such a function. Lowenthal, Wall Street and the Investor, 169 Harper's Magazine 707 (1934).

But even conceding that the trustee can file claims and receive dividends as a creditor, it does not necessarily follow that the trustee can vote on a plan of reorganization. While the trustee may be authorized to perform such acts of an administrative nature, he may not be authorized to decide the questions of changing the contractual rights of bondholders involved in a reorganization. *Cf. Schroeder v. Wolf*, 227 Ill. 133, 81 N.E. 13 (1907); *Bradley v. Tyson*, 33 Mich. 337 (1876). If that is so, the trustee would not seem to be a "creditor" entitled to vote within the meaning of § 77B. But if only creditors who have filed their claims may vote and the trustee may not vote, it would seem that bondholders who have not filed their claims may not vote either, even though the trustee has filed on their behalf. Such disenfranchisement of non-filing bondholders may conceivably make it impossible to secure the adoption of a plan or reorganization under 77B.

Since § 77B (c)(6) is broad enough to allow filing of claims by the trustee as an agent authorized by the court to file on behalf of the bondholders without presentation of the bonds, there is not the same need to invoke the creditor theory to allow the trustee to file. If the trustee merely files as an agent of the bondholder, the trustee has no standing to vote and the bondholder may vote even though he filed no claim. § 77B contemplates that two-thirds of creditors approve a plan of reorganization. Since the bondholders rather than the trustee are the parties ultimately interested in the plan, it seems desirable to allow them to vote, once their claim is filed, regardless of by whom it has been filed, even at the risk of delaying the proceedings until the requisite number of bondholders can be notified and their votes or authorizations to vote secured.

Criminal Procedure—Use of *Habeas Corpus* to Render Prisoner Eligible for Parole—[United States].—Petitioner for a writ of *habeas corpus* had been convicted and sentenced in a federal district court, upon three counts of an indictment, the sentence on the first count running concurrently with that on the second, and the sentences on the second and third counts running consecutively. The petition asserted that the conviction and sentence on the third count were invalid, and that under the federal Parole Act, 37 Stat. 650 (1913), 18 U.S.C.A. § 714 (1927), petitioner was entitled to apply for parole after serving one-third of the aggregate of his sentences. He had served one-third or more of the valid sentences on the first and second counts, but less than one-third of the total of the sentences on all three counts. Petitioner therefore assigned as reason for granting the writ, that the void sentence illegally barred him from his right to apply for parole. *Held*, the petition should be dismissed; the writ of *habeas corpus* can not be used to inquire into the validity of the conviction on the third count, inasmuch as petitioner was lawfully detained under the sentence on the second count. *McNally v. Hill*, 293 U.S. 131 (1934).

The function of the writ of *habeas corpus* is the liberation of those imprisoned without sufficient cause. *Chin Yow v. United States*, 208 U.S. 8 (1907); *Collins v. People*, 92 Colo. 454, 456, 21 P. (2d) 1114 (1933). The judgment of a court of competent jurisdiction, although erroneous, is binding until reversed; another court cannot, by means of *habeas corpus*, look behind such judgment and re-examine the charges and proceedings on which it was based. *United States v. Pridgeon*, 153 U.S. 48 (1893);

Frank v. Mangum, 237 U.S. 309 (1915). However, lack of jurisdiction over person or subject matter is a ground for release upon *habeas corpus*, since the judgment or order of a court without jurisdiction is absolutely void, and detention thereunder is illegal. *McClaughry v. Deming*, 186 U.S. 49 (1902); *People v. Barrett*, 203 Ill. 99, 67 N.E. 742 (1903); and see *People v. Kelly*, 352 Ill. 567, 186 N.E. 188 (1933). See also 13 Va. L. Rev. 433, 440 (1927).

Thus, where the facts charged in the complaint or the indictment do not constitute a crime, the writ will lie. *Ex parte Andrew Jackson*, 45 Ark. 158 (1885); *Ex parte McNulty*, 77 Cal. 164, 19 Pac. 237 (1888); *Ex parte Roquemore*, 60 Tex. Cr. 282, 131 S.W. 1101 (1910). *Habeas corpus* will lie to release a party tried in a federal district court for a common law offense, if it appears upon the face of the indictment that the offense charged is not an offense against any law of the United States. *Mackey v. Miller*, 126 Fed. 161 (C.C.A. 9th 1903). But when the court is in doubt as to whether the facts charged do or do not constitute an offense, the prisoner cannot anticipate the regular course of proceedings by alleging a want of jurisdiction and demanding a ruling in *habeas corpus* proceedings. *Ex parte Yarbrough*, 110 U.S. 651 (1884); *Ex parte Parks*, 93 U.S. 18 (1876). The principle that *habeas corpus* cannot be used to correct procedural errors not affecting jurisdiction has been applied in many cases. For example, it has been held that *habeas corpus* will not lie to determine whether indictments were improperly consolidated; *Howard v. United States*, 75 Fed. 986 (C.C.A. 6th 1896); *De Bara v. United States*, 99 Fed. 942 (C.C.A. 6th 1900); nor whether there was sufficient evidence to warrant a conviction; *Harlan v. McGourin*, 218 U.S. 442 (1910); nor whether there were technical irregularities in impaneling the grand jury; *Harlan v. McGourin*, 218 U.S. 442 (1910). See 13 Va. L. Rev. 433, 435 ff. (1927).

With the exception hereinafter mentioned, the lower federal courts have uniformly denied the petition for *habeas corpus* where the prisoner, although entitled to be relieved of one of two or more consecutive sentences, had not served the aggregate of the valid remaining sentences, and was, therefore, lawfully detained at the time of the petition. *Woodward v. Bridges*, 144 Fed. 156 (D.C. Mass. 1906); *Eori v. Aderhold*, 53 F. (2d) 840 (C.C.A. 5th 1931).

But in *O'Brien v. McClaughry*, 209 Fed. 816 (C.C.A. 8th 1913), where a prisoner was detained under a sentence imposing two terms on different counts of an indictment, to be served successively, the second of which counts was illegal, the court held that the prisoner was entitled to be discharged on *habeas corpus* from the invalid part of his sentence, although the valid sentence had not yet expired, because of the effect which the illegal part of the sentence had on his right to petition for parole. The prisoner was remanded with directions for his discharge from custody with respect to the invalid sentence, but to remand him to custody with respect to the valid sentence. The same court followed this procedure in *Cahill v. Biddle*, 13 F. (2d) 827 (C.C.A. 8th 1926); but see *Hostetter v. United States*, 16 F. (2d) 921, 923 (C.C.A. 8th 1926). Inasmuch as the granting of parole is a matter of discretion and not of right, it seems that so long as the valid sentence has not expired, the prisoner is not being illegally detained. Hence *habeas corpus*, by its very nature, should not lie. It would seem, therefore, that the *O'Brien* case was incorrectly decided, and is to be regarded as overruled by the instant case.