present case it appeared on the record in the plea of *autre fois convict*, which was admitted to be true by the demurrer of the government. We think that this was sufficient. It was laid down by this court in *In re Coy*, (127 U. S. 731, 758,) that the power of Congress to pass a statute under which a prisoner is held in custody may be inquired into under a writ of *habeas corpus* as affecting the jurisdiction of the court which ordered his imprisonment; and the court, speaking by Mr. Justice Miller, adds: "And if their want of power appears on the face of the record of his condemnation, whether in the indictment or elsewhere, the court which has authority to issue the writ is bound to release him," referring to ex parte Siebold, (100 U. S. 371.)

In the present case, it is true, the ground for the *habeas corpus* was not the invalidity of an act of Congress under which the defendant was indicted, but a second prosecution and trial for the same offense, contrary to an express provision of the Constitution. In other words, a Constitutional immunity of the defendant was violated by the second trial and judgment. It is difficult to see why a conviction and punishment under an unconstitutional law is more violative of a person's constitutional rights than an unconstitutional conviction and punishment under a valid law. In the first case, it is true, the court has no authority to take cognizance of the base; but, in the other it has no authority to render judgment against the defendant. This was the case of ex parte Lange, where the court had authority to hear and determine the case, but we held that it had no authority to give the judgment it did. It was the same in the case of Snow: the court had authority over the case, but we held that it had no authority to give judgment against the prisoner. He was protected by a constitutional provision, securing to him a fundamental right. It was not a case of mere error in law, but a case of denying to a person a constitutional right. And where such a case appears on the record, the party is entitled to be discharged from imprisonment. The distinction between the case of a mere error in law and of one in which the judgment is void is pointed out in ex parte Siebold, (100 U. S. 371, 375), and is illustrated by the case of ex parte Parks as compared with the cases of Lange and Snow. In the case of Parks there was an alleged misconstruction of a statute. We held that to be a mere error in law, the court having jurisdiction of the case. In the cases of Lange and Snow, there was a denial or invasion of a constitutional right. A party is entitled to a *habeas corpus*, not merely where the court is without jurisdiction of the cause, but where it has no constitutional authority or power to condemn the prisoner. As said by Chief Baron Gilbert, in a passage quoted in ex parte Parks, (93 U. S. 18, 22.) "If the commitment be against law, as being made by one who had no jurisdiction of the cause, or for a matter for which by law no man ought to be punished, the court are to discharge." This was said in reference to cases which had gone to conviction and sentence. Lord Hale laid down the same doctrine in almost the same words. (2 Hale's H. P. C. 144.) And why should not such a rule prevail in *favorem libertatis*? If we have seemed to hold the contrary in any case, it has been from inadvertence. The law could hardly be stated with more categorical accuracy than it is in the opening sentence of ex parte Wilson (U. S. 417, 420), where Mr. Justice Gray, speaking for the court, said: "It is well settled by a series of decisions that this court, having no jurisdiction of criminal cases by writ of error or appeal, cannot discharge on *habeas corpus* a person imprisoned under the sentence of a circuit or district court in a criminal case unless the sentence exceeds the jurisdiction of that court, or there is no authority to hold him under the sentence." This proposition, it is true, relates to the power of this court to discharge on *habeas corpus* persons sentenced by the circuit and district courts; but, with regard to the power of discharging on *habeas corpus*, it is generally true that, after conviction and sentence the writ only lies when the sentence exceeds the jurisdiction of the court, or there is no authority to hold the defendant under it. In the present case the sentence given was beyond the jurisdiction of the court, because it was against an express provision of the constitution, which bounds and limits all jurisdiction.

Being of opinion, therefore, that *habeas corpus* was a proper remedy for the petitioner, if the crime of adultery with which he was charged was included in the crime of unlawful cohabitation for which he was convicted and punished, that question is now to be considered.

We will revert for a moment to the case of *in re Snow*. Three crimes of unlawful cohabitation were charged against Snow, in three indictments, the crimes being laid continuous with each other, one during the year 1883, one during 1884, and one during 1885. We held that they constituted but a single crime. In the present case there were two indictments; one for unlawful cohabitation with two women down to May 13th, 1888, and the other for adultery with one of the women the following day, May 14, 1888. If the unlawful cohabitation continued after the 13th of May, and if the adultery was only a part of, and incident to it, then an indictment for the adultery was no more admissible, after conviction of the unlawful cohabitation, than a second indictment for unlawful cohabitation would have been; and for the very good reason that the first indictment covered all continuous unlawful cohabitation down to the time it was found. The case would then be exactly the same as that of *in re Snow*. By way of illustrating the argument we quote from the opinion in the case. Mr. Justice Blatchford delivering the opinion of the court said: "The offense of cohabitation in the sense of this statute is committed if there is a living or dwelling together as husband and wife. It is inherently a continuous offense, having duration; and not an offense consisting of an isolated act. That it was intended in that sense in these indictments is shown by the fact that in each the charge laid is that the defendant did on the day named and 'thereafter and continuously,' for the time specified, 'live and cohabit with more than one woman, to wit, with' the seven women named, and 'during all the period aforesaid' 'did unlawfully claim, live and cohabit with all of said women as his wives.' Thus, in each indictment, the offense is laid as a continuous one, and a single one, for all the time covered by the indictment; and taking the three indictments together, there is charged a continuing offense for the entire time covered by all three of the indictments. There was but a single offense committed prior to the time the indictment was found. * * On the same principle there might have been an indictment covering each of the thirty-five months, with imprisonment for seventeen years and a half, and fines amounting to $10,500, or even an indictment covering every week. * * It is to prevent such an application of penal laws that the rule has obtained that a continuing offense of the character of the one in this case can be committed but once, for the purposes of indictment or prosecution, prior to the time the prosecution is instituted." These views were established by an examination of many authorities.

Now, the petitioner, in his plea, averred in terms that the unlawful cohabitation, with which he was charged in the first indictment, continued without intermission up to the time of finding that indictment, covering the time within which the adultery was laid in the second indictment. He also averred that the two indictments were found against him upon the testimony of the same witnesses, on one oath and one examination as to the alleged offense, covering the entire time specified in both indictments. This plea was demurred to by the prosecution, and the demurrer was sustained. The averments of the plea, therefore, must be taken as true. And assuming them to be true, can it be doubted that the adultery charged in the second indictment was an incident and part of the unlawful cohabitation? We have no doubt of it. True, in the case of Snow, we held that it was not necessary to prove sexual intercourse in order to make out a case of unlawful cohabitation; that living together as man and wife was sufficient; but this was only because proof of sexual intercourse would have been merely culminative evidence of the fact. Living together as man and wife is what we decided was meant by unlawful cohabitation under the statute. Of course, that includes sexual intercourse. And this was the integral part of the adultery charged in the second indictment; and was covered by and included in the first indictment and conviction. The