principles and purposes, would be unable to properly introduce the writ, I submitted the following:

HEADQUARTERS DEPARTMENT OF PUERTO RICO,
OFFICE OF THE JUDGE ADVOCATE,
San Juan, P. R., April 11, 1899.

DEPARTMENT COMMANDER.

SIR: In compliance with indorsements from your office of March 27 and 29 ultimo, on the subject of habeas corpus, I have the honor to submit the following:

Article I, section 9, paragraph 2, of the Constitution of the United States, reads as follows:

"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."

This constitutional right, which has been known in England for several centuries, and is one of the fundamental principles of our own Government, is unknown to Spanish law. As there are several hundred persons in confinement in the jails of this island, very many of whom are held for trifling offenses, and as this state of affairs is liable to indefinitely continue under existing conditions, I have the honor to recommend the adoption and publication of the following:

1. The president of a military commission or general court-martial, or any post commander, shall have power to issue writs of habeas corpus for the purpose of inquiring into the cause of restraint of liberty.

2. Application for the writ of habeas corpus shall be made to such president or commander by complaint in writing, setting forth the fact of detention of the party detained, in whose custody he is detained, where and by virtue of what charge or authority, if known. The complaint shall be signed by the prisoner for whose release it is intended.

3. The president or commander to whom such application is made shall forthwith award a writ of habeas corpus, which writ shall be directed to the person in whose custody the party is detained, and served at once by an officer or noncommissioned officer who shall be detailed for the purpose by the post or camp commander nearest the place of detention.

4. Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party detained is beyond the distance of 20 miles, and if beyond that distance, within ten days.

5. The person to whom the writ is directed shall certify to the president or commander before whom it is returnable the true cause of detention of such party.

6. The person making the return shall bring the body of the party before the president or commander who granted the writ.

7. When the writ is returned a day shall be set for hearing the case, not exceeding three days thereafter, unless the party petitioning requests a longer time.

8. The petition of the party in prison may deny the facts set forth in the return, or may allege any other facts that may be material in the case; said denials or allegations shall be under oath, which shall be administered by a judge-advocate of a military commission or general court-martial.

9. The president or commander shall proceed in a summary way to determine the facts in the case by hearing the testimony and the arguments.

10. In all cases of misdemeanor or petty larceny where, in the opinion of the president or commander, the accused party has been sufficiently punished, or where there is no reasonable ground to believe the prisoner guilty, he shall be released. In all other cases the prisoner shall be admitted to bail, the amount of which shall be fixed by the president or commander.

11. The president or commander shall in each case certify his action to the person having custody of the prisoner, who shall comply with said order, and it shall be his authority and protection therefor, and shall be so recognized by the courts; and in cases of bail shall certify the amount fixed by him to the court having jurisdiction of the case. Upon receipt of such certification the prisoner shall forthwith be released, upon furnishing the bail so fixed by the president or commander.

12. Petitions to obtain reduction of bail on habeas corpus should be framed with a view to that relief, and complaint that the amount required is excessive. Where no such complaint is made in the petition and no testimony is adduced, the president or commander will not make any inquiry as to whether the bail is excessive or not.

13. A prisoner will not be discharged from custody for mere irregularities or illegalities if in the opinion of the president or commander before whom he appears there are sufficient reasons to create a reasonable belief of his guilt.

It appears by recent communications received at this office that excessive bail is demanded in some cases. It is a well-established principle under our law that "a prisoner committed for failure to procure bail which appears excessive possesses the

right to be brought before a court on habeas corpus, and to have the sum reduced if, under all the circumstances, it is thought too large."

I have prepared in both English and Spanish and inclose herewith copies of forms of writs which may facilitate the introduction of the American system in this matter.

Very respectfully,

A. C. SHARPE,
Major and Inspector-General, U. S. V., Acting Judge-Advocate.

This was referred to the department of justice for consideration, and after considerable delay returned with many objections, chiefly that such authority belonged exclusively to the courts and should not be intrusted to military men. Although it was plainly evident that little or no result could be achieved through the channels indicated by the secretary of justice, for reasons already stated, it was finally determined, in order not to abandon all hope of establishing the writ, and to pave the way more effectually for its use by the United States provisional court, the creation of which was then in contemplation, to issue an order investing the local courts with the power to issue it. This was done by the following general orders, which were first submitted to the secretary of justice and at his request issued upon his recommendation:

General Orders, No. 71.

HEADQUARTERS DEPARTMENT OF PUERTO RICO,
San Juan, P. R., May 31, 1899.

Upon the recommendation of the secretary of justice the following is promulgated:

I. Any justice of the supreme court of Puerto Rico, or of any audiencia, or any judge of instruction, shall issue the writ of habeas corpus on the petition of any person who is restrained of his liberty within their respective judicial districts. But when such writ so issuing from such court is served upon any person who holds a prisoner subject to United States authority, the body of the prisoner will not be produced, but respectful return will be made setting forth that the prisoner is held under color of the authority of the United States, and that therefore the court issuing the writ is without jurisdiction, and praying that the writ be therefore dismissed.

II. Upon ascertainment by such judge or court issuing the writ that such return is true in fact, the writ shall be dismissed.

III. The secretary of justice will see that this order is duly observed. Instructions, approved by the commanding general, and printed blank forms will be supplied upon application to the secretary of justice.

By command of Brigadier-General Davis:

W. P. HALL, *Adjutant-General.*

While the fears expressed regarding the carrying out of this constitutional right by the local courts have been realized in some cases, it can be safely stated that the innovation has borne good results, and especially so since the establishment of the provisional court.

PRACTICE OF LAW BY FOREIGN LAWYERS.

Under date of February 25, 1899, a number of Spanish lawyers, residents of Puerto Rico, petitioned the governor-general against a decision of the department of justice, denying to them the right to practice before the local courts unless they renounce their Spanish citizenship.

The matter having been referred to this office for opinion, it was returned with the following indorsement:

OFFICE OF THE JUDGE-ADVOCATE,
DEPARTMENT OF PUERTO RICO,
San Juan, P. R., March 4, 1899.

Respectfully returned, etc.

In the celebrated case of Bradwell *v.* The State of Illinois (16 Wall., 130) the Supreme Court of the United States held as follows:

"The right of admission to practice in the courts of a State in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State or in any case to depend on citizenship at all. Certainly many prominent and distinguished lawyers have been admitted to practice, both in the State and Federal courts, who were not citizens of the United States or of any State."

In view of this clear and pointed decision it appears that these gentlemen should not be debarred from practicing in the courts of this island, provided they furnish proper guaranties of capacity, fidelity to courts and clients and the administration of justice, and to the Constitution of the United States.

These guaranties are found in the required license and oath of admission.

A. C. SHARPE,
Major and Inspector-General, U. S. V., Acting Judge-Advocate.