
 this Court over the subject matter and
 being in our judgment well taken
 makes it unnecessary, as well as improper
 to consider the other points raised by the
 briefs of the respective parties.

Writ of Error dismissed