38TH CONGRESS, 1st Session. | SENATE. | REP. COM No. 24.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 29, 1864.—Ordered to be printed.

Mr. SUMNER submitted the following

REPORT.

[To accompany bill S. No. 141.]

The select committee on Slavery and the treatment of Freedmen, to whom were referred sundry petitions asking for the repeal of the Fugitive Slave Act of 1850, *and, also, asking for the repeal of all acts for the rendition of fugitive slaves, have had the same under consideration and ask leave to make the following report:*

There are two fugitive slave acts which still continue unrepealed on our statute-book. The first, dated as long ago as 1793, was preceded by an official correspondence, which was supposed to show the necessity for legislation. The second, dated in 1850, was introduced by a report from Mr. Butler, of South Carolina, at that time chairman of the Judiciary Committee of the senate. In proposing the repeal of all legislation on the subject it seems advisable to imitate the latter precedent by a report, assigning briefly the reasons which have governed the committee.

RELATION BETWEEN SLAVERY AND THE FUGITIVE SLAVE ACTS.

These acts may be viewed as part of the system of Slavery, and, therefore, obnoxious to the judgment which civilization is accumulating against this Barbarism; or they may be viewed as independent agencies. But it is difficult to consider them in the latter character alone, for if slavery be the offence, which it doubtless is, then must it infect all the agencies which it employs. Especially at this moment, when Slavery is recognized, by common consent, as the origin and life of the rebellion, must all its agencies be regarded with more than ordinary repugnance.

If, in time of peace, all fugitive slave acts were offensive, as requiring what humanity and religion both condemn, they must be still more offensive at this moment, when Slavery, in whose behalf they were made, has risen in arms against the national government. It is bad enough to thrust an escaped slave back into bondage at any time. It is absurd to thrust him back at a moment when Slavery is rallying all its forces for the conflict which it has madly challenged. But the crime of such a transaction is not diminished by its absurdity. A slave, with courage and address to escape from his master, has the qualities needed for a soldier of freedom; but existing statutes require his arrest and sentence to bondage.

In annulling these statutes Congress simply withdraws an irrational support from Slavery. It does nothing against Slavery, but it merely refuses to do anything for it. In this respect the present proposition differs from all pre-

ceding measures of abolition, as a refusal to help an offender on the highway differs from an attempt to take his life.

And yet it cannot be doubted that the withdrawal of this congressional support would contribute effectively to the abolition of Slavery; not that, at this present moment, this congressional support is of any considerable value, but because its withdrawal would be an encouragement to that universal public opinion which must soon sweep this Barbarism from our country. It is one of the felicities of our present position that, by repealing all acts for the restitution of slaves, we may hasten the happy day of freedom and of peace.

Regarding this question in its association with the broader question of universal emancipation, we find that every sentiment, or reason, or argument for the latter pleads for the repeal of these obnoxious statutes, but that the difficulties which are supposed to beset emancipation do not touch the proposed repeal, so that we might well insist upon the latter, even if we hesitated with regard to the former. But the committee find a new motive to the recommendation which they now make, when they see how important its adoption must be in securing the extinction of Slavery.

But it is not enough to consider the proposed measure in its relations to emancipation. Even if Congress be not ready to make an end of Slavery, it cannot hesitate to make an end of all fugitive slave acts. Against the latter there are cumulative arguments of constitutional law and of duty, beyond any which can be arrayed against Slavery itself. A man may even support Slavery and yet reject the fugitive slave acts.

THE FUGITIVE CLAUSE IN THE CONSTITUTION AND THE RULES FOR ITS INTERPRETATION.

These acts profess to be founded upon certain words of the Constitution. On this account it is important to consider these words with a certain degree of care. They are as follows:

"*No person* held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but *shall be delivered up on claim of the party to whom such service or labor may be due.*"—(Article IV, § 2.)

John Quincy Adams has already remarked that in this much debated clause the laws of grammar are violated in order to assert the claim of property in man, for the words "no person" are the noun with which the words "shall be delivered up" are the agreeing verb, and thus the grammatical interpretation actually forbids the rendition. It is on this jumble and muddle of words that a superstructure of wrong has been built. Even bad grammar may be disregarded, especially in behalf of human rights; but it is worthy of remark that, in this clause of the Constitution, an outrage on human rights was begun by an outrage on language.

But, assuming that this clause is not invalidated by its bad grammar, it is often insisted, and here the committee concur, that, according to the best rules of interpretation, it cannot be considered as applicable to fugitive slaves; since, whatever may have been the intention of its authors, no such words were employed as describe fugitive slaves *and nobody else*. It is obvious that this clause, on its face, is applicable to apprentices, and it is known historically that under it apprentices have been delivered up on the claim of the party to whom "their service or labor" was due. It is, therefore, only by going behind its primary signification, and by supplying a secondary signification, that this clause can be considered as applicable to fugitive slaves. On any common occasion, not involving a question of human rights, such secondary signification might be supplied by intendment; but it cannot be supplied to limit or deny human rights, especially to defeat liberty, without a violation of fundamental rules which constitute the glory of the law.

This principle is common to every system of civilized jurisprudence; but it has been nowhere expressed with more force than in the maxims of the common law and the decisions of its courts. It entered into the remarkable argument of Granville Sharp, which preceded the judgment extorted from Lord Mansfield, and led him to exclaim, in words strictly applicable to the Constitution of the United States, "neither the word *slave* or anything that can justify the enslaving of others can be found in the British constitution, God be praised!"—(*Hoare's Life of Sharp*, vol. 1, p. 58, chap. 1.) It entered into the judgment pronounced at last by Lord Mansfield, under the benevolent pressure of Granville Sharp, in the renowned *Somersett* case, where this great magistrate decided that Slavery could not exist in England. His words on that occasion cannot be too often quoted as an illustration of the true rule of interpretation. "The state of Slavery," he said, "is of such a nature that it is incapable of being introduced on any reasons, moral or political, *but only by positive law*. It is so odious that nothing can be suffered to support it *but positive law*."—(*Howell's State Trials*, vol. 20, p. 82.) Of course, therefore, the authority for Slavery cannot be derived from any words of doubtful signification. Such words are not "positive." And clearly, by the same rule, *if the words are susceptible of two different significations, that must be adopted which is hostile to Slavery.* But the same principle was also recognized by Chief Justice Marshall in our own Supreme Court, when he said, "*where rights are infringed* * * the legislative intention must be expressed with *irresistible clearness* to induce a court of justice to suppose a design to effect such objects."—(2 *Cranch's Rep.*, 390.) Obviously in a clause which is capable of two meanings there can be no such "irresistible clearness" as would justify an infringement of human rights.

But Lord Mansfield and Chief Justice Marshall were simply giving a practical application to these venerable maxims, which are cherished in America as in England. It is not necessary to repeat them now at length. They are substantially embodied in the words, *Angliæ jura in omni casu libertati dant favorem*—the laws of England, *in every case*, show favor to liberty; and also, in the words of Fortescue, *Impius et crudelis judicandus est qui libertati non favet*—he is to be adjudged impious and cruel who does not favor liberty. By such lessons all who administer justice have been warned for centuries against any sacrifice of human rights. Even Blackstone, whose personal sympathies were with power, was led to declare in most suggestive words worthy of a commentator on English law, that "the law is always ready to catch at anything in favor of liberty."—(2 *Black. Com.*, 94.) And Hallam, whose instincts were always for freedom, has adopted and vindicated this rule of interpretation as a pole-star of constitional liberty. "It was," says this great author, "by dwelling on all authorities in favor of liberty, *and by setting aside those which were against it*, that our ancesters overthrew the claims of unfounded prerogative."—(*Constitutional History of England*, vol 3, p. 380.) Nor can it be doubted that this conduct helped to build in England those safeguards of freedom which have been an example to mankind.

But this rule has never received a plainer illustration than in the writings of Dr. Webster, the eminent lexicographer of our own country. In a tract, which bears date 1795, long before the heats engendered by the fugitive slave act, he used language which, if applied to our Constitution, must defeat every interpretation favorable to Slavery. "Where there are two constructions," he says, "the one favorable and the other odious, *that which is odious is always to be rejected.*"—(*Webster's Tracts*, p. 185.) This principle thus sententiously expressed by the American lexicographer may be found, also, in the judgments of courts and the writings of civilians without number. It is one of the common places of interpretation. Lord Coke tells us that "*where words may have a double intendment*, and the one standeth with law and right, and the other is wrongful and against law, the intendment which standeth with law shall be

taken.—(*Coke Litt.*, 42 *a.*) And Vattel says that "we should particularly regard the famous distinction of things *favorable* and things *odious*," and then he assumes that "we must consider as *odious* everything that, in its own nature, is rather hurtful than of use to the human race"—(*Vattel Law of Nations B.* 2, ch. 17, p. 300.) But the clause of the Constitution, which has been made the apology of the Fugitive Slave act, is clearly open to "two constructions," according to the language of Dr. Webster, or a "double intendment," according to the language of Lord Coke—"the one favorable and the other odious." Thus far in our history, under the malignant influence of Slavery, the odious construction or intendment has prevailed.

There is also another voice which must be heard in determining the meaning of a doubtful clause. It is the Preamble which, by solemn declaration, on the threshold proclaims the spirit in which the Constitution was framed, and furnishes a rule of interpretation. "*To establish justice*, insure domestic tranquillity, provide for the common defense, *promote the general welfare, and secure the blessings of liberty* to ourselves and our posterity," such are the declared objects of the Constitution, which must be kept present to the mind as we read its various provisions. And every word must be so interpreted as best to uphold these objects. The Preamble would be powerless against any "positive" sanction of Slavery by unequivocal words; but, on the other hand, any attempted sanction of Slavery by words which are not "positive" and unequivocal, must be powerless against the Preamble which, in this respect, is in harmony with the ancient maxims of the law.

ANALYSIS OF THE WORDS OF THE FUGITIVE CLAUSE.

But looking more minutely at the precise words of this clause, we shall see how completely it is stamped with equivocation from beginning to end. Every *descriptive word it contains is double in its signification.* But the clause may be seen, first, in what it does not contain; and, secondly, in what it does contain. It does not contain, the word "slave" or "slavery," which singly and exclusively denotes the idea of property in man. Had either of these fatal words been employed, there would have been no uncertainty or duplicity. But in abandoning these words all idea of property in man was abandoned also. Other words were adopted simply because they might mean something else, and therefore would not render the Constitution "odious" on its face. But the unquestionable fact that these words might mean something else makes it impossible for them to mean "slave" or "slavery," unless in this behalf we set aside the most commanding rules of interpretation. It is clear that the authors of this clause attempted an impossibility. They wished to secure Slavery without plainly saying so; but such is Slavery that it cannot be secured without plainly saying so. Naturally and inevitably they failed, as if they had attempted to describe black by words which might mean white, or to authorize crime by words which naturally mean something which is not crime. The thing could not be done. The attempt to square the circle was not more absurd.

The clause begins with the descriptive words "no *person* held to service or labor in one State under the laws thereof." Now a slave is not a "person," with the rights of persons, but a *chattel* or *thing*. Such is the received definition of the slave States, handed down from Aristotle. He is not "held to service or labor," but he is held as property. The terms employed describe an apprentice but not a slave. And he must be held "under the laws" of a State. Here again is the case of an apprentice, who is clearly held "under the laws" of a State. But we have the authority of Mr. Mason of Virginia, for saying that no proof can be adduced that Slavery in any State "is established by *existing laws.*" (*Congressional Globe*, vol. 22 part 2, p. 1584—31st Congress, 1st session,) And the person thus described shall not "be *discharged* from such service or

labor." Clearly an apprentice is discharged, but a slave is manumitted or emancipated. And this undischarged person "shall be delivered up on *claim* of the party to whom such service or labor may be *due*." But all these words imply *contract*, or at least *debt*, as in the case of apprentices. The slave can *owe* no "service or labor" to his master. There is nothing in their relations out of which any such obligation can spring. The whole condition *stands on force* and nothing else. It is robbery tempered by the lash—not merely robbery of all the fruits of industry, but robbery of wife and child. To such a terrible assumption the language of *contract* or *debt* is totally inapplicable. Nothing can be "due" from a slave to a master, unless it be something of that resistance to tyrants which is obedience to God. It is absured to say that "labor or service," in any sense, whether of justice or of law, can be "due" from him. The same power which takes wife and child may exact this further sacrifice; but not because it is "due."

Such is the truth with regard to this much-debated clause. As we bring it to the touch stone of unquestioned rules of interpretation its *odious* character disappears, and we are astonished that the public mind could have been perverted, with regard to it, for so long a period. Nobody can doubt that this clause *may* be interpreted in favor of freedom so as to exclude all idea of property in man. But if it *may*, such is the voice of freedom, it *must*.

NO LAPSE OF TIME CAN DEFEAT AN INTERPRETATION IN FAVOR OF LIBERTY.

Against this interpretation, so overpowering in reason and authority, it can be no objection that thus far, Slavery has prevailed. There is no statute of limitation and no prescription against the undying claims of liberty. Rejected or neglected in one generation they may be revived in another; nor can they be impaired by any desuetude. This objection was impotent to prevent Lord Mansfield from declaring that Slavery could not exist in England, although practically, under a false interpretation of the British constitution, sustained by the professional opinions of Talbot and Yorke, and by the judgment of the latter on the bench, under the name of Lord Hardwicke, African slaves had been sold in the streets of London, and advertised for sale in the English papers for a period full as long as that which has witnessed the false interpretation of our Constitution. But as length of time did not prevail against a true interpretation of the British Constitution, in the case of *Somersett*, it ought not to prevail against a true interpretation of our Constitution now.

There is no chemistry in time to transmute wrong into right. Therefore, the whole question on the Constitution is still open, as on the day of its adoption. The cases of mis-interpretation are of no value; at least, they cannot settle the question against liberty. Such was the noble declaration of Charles James Fox, in the British Parliament, when, in words strictly applicable to the present occasion, he said: "Whenever any usage appeared subversive of the Constitution, if it had lasted for one or two hundred years, *it was not a precedent, but a usurpation.*"—(*Fox's speeches*, vol. 4, p. 131, *December* 23, 1790.) And such is the character of every instance in which our Constitution has been perverted to sanction Slavery.

PERVERSIONS WITH REGARD TO ORIGIN OF THE FUGITIVE CLAUSE.

But a slight examination will show the perversions which have prevailed, also, with regard to the origin and history of this clause. Not content with imparting to it a meaning which it cannot bear, the partisans of Slavery have given to this clause an origin and history which have no foundation in truth.

It has been common to assert that the clause was intended to remove or counteract some difficulty which had occurred anterior to the Convention. But there

is no evidence of any such difficulty. There was no complaint. Not a single voice was raised in advance to ask any such security.

It has also been asserted, with peculiar confidence, that this clause interpreted as requiring the rendition of fugitive slaves constituted one of the original compromises of the Constitution, without which the Union could not have been formed. This pretension, it will be perceived, makes an asserted stipulation for the rendition of fugitive slaves, one of the corner-stones of the Union. To this discreditable imputation upon the fathers of the republic the Supreme Court seems to have lent the sanction of its authority when it declared in the famous *Prigg case* (16 *Peters's Rep.*, 610) not only "that the object of this clause was to secure to the slaveholding States the complete right and title of ownership in their slaves *as property* in every state in the Union into which they might escape;" but that the full recognition of this right and title "was so essential to the preservation of their domestic interests and institutions, that it cannot be doubted *that it constituted a fundamental article, without the adoption of which the Union could not have been formed.*" Mark the way in which this extraordinary statement is ushered in—"It cannot be doubted!" But it is doubted, and more too. Chief Justice Taney, at a later day, put forth the statement that during the Revolution it was an accepted truth that "colored men had no rights which white men were bound to respect;" and this statement was said to stand on authentic history; but it is now exploded, and the other statement must share the same fate. A careful inquiry will show that it is utterly without support in the records of the Convention, where the real compromises are revealed; nor is there a single pamphlet, speech, article, or published letter of the time, out of which any such thing can be inferred. Surely, if this provision had been of such controlling importance, it would have been noticed at least in the *Federalist* when its writers undertake to describe and group the powers of Congress which "provide for the harmony and proper intercourse among the States;" but the *Federalist* is entirely silent with regard to it. And yet we are gravely told "it cannot be doubted" that this provision "constituted a fundamental article, without the adoption of which the Union could not have been formed." The frequent repetition of this assertion has caused a common belief that it was history instead of fable.

But the actual compromises of the Constitution are well known. They were three in number. One established the equality of all the States in the Union by securing an equal representation in the Senate for the small States and large States. Another allowed representatives to the slave States according to the whole number of free persons and "three-fifths of all other persons," in consideration that direct taxes should be apportioned in the same way. Another was the bargain by which the slave trade was tolerated for twenty years, in consideration of commercial concessions to the "Eastern members." Such are the actual compromises of the Constitution, with regard to which there is evidence. But imagination or falsehood is the only authority for adding the rendition of fugitive slaves to this list.

THE TRUE ORIGIN OF THE FUGITIVE CLAUSE.

The debates of the Convention attest beyond question the little interest in this clause at the time. In all the general propositions or plans successively brought forward from the meeting of the Convention on the 25th May, 1787, there was no allusion to fugitive slaves; nor was there any allusion to them, even in debate, till as late as the 28th August, when, as the Convention was drawing to a close, they were incidentally mentioned in a discussion on another subject. The question was on the article providing for the privileges of citizens in different States. Here is the authentic report by Mr. Madison of what was said:

"General (Charles Cotesworth) Pinckney was not satisfied with it. He

seemed to wish some provision should be included in favor of property in slaves."—Madison Papers, p. 1447.

But he made no proposition. Mark the modesty of the suggestion. Here was no offer of compromise—not even a complaint, much less a suggestion of corner-stone. The next article under discussion provided for the surrender of fugitives from justice. Mr. Butler and Mr. Charles Pinckney, both from South Carolina, now moved openly, but without any offer of compromise, to require "fugitive slaves and servants to be delivered up like criminals." But the very boldness of the proposition drew attention and aroused opposition

Mr. Wilson, of Pennsylvania, afterwards the eminent judge and lecturer on law, promptly remarked: "This would oblige the executive of the State to do it *at the public expense.*"

Mr. Sherman, of Connecticut, followed in apt words, saying that "he saw no more propriety in the public seizing and surrendering a slave or servant than a horse."

Under this proper pressure the offensive proposition was withdrawn. The article for the surrender of criminals was then adopted. On the next day, August 29, Mr. Butler showed that the lovers of liberty had not spoken in vain. *Abandoning the idea of any proposition openly requiring the surrender of fugitive slaves*, he moved an *equivocal* clause substantially like that now found in the Constitution, which, without debate or opposition of any kind, was unanimously adopted, or, according to the report of Mr. Madison, *nem. con.* What could not be done directly was attempted indirectly; and the partisans of Slavery contented themselves, according to the teachings of old Polonius, with language which only "by indirection finds direction out." But no "indirection" can find Slavery out. The language which sanctions such a wrong must be "direct." Therefore, at the moment of seeming triumph, the partizans of Slavery failed.

Such is the indubitable origin of a clause which latterly has been declared to be a compromise of the Constitution and a corner-stone of the republic. That a clause for the hunting of slaves was recognized at the time as compromise or corner-stone, is an absurdity disowned alike by history and by reason. That the clause was adopted *nem. con.*, with the idea that, *according to any received rules of interpretation*, it could authorize the hunting of slaves, it is difficult to believe. The very statement that it was adopted *nem. con.* shows that it must have been regarded, *according to received rules of interpretation*, as having no "positive" character; for there were eminent members of the Convention who, according to their declared opinions, could never have consented to any such proposition, if it had been supposed for a moment to turn the republic which they were then organizing into a mighty slave-hunter. There sat Gouverneur Morris, who only a short time before exclaimed, in the Convention: "*He never would concur in upholding domestic Slavery.* It was a nefarious institution. It was the curse of Heaven on the State where it prevailed." There sat Oliver Ellsworth, afterwards Chief Justice, who said, in words which strike at all support of Slavery by the national government: "The morality or wisdom of Slavery are considerations belonging to the States themselves." There sat Elbridge Gerry, afterwards Vice-President, who openly declared that "we had nothing to do with the conduct of the States as to Slavery; *but we ought to be careful not to give any sanction to it.*" There sat Roger Sherman, who avowed that he was "opposed to any tax on slaves imported, as making the matter worse, *because it implied they were property.*" And, greatest of all, there sat Benjamin Franklin, who by character and conviction, in every fibre of his moral and intellectual being, was pledged against any sanction of Slavery. Who can suppose that these wise and illustrious patriarchs of liberty all consented, *nem. con.*, not only to sanction Slavery and to recognize property in man, but to put a kennel of blood-hounds into the Constitution, ready to hunt the flying bondman? They did no

such thing; or, if it is insisted, *contrary to received rules of interpretation*, that such must be the signification of their language, clearly they did not understand it so. Doubtless, there were members of the convention who, in their passion for Slavery, cheered themselves with the delusion that they had adequately described, in "positive" terms, the pretension which they hoped to embody in the Constitution; but the *legal meaning* of this provision must be determined, not by the passion of such persons, but by the actual language employed, according to received rules of interpretation, from which there is no appeal. Other rules may be set aside as inapplicable; but the rule which, in presence of any doubtful phrase, any indirect language, or any word capable of a double sense, requires that it shall be interpreted *in favor of liberty*, is the most commanding of all.

Thus, when this clause took its place in the Constitution *nem. con.*, it was clearly as a cipher. It meant nothing—or at least nothing odious. But this conclusion becomes still more apparent in the light of two special incidents, which cannot be forgotten in determining the validity of any claim for Slavery under equivocal words of the Constitution. The first is the saying of Mr. Madison, which he has recorded in the report of the Convention, that "it was wrong to admit in the Constitution the idea of property in man." Admirable words, constituting a binding rule of interpretation! And yet, in the face of this declaration, it has been insisted that the "idea of property in man" is embodied in the double-faced words of the fugitive clause. But as the words are susceptible of two meanings, clearly they should be interpreted so as to exclude what was "wrong." The other incident furnishes the same lesson, in a manner more pointed still. It appears that, on the 13th of September, 1787, a fortnight after the fugitive clause was adopted in its earliest form, and while the convention was considering the report of its committee on style, "On motion of Mr. Randolph, the word *servitude* was struck out, and *service* unanimously inserted; the former being thought to express the condition of slaves, *and the latter free persons*."—(Madison Papers, September 13.) Thus the word "service" ceases even to be equivocal, for it was unanimously adopted as expressing "the condition of free persons." And such it would have continued to express always, if Slavery had not unhappily triumphed over our government in all its departments, executive, legislative and judicial.

It is not doubted that at home in the Slave States the fugitive clause was interpreted as applicable to slaves and that this asserted license was at times mentioned as a reason for the adoption of the Constitution. Even Mr. Madison, who had declared in the National Convention "that it was wrong to admit in the Constitution the idea of property in man," argued afterwards in the Virginia Convention that "this clause was expressly inserted to enable owners of slaves to reclaim them."—(*Eliot's Debates*, vol. 3, p. 453)—all of which was doubtless true, but the question still occurs as to the constitutional efficacy of the clause. Mr. Iredell, who was not a member of the National Convention, undertook in the North Carolina Convention to explain what it had done. He said that the clause was intended to include slaves, but he added, "the northern delegates, *owing to their particular scruples* on the subject of Slavery, did not choose the word *slave* to be mentioned."—(*Ibid*, vol. 4, p. 176)—so that on the very statement of this expositor the question naturally arose whether slaves were really included. In the South Carolina Convention, General Pinckney, who in the National Convention had first dropped the idea of "some provision in favor of property in slaves," boasted that this had been obtained; but he added, in suggestive words, "we have made the best terms for the security of this species of property it was in our power to make. *We would have made better if we could.*"—(*Ibid*, vol. 4, p. 286.) True enough. The slave-masters got all they could. If possible they would have got more. But the question still recurs wether in this equivocal provision they got anything. In the

National Convention they adopted a clause which was only another illustration of "Mr. Facing—both—ways." At home, in their local conventions, they courageously insisted that it forced only one way. It is an old dramatist who tells us that "there is a moral in a *villan out-witting himself;*" and Falstaff exclaims, in familiar words, "see how wit may be made a jackanapeses when it is upon an ill-employ." Clearly, the wit of the slave-masters was "in ill-employ" when it sought to foist Slavery into the text of the Constitution, and it is easy to see that all who engaged in the work were like "the villain out-witting himself." Whatever they may have thought or boasted the thing was not done.

From this review of the origin of the fugitive clause, and the circumstances which attended its adoption, it is apparent that it has been the occasion of infinite exaggeration and misrepresentation. Like a Pagan idol, it has been worshipped and covered with gifts; but the prevailing superstition which sustained the imposture has at last disappeared, and we see nothing but a vulgar image of painted wood.

LEGISLATION FOR THE RENDITION OF FUGITIVE SLAVES.

From the clause in the Constitution, the committee pass to a consideration of the legislation founded upon it. Of course, if the clause has been misunderstood, no legislation can derive any validity from it. *Nothing can come out of nothing;* and since there is nothing in the Constitution requiring the rendition of fugitive slaves by the national government, there can be no authority for any legislation by Congress on the subject. Therefore, the argument against the existing statutes is complete. But, on such an occasion, when it is proposed to reverse an early policy of the government, the committee are unwilling to stop here. It is important that these statutes should be considered in their history and character.

As early as 1793, while Congress was sitting in Philadelphia, provisions for the surrender of fugitive slaves were fastened upon a bill for the surrender of fugitives from justice, and the whole was adopted, apparently with very little consideration. Thus, accidentally, Congress undertook to assume the *odious* power to organize slave-hunting. But the act was scarcely passed before the conscience of people, not only at the north, but even in Maryland, began to be aroused against it. Granville Sharp, who, in England, so bravely maintained our national cause as well as the cause of the slave, addressed a letter to the Maryland "Society for Promoting the Abolition of Slavery and the Relief of Free Negroes, and others unlawfully detained in bondage," in which he set forth elaborately those binding rules of interpretation, which, according to English law, require a court to incline always in favor of liberty. This letter purports to have been published as a pamphlet, by order of the society, and to have been printed at Baltimore, near the court-house, by D. Graham, L. Yandy, and W. Patten, in 1793. In a brief preface, the Maryland society thus reveal the trials attending the new fugitive slave act:

"Still Slavery exists, and *in the case of slaves escaping from their masters,* the friends of universal liberty are often embarassed in their conduct by a conflict between their principles and *the obligations imposed by unwise and perhaps unconstitutional laws.*"

Such is a contemporary record of the sensibilities of a slave State on this occasion; and let it be mentioned to the honor of Maryland. But it is reasonable to suppose that the sensibilities of States further north were touched still more. Mr. Quincy, whose living memory embraces this early period, tells us that, when an enforcement of this act was attempted in Boston, the crowd which thronged the room of the magistrate, quietly and spontaneously, opened a lane for the fugitive, who was thus enabled to save himself from Slavery, and also to save the country from the dishonor of such a sacrifice. Almost at the same time, in the patriotic State of Vermont, a judge of the supreme court of the State,

on application for the surrender of an alleged slave, accompanied by documentary evidence, refused to comply, *unless the master could show a bill of sale from the Almighty.* Such was the popular feeling which this earlier legislation encountered.

There is authentic evidence that this popular feeling was recognized by President Washington as a proper guide on an occasion when he was personally interested. A slave of Mrs. Washington had escaped to New Hampshire. The President, in an autograph letter which has been produced in the Senate, addressed to Mr. Whipple, the collector at Portsmouth, and dated at Philadelphia, November 28, 1796, after expressing the desire of "her mistress" for the return of the slave, lays down the following rule of conduct:

"I do not mean, however, by this request, that *such violent measures* should be used *as would excite* a mob or riot, which might be the case if she has adherents, *or even uneasy sensations in the minds of well-disposed citizens.* Rather than either of these should happen, I would forego her services altogether; and the example, also, which is of infinite more importance.

"GEORGE WASHINGTON."

The fugitive never was returned; but lived to a good old age—down to a recent period—a living witness to that public opinion which made even the mildest of fugitive slave acts a dead letter.

At last, in 1850, after the subject of Slavery had been agitated in Congress without interruption for nearly twenty years, a series of propositions was adopted, which were solemnly declared to be *compromises* by which all the questions concerning Slavery were permanently settled, so as never again to vex the country—as if any question could be permanently settled except on the principles of justice. But the "gruel" was adopted, and among its ingredients "for a charm of powerful trouble" was a new fugitive slave act, first reported from the Committee on the Judiciary by Mr. Butler, of South Carolina, but afterwards amended by a substitute from Mr. Mason, of Virginia, so as to become substantially his measure. It is not necessary now to mention its details. Suffice it to say that in these, as well as in its general conception, it was harsh, cruel, and vindictive. Few statutes in all history have been so utterly inhuman; not excepting even those British statutes for the oppression of the Irish Catholics, which are pictured by Edmund Burke in words strictly applicable to the monstrosity of our country:

"It is truly a barbarous system, where all the parts are an outrage on the laws of humanity and the rights of nature; it is a system of elaborate contrivance, as well fitted for the oppression, imprisonment, and degradation of a people and the debasement of human nature itself, as ever proceeded from the perverted ingenuity of man."

And such unquestionably was the fugitive slave act of 1850, which is still allowed to remain on the statute book, a blot upon our country and our age.

Where a measure is so plainly repugnant to reason and to authority, and on the face of it has so little foundation in the Constitution, any elaborate argument against it seems superfluous, especially at this moment, when Slavery everywhere is yielding to freedom. The general conscience condemns the inhuman statute, and this is enough.

But it is important to go further in order to exhibit the extent to which the country has been deceived on this subject. Therefore, briefly the committee will call attention to the constitutional objections.

UNCONSTITUTIONAL USURPATION OF POWER BY CONGRESS.

Forgetting, then, for the moment, the preamble of the Constitution, which speaks always for justice and liberty; forgetting also the venerable maxim of

the law, that "we must incline always in favor of freedom," and also that other maxim, that "he is impious and cruel who does not favor freedom;" refusing, according to the requirement of law, "to catch at anything in favor of liberty;" and, in spite of all received rules of interpretation, assuming that the words of the fugitive clause adequately define fugitive slaves, the question then arises, if this clause thus defiantly interpreted confers any power upon Congress.

Clearly not.

Search the Constitution and you will find no grant, general or special, conferring upon Congress the power to legislate with regard to fugitives from service or labor. In the catalogue of powers belonging to Congress, this power is not mentioned; nor does it appear in any special grant. There is nothing in the clause itself; there is nothing in any other clause applicable to this pretended power. The whole subject is left to stand on a clause which, whatever may be its meaning otherwise, is obviously on its face only a *compact*, and not a grant of power. And in this respect it differs on its face from other provisions of the Constitution. For instance, Congress is expressly empowered "*to establish a uniform rule* of naturalization, and *uniform laws* on the subject of bankruptcies, *throughout the United States.*" Without this grant these two important subjects would have fallen within the control of the States, the nation having no power *to establish a uniform rule* thereupon. But, instead of the existing compact on fugitive from service or labor, it would have been easy, had any such desire prevailed, to add this case to the provision on naturalization and bankruptcies, and to empower Congress *to establish a uniform rule for the surrender of fugitives from service or labor throughout the United States.* Then would Congress have had unquestionable jurisdiction over this subject. But nobody in the Convention—not one of the hardiest partisans of Slavery—presumed to make this proposition. Had it been made, it is easy to see that it must have been most unceremoniously dismissed.

The genius of common law, to which our ancestors were devoted, would have cried out against any such concession. If we refer to its great master, Lord Coke, from whose teachings in that day there was no appeal, we shall find its living voice. In the Third Institute (p. 189) he thus expresses himself: "It is holden, and so it hath been resolved, *that divided kingdoms under several kings in league one with another, are sanctuaries for servants* or subjects flying for safety from one kingdon to another, and upon demand made by them are not, *by the laws and liberties of kingdoms*, to be delivered." Unquestionably, if such "sanctuaries" may be overturned, it can be only in a manner consistent with the "laws and liberties" of the States where the fugitive may be found, and not through the exercise of a domineering prerogative by Congress.

Whatever may be the real meaning of the clause in other respects, it is obvious that it is a *compact* with a *prohibition* on the States, *conferring no power on the nation.* In its natural signification it is a compact. According to the examples of other countries, and the principles of jurisprudence, it is a compact. All arrangements for the surrender of fugitives have been customarily compacts. Except under the express obligations of treaty, no nation is bound to surrender fugitives. Especially has this been the case with fugitives for freedom. In medieval Europe, cities refused to recognize this obligation in favor of persons even under the same national government. In 1531, while the Netherlands and Spain were united under Charles V, the supreme council of Mechlin rejected an application from Spain for the surrender of a fugitive slave. By express compact alone could this be secured. But the provision of the Constitution was borrowed from the ordinance of the Northwestern Territory, which is expressly declared to be a "compact;" and this ordinance, finally drawn by Nathan Dane, of Massachusetts, was again borrowed, in some of its distinctive features, from the early institutions of Massachusetts, among which, as far back as 1643, was a compact of like nature with other New England States. Thus

this provision is a compact in language, in nature, and in its whole history; as we have already seen, it is a compact according to the intentions of our fathers and the genius of our institutions.

There are two instances of compacts in history which will illustrate the present words. The first is found in a treaty of peace between Alexander Comnenus, Greek Emperor of Constantinople, and Oleg, King of Russia, in the year of the Christian era 902, as follows:

"If a Russian slave take flight, or even if he is carried away by any one under pretence of having been bought, his master shall have the right and power to pursue him, *and hunt for and capture him* wherever he shall be found; and any person who shall oppose the master in the execution of this right *shall be deemed guilty of violating this treaty*, and be punished accordingly."

This compact, made in the unequivocal language of a barbarous age, has long long since ceased to exist, and now, in our own day, Russia disdains to own a slave.

The other instance is the compact between the New England colonies in 1643, being one of the "articles of confederation between the plantations under the government of the Massachusetts, the plantations under the government of New Plymouth, and the plantations under the government of Connecticut." Here it is:

"*It is also agreed*, that if any servant run away from his master into any other of these confederated jurisdictions, that in such case, upon the certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant *shall be delivered* either to his master or any other that pursues and brings such certificate or proof."—(Plymouth Colony Records, vol. 9, p. 6: See, also Ancient Charters of Massachusetts, p. 722.)

Here, by words of *agreement*, less frank and unequivocal than those of the earlier time, fugitives are to be delivered up. But this compact, like its Russian prototype, has long since ceased to exist.

Unquestionably the fugitive clause of the Constitution, whether applicable to fugitive slaves or not, was never intended to confer power upon Congress, but was simply a *compact* to receive such interpretation as the States where it was enforced might choose to adopt.

AUTHORITIES AGAINST THE POWER OF CONGRESS.

But the committee do not leave this conclusion to rest merely on unanswerable reason. There are authorities on the subject which add to the testimony.

Here are the words of Chancellor Walworth, of New York, in a judgment pronounced in 1835, before this subject had become the occasion of political strife. This testimony of the learned chancellor is the more important, when it is considered that he has always acted politically with that democracy which has been such a support to Slavery:

"I have looked in vain among the powers delegated to Congress by the Constitution for any general authority to that body to legislate on this subject. It certainly is not contained in any express grant of power, and it does not appear to be embraced in the general grant of incidental powers contained in the last clause of the Constitution relative to the power of Congress. The law of the United States respecting fugitives from justice and fugitive slaves is not a law to carry into effect any of the powers expressly granted to Congress, or any other power vested by the Constitution in the government of the United States, or any department or officer thereof."—(*Jack* vs. *Martin*, 14 *Wendell*, 525.)

Here, also, are the words of Chief Justice Hornblower, of New Jersey, in a judgment pronounced in 1836. Having shown that the clause in question confers no power on Congress, he proceeds as follows:

"In short, if the power of legislation upon this subject is not given to Congress in the second section of the fourth article of the Constitution, it cannot

then, be found in that instrument. The last clause of the eighth section of the first article gives to Congress a right to make all laws which shall be necessary and proper for carrying into execution *all the powers* vested by the Constitution in the government of the United States, or in any department or officer thereof. But the provisions of the second section of the fourth article of the Constitution covered no grant to, confides no trust and vests *no powers* in, the government of the United States. The language of the whole of that section is to establish certain principles and rules of action by which the contracting parties are to be governed in certain specified cases. The stipulations respecting the rights of citizenship and the delivery of persons fleeing from justice or escaping from bondage *are not grants of power* to the general government, to be executed by it in derogation of State authority, but they are in the nature of treaty stipulations, resting for their fulfilment upon the enlightened patriotism and good faith of the several States." * * "The argument in favor of congressional legislation, founded on the suggestion that some of the States might refuse a compliance with these constitutional provisions, or neglect to pass laws to carry them into effect, *is entitled to no weight.*"—(*The State* vs. *The Sheriff of Burlington, in Hab. Corp.*)

Afterwards, in a published letter of 1852, the chief justice says:

"Be assured, my dear sir, my judgment, whatever it may be worth, has been for years, and now is, in perfect accordance with yours in relation to the unconstitutionality of the fugitive slave laws of 1793 and 1850."

Other judicial opinions might be adduced; but as they have been given since the controversy on this question has raged, they would be less regarded.

But there are other opinions pronounced in the Senate, which, from the characters of their authors, are entitled to peculiar consideration.

It will be remembered that Mr. Webster gave his support to the fugitive slave act of 1850; but, whatever may have been his vote, so far as his personal authority could go, *he condemned this act as unconstitutional.* Here is his opinion, expressed in the famous speech of the 7th March, 1850:

"I have always thought that the Constitution addressed itself to the legislatures of the States, or to the States themselves. It says those persons escaping into other States shall be delivered up, and I confess I have always been of the opinion that that was an injunction upon the States themselves. It is said that a person escaping into another State, and coming, therefore, within the jurisdiction of that State, shall be delivered up. *It seems to me that the plain import of the passage is that the State itself, in obedience to the injunction of the Constitution, shall cause him to be delivered up. This is my judgment, and I have always entertained it, and I entertain it now.*"

"I have always entertained it, and I entertain it now." Such are the emphatic words by which Mr. Webster declares his judgment of the unconstitutionality of this act.

But he was not alone. Mr. Mason, the actual author of the act of Congress, thus exposed its unconstitutionality in the very speech by which he introduced it.

"In my reading of these clauses of the Constitution for extradition of fugitives, of both classes *I advance the confident opinion* that it devolves upon the States the duty of providing by law both for their capture and delivery. * * * I say, then, sir, that the true intent of the Constitution was to devolve it upon the States as a federal duty to enforce, by their own laws, within their respective limits, both these clauses of extradition."—(*Congressional Globe*, vol. 21, part 1, pp. 234–'5, January 28th, 1850.)

And Mr. Butler, of South Carolina, at a later day, said:

"Under the Constitution each State of itself ought to provide for the rendition of all fugitives from labor to their masters. *This was certainly the design of the Constitution.*"—(*Congressional Globe*, June 26, 1854.)

Such are some of the authorities, judicial and political, by which the power of Congress over this subject is denied. And yet, in the face of all authority, and in defiance of reason, Congress assumed this power. It was done at the demand of Slavery, and for the protection of Slavery. Of course, such an assumption of undelegated power was a usurpation at the time, and it is a usurpation still—doubly hateful when it is considered that it is a usurpation in the name of Slavery. It is hard to think that Congress was driven to an unconstitutional assumption in such a cause, and that, contrary to sovereign rules of interpretation, it was constrained to lean to Slavery rather than to freedom. But the time has come at last when it may recover the attitude which belongs to it under the Constitution.

In advising the repeal of the fugitive slave act, it is enough to show that it is founded on a usurpation by Congress of power not granted by the Constitution. But even admitting the power, a slight examination will show that it has been executed in defiance of the Constitution.

The constitutional objections to the fugitive slave act are abundant. It is not too much to say, that in every section and at every point it is repugnant to admitted principles of constitutional law.

UNCONSTITUTIONAL DENIAL OF TRIAL BY JURY.

Foremost among these objections it is proper to put the denial of a trial by jury to the fugitive, whose liberty is in question. It is well known that Judge Story, who pronounced the opinion of the Supreme Court affirming the constitutionality of the early fugitive slave act, declared that the necessity of a trial by jury had not been argued before the court, and that in his opinion this was still an "open question."—(*Story's Life and Letters*, vol. 2, p. 396.) It has never been argued since; but it is difficult to say that it is still an "open question." The battles of freedom are never lost, and the longer this right has been denied the more its justice has become apparent, until at last it shines resplendent beyond all contradiction. Even if there were any doubt of the obligation of Congress, there can be no doubt of the power. Nobody denies that Congress, if it legislates on this matter, *may* allow a trial by jury. But here again, if it *may*, so overwhelming is the claim of justice, it MUST.

The text of the Constitution leaves the case beyond question. And here, on the threshold, two necessary incidents of the delivery may be observed: First, it must be made in the State where the fugitive is found; and, secondly, it restores to the claimant his complete control over the person of the victim, so that he may be conveyed to any part of the country where it is possible to hold a slave, or he may be sold on the way. From these circumstances, it is evident that the proceedings cannot be regarded, in any just sense, as preliminary or auxiliary to some future formal trial, as in the case of the surrender of a fugitive from justice, but as complete in themselves, final and conclusive.

It is because of the contempt with which, to the shame of our country, under the teachings of Slavery, men have thus far regarded the rights of colored persons, that courts have been willing for a moment to recognize the constitutional right to hurl a human being into bondage, without a trial by jury. Had the victims, in point of fact, been white, it is easy to see that the rule would have been different. But it is obvious that, under the Constitution, the rule must be the same for all, whether black or white.

On the one side is a question of property; on the other side is the vital question of human freedom in its most transcendent form; not merely freedom for a day or a year, but for life, and the freedom of generations that shall succeed so long as Slavery endures. But whether viewed as a question of property or a question of human freedom, the requirement of the Constitution is equally explicit, and it becomes more explicit as we examine its history. It is well known that at the close of the national Convention Elbridge Gerry refused to sign the

Constitution, because, among other things, it established "a tribunal *without juries*—a star chamber as to civil cases." Many united in this opposition, and on the recommendation of the first Congress an additional safeguard was added in the following words: "In *suits at common law*, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved.*" Words cannot be more positive.

Three conditions, according to this amendment, are necessary. *First*, there must be "a suit." But the Supreme Court, in the case of *Cohens* vs. *Virginia*, (6 Wheaton, 407,) have defined a suit to be "the prosecution of some *claim*, demand, or request," thus affirming that the "claim" for a fugitive is "a suit." *Secondly*, there must be a suit "at common law." But here again the Supreme Court, in the case of *Parsons* vs. *Bedford*, (3 Peters, 456,) while considering this very clause, has declared that "in a just sense this amendment may well be construed to embrace all suits which are not of equity or admiralty jurisdiction, *whatever may be the peculiar form which they may assume to settle legal rights;*" and clearly, since the claim for a fugitive is not a suit in equity or admiralty, but a suit to settle what are called "legal rights," it must, of course, be "a suit at common law." *Thirdly*, the value in controversy must "exceed twenty dollars." But here again the Supreme Court in the case of *Lee* vs. *Lee*, (8 Peters's R., 44,) on a question as to jurisdiction founded on the "value in controversy," has declared that the freedom of the petitioners, which was the matter in dispute, "was not susceptible of pecuniary valuation," showing that since liberty is above price, the claim to a fugitive always necessarily presumes that "the value in contoversy exceeds twenty dollars."

Thus, by a series of separate decisions of the Supreme Court on the three points involved in the interpretation of this clause of the Constitution, it is clear, beyond question, that the claim to a fugitive is, first, "a suit;" secondly, "at common law;" thirdly, "where the value in controversy exceeds twenty dollars;" so that trial by jury is expressly secured.

But even if the Supreme Court had been silent on this question, the argument from the old books of the common law would be unanswerable. We are told that there is nothing new under the sun. Certainly, long before our Constitution the claim for a fugitive slave was known to the common law. In early history, and down even to a late period, the slave in England was generally called a *villain*, though, in the original Latin forms of judicial proceedings, *nativus* implying Slavery by birth. Of course, then, as now, the slave sometimes ventured to *escape* from his master; but the common law supplied the appropriate remedy. The claim was prosecuted by a "suit at common law," to which, as to every suit at common law, the trial by jury was necessarily attached. Blackstone, in his Commentaries, (vol. 2, p. 93,) in words which must have been known to all the lawyers of the convention, said of *villains:* "They could not leave their lord without his permission; but, *if they ran away* or were purloined from him, *might be* claimed *and recovered by* action, *like beasts or other cattle.*" But this word "action" of itself implies "a suit at common law," with trial by jury.

The forms of proceeding in such cases are carefully preserved in those books which constitute the authoritative precedents of the common law. There are the writs, counts, pleadings, and judgments, all ending in trial by jury. They will be found in Fitzherbert's *Natura Brevium*, (vol. 1, p. 76.) The year books and books of entries are full of them. Clearly and indisputably, in England, where the common law has its origin, a claim for a fugitive slave was "a suit at common law," recognized as such among its old and settled proceedings, as much as a writ of replevin for a horse or a writ of right for land. It follows, then, that the requirement of the Constitution, read in the illumination of the common law, naturally and necessarily embraces proceedings for the recovery of

fugitive slaves *so far as any such are instituted or allowed under the Constitution.*

And this irresistible conclusion has the support of a senator from South Carolina in an earlier period of our history, before passion had obscured reason and conspiracy against the Union had blotted out all loyalty to truth. In reply to a proposition, in 1818, to refer the claim of the master to a judge without a jury, Mr. Smith, speaking solely in the interests of property, thus expressed himself:

"This would give the judge the sole power of deciding *the right of property the master claims in his slaves, instead of trying that right by a jury, as prescribed by the Constitution.* He would be judge of matters of law and matters of fact—clothed with all the powers of a court. Such a principle is unknown in your system of jurisprudence. *Your Constitution has forbid it.* It preserves the right of trial by jury in all cases where the value in controversy exceeds twenty dollars."—(*Annals of Congress*, 15th Cong., 1st sess., vol. 1, p. 232.)

Thus, in those days, a partisan of slavery, while asserting its divine origin, and vindicating the rendition of fugitive slaves, recognized the claim of the master as a "suit at common law," to be tried by a jury; and this he *insisted* was prescribed by the Constitution. But if this senator could claim a trial by jury for the protection of his pretended property, with much greater reason might the fugitive claim a trial by jury for the protection of his liberty. Surely, now, when liberty is regaining her lost foothold in the Republic, this protection will not be denied.

OBJECTIONS TO TRIAL BY JURY.

To all this array of reason and authority there have been but two attempts at reply, so far as the committee is informed.

1. The first of these attempts asserts that the rendition of the slave under the act of Congress is a "preliminary" proceeding, in the nature of *extradition*, which does not establish any right between the parties, but simply hands the slave over to the local jurisdiction from which he escaped, and that, therefore, trial by jury is unnecessary. But this pretension is founded on a plain misapprehension. It forgets, in the first place, that by ancient authority a "claim" for a fugitive slave is unquestionably a "suit at common law," to be determined by a jury *before the judgment of rendition.* And it forgets, in the second place, that the proceedings are in no respect "preliminary;" that they do not contemplate any other trial between the parties, but that they fix absolutely the relations of the parties, making one of them master and the other slave; that the certificate of rendition is absolute and unimpeachable by any human tribunal, so that the claimant, from the moment of its issue, may assert an unqualified ownership over the fugitive; that, under this certificate, he may proceed at once to demand service and labor, and may enforce his demand by the lash; and that, instead of returning the victim to that local jurisdiction from which he is alleged to have escaped, the claimant may hurry him, chained and manacled, to some distant plantation, where the only judge will be an overseer, and the only jury will be the creatures who aid in enforcing a vulgar power. And this argument forgets, also, that this cruel judgment may be inflicted upon a freeman who, perhaps, has never left his northern home, but whose fate will be fixed beyond appeal by the certificate of a commissioner. Surely the simple statement of this case is enough.

But the very word "preliminary" suggests the inquiry, to what? Preliminary is not an adjective that supports itself. It requires an adjunct, or an abutment on which to rest. It is the beginning or introduction to some further proceeding. It is something incomplete or unfinished. If it be judicial in character, it necessarily contemplates some further judicial proceeding. The judge who pronounces a preliminary judgment must necessarily have in his mind the

judgment which is to follow, and he must recognize his relation to it. But if there is no judgment to follow; if there is no contemplation of any further judicial proceeding; if the actual proceeding is complete and finished; if it is not the beginning or introduction to any further proceeding; if there is nothing on which the adjective "preliminary" can rest, it seems absurd to call the proceeding by this name. It is essentially final, and such is the unquestionable character of the proceeding under the fugitive slave act. To call it "preliminary," and on this ground to attempt an apology for the denial of trial by jury, is only another illustration of the devices employed by Slavery to baffle the demands of freedom.

But it is still said that there may be another trial in the State whither the slave is conveyed. On this assumption it has been well remarked, that if, contrary to the general principles of law which attach to the decision of a competent tribunal a conclusive force as to the same right between the same parties, there could be any trial in the slave State, it is sufficient to observe that it is *another trial*, and in no respect a continuation and completion of the proceedings before the commissioners. The only trial possible would be an original suit brought for his freedom by the alleged slave against his *actual* master, whosoever he might be; for the claimant may have already sold him to another. But there can be no legal connexion between the two proceedings. Each is original, and must be decided on its own merits. In the one case the *actual* claimant, whosoever he may be, is plaintiff, and the slave is defendant; and in the other case, the slave is plaintiff, and the *actual* master, whosoever he may be, is defendant. And the first proceeding is preliminary to the other, only as an illegal imprisonment is preliminary to a suit for damages. The whole pretension is lost in its absurdity.

2. The second attempt at reply to the argument for a trial by jury may be given in the words of the author of the fugitive slave act himself. In the debate which occurred on its passage, Mr. Mason thus expressed himself:

"If you pass a law which shall require a trial by jury, not one man in twenty whose slave escapes will incur the risks or expense of going after the fugitive. It proposes a trial according to all the forms of the court. *A trial by jury necessarily carries with it a trial of the whole right*, and a trial of the right to service will be gone into according to all the forms of the court in determining upon any other fact. * * * This involves the detention of the fugitive in the mean time, a detention that is purely informal; and whether the jury should or should not render a righteous verdict in the end is a matter I will not inquire into, for it is perfectly immaterial, *as the delay itself would effectually defeat the right of reclamation.*"—(*Congressional Globe*, vol. 22, part 2, p. 1584, 31st Congress, 1st session.)

Thus, in a question of human freedom, the delay incident to a trial by jury was unblushingly asserted as a sufficient reason for the denial of this right. On a pretension so repulsive, it is enough to say that its feebleness is exceeded only by its audacity.

The committee, therefore, put aside the attempts at reply, and confidently rest in the conclusion that the denial of trial by jury to a person claimed as a slave is an unquestionable violation of the Constitution.

UNCONSTITUTIONAL DELEGATION OF JUDICIAL POWER TO COMMISSIONERS, WHO ARE NOT JUDGES.

There is still another objection on account of unconstitutionality, which may be treated more briefly; but it is not less decisive than the two objections already considered. It is founded on the character of the magistrate to whom is committed the adjudication of the great question of human freedom, than which none greater is known to the law.

If it were a question merely of property above twenty dollars; if it were a

question of crime, involving imprisonment under the laws of the United States; especially if it were a question involving life, the trial must be by a judge duly appointed by the President, by and with the advice and consent of the Senate, holding office during good behavior, receiving for his services a fixed compensation, and bound by a solemn oath of office. But this great question of human freedom is committed to the unaided judgment of a petty magistrate, called a commissioner, appointed by the court instead of the President, holding his office during the will of the court instead of during good behavior, paid by fees according to each individual case, instead of receiving for his services a fixed compensation, and not bound by any oath of office.

A claim for the rendition of a fugitive from service or labor, constituting, as it does, "a suit at common law," and also "a case arising under the Constitution," must be determined by a *judicial tribunal;* but a commissioner is not a judicial tribunal, nor is he in any sense a judge, so that he is not entitled under the Constitution to exercise this extraordinary jurisdiction.

As a "suit at common law," the claim must be tried by the tribunal which has jurisdiction of suits. But a commissioner can have no such jurisdiction.

As "a case arising under the Constitution," it falls under the judicial power of the United States; but a commissioner is no part of this power.

There are two provisions of the Constitution which place this conclusion beyond question. First. By article III, section 7, it is declared that "*the judicial power of the United States* shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and the inferior courts, shall hold their office during good behavior, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office." Secondly. By article III, section 2, it is declared that "*the judicial power shall extend to all cases in law and equity under this Constitution, the laws of the United States,* and the treaties made, or which shall be made, under their authority." Here it appears, first, who are the judges constituting the judicial power of the United States; and secondly, what is the extent of this power. But a commissioner clearly is not a judge, or any part of the judicial power. Therefore, by inevitable conclusion, he cannot have jurisdiction of any "case arising under the Constitution." But the Supreme Court has expressly decided that the proceeding by a claimant for the delivery of an alleged slave "constitutes in the strictest sense a controversy between the parties, and *a case arising under the Constitution* of the United States, with the express delegation of judicial power given by that instrument." —(*Prigg's case*, 16 *Peters*, 616.)

And yet a commissioner, dressed in the smallest and briefest authority, is put forward to determine this great case under the Constitution, and his judgment is declared to be final, and even without appeal. The fugitive slave act proclaims expressly (section 4) that "he shall have *concurrent jurisdiction* with the judges of the circuit and district courts of the United States;" (section 6) that "he shall hear and determine the case of the claimant in a summary manner;" and (section 6) that "his certificate shall be conclusive of the right of the person in whose favor granted to remove such fugitive to the State or Territory from which he escaped, and *shall prevent all molestation of the said person by any process issued by any court, judge, magistrate, or other person whatsoever.*" Such are the plenary powers conferred upon the commissioner, together with an eminent jurisdiction concurrent with judges of the circuit and district courts. This act, as originally introduced by Mr. Butler, before the substitute of Mr. Mason, intrusted this *concurrent jurisdiction* to the whole army of postmasters; but a trumpery commissioner, appointed by a court, is as little entitled to exercise it as a postmaster. It is not doubted that, under existing statutes, a commissioner may be appointed to take depositions and acknowledgments of bail, and also to arrest, examine and detain offenders for trial. Thus much a court

may authorize; *but a court cannot delegate to a commissioner the power of trying a cause*, whether "a suit at common law" or "a case arising under the Constitution;" *nor can Congress authorize a court to delegate this power.* The whole pretension is a discredit to the jurisprudence of the country.

Such are three principal objections to the constitutionality of this act. One alone is enough. The three together are more than enough.

OTHER OBJECTIONS TO THE FUGITIVE SLAVE ACT.

But there are other objections to which the committee merely allude.

The offensive act, defying the whole law of evidence, authorizes a judgment which shall despoil a man of his liberty on *ex parte* testimony, by affidavits, without the sanction of cross-examination.

It practically denies the writ of *habeas corpus*, ever known as the palladium of the citizen.

Contrary to the declared purposes of the framers of the Constitution, it sends the fugitive back "at the public expense."

Adding meanness to the violation of the Constitution, it bribes the commissioner by a double fee to pronounce against freedom. If he dooms a man to Slavery the reward is ten dollars, but saving him to freedom his dole is five dollars.

As it is for the public weal that there should be an end of suits, so, by the consent of civilized nations, these must be instituted within fixed limitations of time; but this act, exalting slavery above even this practical principle of universal justice, ordains proceedings against freedom without any reference to lapse of time.

Careless of the feelings and conscientious convictions of good men who cannot help in the work of thrusting a fellow-being back into bondage, this act declares that "all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law;" and this injunction is addressed to all alike, not excepting those who religiously believe that the Divine mandate is as binding now as when it was first given to the Hebrews of old: "THOU SHALT NOT DELIVER *unto his master the servant which is escaped from his master unto thee;* he shall dwell with thee, even among you, in that place where he shall choose, in one of the gates where it liketh him best; thou shalt not oppress him."—(*Deuteronomy*, ch. 23, verses 15 and 16.) The thunder of Sinai is silent and the ancient judgments have ceased; but an act of Congress, which, besides its direct violation of this early law, offends every sentiment of Christianity, must expect the judgments of men, even if it escapes those of Heaven. Perhaps the sorrows and funerals of this war are so many warnings to do justice.

But this act is to be seen not merely in its open defiance of the Constitution, and of all the decencies of legislation; it must be considered, also, in two other aspects: first, in its consequences; and secondly, in the character of its authors. The time at last has come when each of these may be exposed.

CONSEQUENCES OF THE FUGITIVE SLAVE ACT.

And, first, as to its consequences. In the history of the African race these can never be forgotten. Since the first authorization of the slave trade nothing so terrible had fallen upon this unhappy people, whether we contemplate its cruelty to individuals or the widespread proscription which it launched against all who were "guilty of a skin not colored as our own."

It is sad to know of suffering anywhere, even by a single lowly person. But our feelings are enhanced when individual sorrows are multiplied and the blow descends upon a whole race. History, too, takes up the grief. The Jews expelled from Spain by merciless decrees; the Huguenots driven from France by the revocation of the edict of Nantes; our own Puritan fathers compelled to

exile for religious freedom; all these receive a gushing sympathy, and we detest the tyrants. These were persecutions for religion in days of religious bigotry and darkness. But an American Congress, in this age of Christian light, not in the fanaticism of religion, but in the fanaticism of Slavery, did an act which can find companionship only with these enormities of the past. The fugitive slave act carried distress and terror to every person of African blood in the free States. All were fluttered, as the arbitrary edict commenced its swoop over the land The very rumor that a slave hunter was in town so shook the nerves of a sensitive freeman, on whom was the ban of color, that he died. To large numbers this act was a decree of instantaneous expulsion from the Republic, under the penalties of Slavery to them and their heirs forever. Stung with despair, as many as 6,000 Christian men and women, meritorious persons—a larger band than that of the escaping Puritans—precipitately fled from homes which they had established, opportunities of usefulness which they had found, and the regard of fellow-citizens, until at last, in an unwelcome northern climate, beneath the British flag, with glad voices of free loin on their lips, though with the yearnings of exile in their hearts, they were happy in swelling the chant "God save the Queen"

But such an injustice cannot be restrained in its influence. Wherever it shows itself it is an extension of Slavery, with all the wrong, violence, and brutality which are the natural outgrowth of Slavery. The free States became little better than a huge outlying plantation, quivering under the lash of the overseer; or rather they were a diversified hunting-ground for the flying bondman, resounding always with the "halloo" of the huntsman. There seemed to be no rest. The chase was hardly finished at Boston, before it broke out at Philadelphia, Syracuse, or Buffalo, and then again raged furiously over the prairies of the west. Not a case occurred which did not shock the conscience of the country, and sting it with anger. The records of the time attest the accuf racy of this statement. Perhaps there is no instance in history where human passion showed itself in grander forms of expression, or where eloquence lent all her gifts more completely to the demands of liberty, than the speech of an eminent character now dead and buried in a foreign land, denouncing the capture of Thomas Simms, at Boston, and invoking the judgment of God and man upon the agents in this wickedness. That great effort cannot be forgotten in the history of humanity. But every case pleaded with an eloquence of its own, until, at last, one of those tragedies occurred which darken the heavens and cry out with a voice that will be heard. It was the voice of a mother standing over her murdered child. Margaret Garner had escaped from Slavery with three children, but she was overtaken at Cincinnati. Unwilling to see her offspring returned to the shambles of the south, this unhappy person, described in the testimony as "a womanly, amiable, affectionate mother," determined to save them in the only way within her power. With a butcher knife, coolly and deliberately, she took the life of one of the children, described as "almost white, and a little girl of rare beauty," and attempted, without success, to take the life of the other two. To the preacher who interrogated her, she exclaimed: "The child was my own, given me of God to do the best a mother could in its behalf. I have done the best I could; I would have done more and better for the rest; I knew it was better for them to go home to God than back to slavery." But she was restrained in her purpose. The fugitive slave act triumphed, and after the determination of sundry questions of jurisdiction, this devoted historic mother, with the two children that remained to her, and the dead body of the little one just emancipated, was escorted by a national guard of armed men to the doom of Slavery. But her case did not end with this revolting sacrifice. So long as the human heart is moved by human suffering, the story of this mother will be read with alternate anger and grief, while it is studied as a perpetual witness to the slaveholding tyranny which then ruled the Republic with

execrable exactions, destined at last to break out in war, as the sacrifice of Virginia by her father is a perpetual witness to the decemviral tyranny which ruled Rome.

But liberty is always priceless. There are other instances less known in which kindred wrong has been done. Every case was a tragedy—under the forms of law. Worse than poisoned bowl or dagger was the certificate of a commissioner—who was allowed, without interruption, to continue his dreadful trade. Even since the rebellion for Slavery has been raging in blood, the pretension of returning slaves to their masters has not been abandoned. The piety of Abraham, who offered up Isaac as a sacrifice to Jehovah, has been imitated, and the country has continued to offer up its fugitive slaves as a sacrifice to Slavery. It is reported, on good authority, that among the slaves thus offered up was one who, by his communications to the government, had been the means of saving upwards of one hundred thousand dollars. And here in Washington, since the beneficent act of emancipation, even in sight of the flag floating from the national Capitol, the fugitive slave act has been made a scourge and a terror to innocent men and women

If all these pains and sorrows had redounded in any respect to the honor of the country, or had contributed in any respect to the strength of the Union, then we might confess, perhaps, that something at least had been gained. But, alas! there has been nothing but unmixed evil. The country has suffered in its good name, while foreign nations have pointed with scorn to a republic which could sanction such indecencies. Not a case occurred which was not greedily chronicled in Europe, and circulated there by the enemies of liberal institutions. Even since the rebellion began, in the name of Slavery, the existence of this odious enactment unrepealed on our statute-book has been quoted abroad to show that the supporters of the Union are as little deserving of sympathy as the rebel slavemongers. But from the enforcement of this enactment the Union has suffered; for not a slave was thrust back into bondage without weakening those patriotic sympathies, north and south, which are its best support. The natural irritation of the north as it beheld all the safeguards of freedom overthrown, and Slavery triumphant in its very streets, was encountered by a savage exultation in the south, which seemed to dance about its victims. Each instance was the occasion of new exasperations on both sides, which were skilfully employed by wicked conspirators "to fire the southern heart."

AUTHORS OF THE FUGITIVE SLAVE ACT.

Such are some of the consequences of this ill-fated measure. But the duty of the committee cannot be performed without glancing at its authors also. It is by an easy transition that we pass from one to the other, for the two are in natural harmony. Each may be read in the light of the other.

And who were the authors of the fugitive slave act? The answer may be general or special.

If general, it may be said that its authors were the representatives of Slavery, constituting that same oligarchy or slave power which has madly plunged this country into civil war. Some of them even at the time of its enactment were already engaged in treasonable conspiracy against the Union. They thought little of any pretended interests in property; but they were occupied with two controlling ideas: first, how to unite their own people at home; and, secondly, how to insult and subjugate the free States. The fugitive slave act furnished a convenient agency for this double purpose, and was naturally adopted by men who had lost the power of blushing as well as the power of feeling.

Unquestionable facts will show how little real occasion there was for this barbarous enactment. It is now established by the report of the census of 1860 that the loss of slaves by escape was trivial. According to this docu-

ment "the whole annual loss to the southern States from this cause bears less proportion to the amount of capital involved than the daily variations which, in ordinary times, occur in the fluctuations of State or government securities in the city of New York alone."—(*Compendium of Census* for 1860, p. 12.) Such a statement is most suggestive. But the official tables furnish confirmatory details. From these, it appears that during the year ending June 1, 1860, out of 3,949,557 slaves, only 803 were able to escape, being one to about 5,000, or at the rate of one-fiftieth of one per cent. Then, again, out of more than one million of slaves in the border States in 1860, fewer than 500 escaped. Such are the authentic facts. But this is not all. The slave who had succeeded in escaping, even when re-enslaved, was never afterwards regarded as good property. All the work he could do would not compensate for his bad example. Jefferson Davis, in the frankness of an address to his constituents at home in Mississippi, on the 11th July, 1851, said openly that he did not want any fugitive slaves sent into his State; that "such stock would be a curse to the land, for with the knowledge they had gained they would ruin the rest of the slaves, and very probably give rise to the most dreadful consequences;" and he concluded by announcing that "he would not have in his quarters a negro brought from the north on any account whatever."—(*Southern Press*, August 8, 1851.) And yet, in the face of these authentic facts, showing how few escaped, and then in the face of an instinctive repugnance to allow slaves who had once tasted liberty to mingle with other slaves, this atrocious statute was enacted, and its enforcement was maintained at the point of the bayonet, while Jefferson Davis was Secretary of War.

There have been wars of *pretext;* but here was an act of legislation, which, whenever enforced, was a *petty war*, and its origin was a pretext. It was nothing but a pretext through which the representatives of Slavery sought to enforce a flagitious power. The pretext was worthy of the legislation, and both pretext and legislation were in harmony with the authors, who drew their motives of conduct from Slavery, and nothing else. The same spirit which triumphed in the fugitive slave act, on a pretext, has at last broken forth in rebellion, on a pretext also. Each was under the pretext of maintaining Slavery, and each proceeded from the same influence.

Speaking, then, in general terms, the authors of the fugitive slave act were the authors of the rebellion. The one and the other have the same paternity, as unquestionably they have a family likeness.

If, however, we go still further and seek the individual authors of this odious measure, the forerunner of the rebellion, it will be easy to point them out.

The bill was first reported to the Senate by Mr. Butler, of South Carolina, so that in its origin it may be traced directly to the hot house of nullification, treason and rebellion. But Mr. Mason, of Virginia, subsequently moved a substitute, which was adopted and became the existing statute, so that this enormity stalked into life under the patronage of a senator from Virginia. Public report, which is entitled to belief, attributes this substitute to the cunning hand of Mr. Faulkner, also of Virginia; but on moving it in the Senate, Mr. Mason made it his own, and pressed it with untiring pertinacity, as the *Globe* amply attests, until it became the law of the land, so far as such a measure can in any just sense be "law."

But whether its authors be found in States or individuals, there is about it the same smell of rebellion. Proceeding first from South Carolina, it was adopted by Virginia, like the rebellion itself. A senator from Virginia took from South Carolina the final responsibility—as an aged madman from Virginia asked and obtained permission to point the first gun at Fort Sumter. Nor are the two events unlike in character. The fugitive slave act was levelled at the Union hardly less than the batteries at Charleston when they opened upon Fort Sumter.

Such are the authors, general and special, of this wickedness. The senator from South Carolina is dead; but the representatives of Slavery still live, and so also do the two authors from Virginia. Thus do the representatives of Slavery, though now in open rebellion, continue, through an unrepealed statute, to insult the loyal States, to degrade the Republic, and to rule the country which they have tried to ruin. And thus do two audacious rebels—one the pretended minister of the rebellion at London, and the other an officer in the rebel forces—still enjoy among us a malignant power, while, with a long arm not yet amputated, they reach even into the streets of Washington, and fasten the chains of the slave.

CONCLUSION.

To all this there is one simple answer, and Congress must make it.

A clause of the Constitution, contrary to all commanding rules of jurisprudence, has been interpreted to sanction the hunting of slaves; and the same clause, thus interpreted, has been declared, contrary to all the testimony of history, to have been an original compromise of the Constitution, and a corner-stone of the Union. On this clause, thus misinterpreted and thus misrepresented, an act of Congress has been founded, which, even assuming that the clause is strictly applicable to fugitive slaves, is many times unconstitutional, but especially in three several particulars: (1,) as a usurpation by Congres of powers not granted by the Constitution; (2,) as a denial of trial by jury in a case of personal liberty, and a suit at common law; and, (3,) as a concession of the case of personal liberty to the unaided judgment of a single petty magistrate, without any oath of office, constituting no part of the judicial power; appointed not by the President with the consent of the Senate, but by the court; holding his office, not during good behavior, but merely during the will of the court; and receiving, not a regular salary, but fees according to each individual case. But even if this act were strictly constitutional in all respects, yet, regarding it in its terrible consequences, and in its rebel authors, it is none the less offensive; for, from the beginning, it was a scourge to the African race, and a grievance to the whole country—a scandal abroad and a dead-weight upon the Union at home, while it was the arch contrivance of men who, at the time, were rebel at heart, and are now in open rebellion—devised as an insult to the free States, and as a badge of subjugation. Such a statute, thus utterly unconstitutional in every respect, and utterly mischievous in all its consequences and influences, while it is peculiarly obnoxious in its well-known authors, ought to be repealed without delay. If consistent with parliamentary usage, it ought to be torn from the volumes of the law, so that there should be no record of such an abuse and such a shame.

Unhappily, the statute must always remain in the pages of our history. But every day of delay in its repeal is hurtful to the national cause, and to the national name. Would you put down the rebellion? Would you uphold our fame abroad? Would you save the Constitution from outrage? Would you extinguish Slavery? Above all, would you follow the Constitution, and establish justice? Then repeal this statute at once.

MINORITY REPORT.

MARCH 1, 1864.

Views of the minority, submitted by Mr. Buckalew, and ordered to be printed with the report of the committee.

The undersigned, a minority of the Committee on "Slavery and the Treatment of Freedmen," to which committee were referred sundry petitions for the repeal of all existing laws of the United States for the rendition of fugitive slaves, have found themselves unable to agree with the majority of the committee in the views expressed by them in their proposed report to the Senate, or to concur with the majority in reporting a bill in accordance with the prayer of the petitioners.

The majority of the committee declare the acts of Congress of 1793 and 1850, in aid of the reclamation of fugitives from service and labor, to be unconstitutional and inexpedient, and their report is a *resumé* of the arguments which heretofore have been made against such congressional legislation. It is, therefore, a proper occasion for restating the grounds upon which Congress proceeded upon former occasions in making provision by law for the reclamation of fugitives from labor, and to refute and repel once more the impassioned and unjust objections by which that action of Congress has been assailed.

The fourth article of the Constitution contains seven miscellaneous provisions, the third and fourth of which, contained in the second section, are as follows:

"A person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

"No person held to service or labor in one State under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

These clauses may be described as in the nature of clauses of extradition, and if they appeared in a treaty between States perfectly independent of each other, and without a common agent or authority for the determination of questions between them, would be executed exclusively by the political authority of the State where the fugitive from justice or labor should be found. They would be only articles of compact or agreement between independent parties, the execution of which would be a question of good faith in the party upon whom the obligation would rest. And the remedy for a breach of the obligation would be by the action of the State aggrieved, in a resort to war, reprisal, or other means of redress known to international law.

But our States are not wholly independent of each other. They are associated together in a constitutional union, and have a joint representative or agent in the government of the United States. And the instrument by which that association is created, and that government established, cannot be rescinded or changed, except by the formal action of the political bodies which formed it, acting in the manner prescribed in the instrument itself. In fact, so intimate is the association, that it loses the character of an alliance or league of independent States (dependent upon the free assent of the parties for its continuance) as to

all subjects, whether of power or duty, embraced in the agreement of union. The several States, and the people of each, are bound by the action of the common government upon all subjects committed to its jurisdiction.

And as to the stipulations above mentioned, which relate to the return of fugitives from one State to another, it must be manifest that the relation of the States would be different if they were wholly independent of each other. Doubtless the duty of executing the stipulation would be the same, but its obligation would be imperfect, or at least, its sanction would be different.

If there be no jurisdiction in the government of the United States over this subject of the return of fugitives, it is manifest that there is no sanction or power whatsoever for the enforcement of the right of reclamation against a defaulting State—against a State which declines to execute, or opposes the execution of the Constitution, and we would arrive at the absurd or improbable conclusion that a solemn right and duty were created without any possible remedy for their violation; for it is manifest that a State aggrieved could not resort to any means of redress known to public law. By the tenth section of the first article it is declared that "No State shall enter into any treaty, alliance, or confederation, or grant letters of marque and reprisal, nor, without the consent of Congress, keep troops or ships-of-war in time of peace, or enter into any agreement or compact with another State, or a foreign power, unless actually invaded, or in such imminent danger as will not admit of delay."

In case, therefore, of obstruction or denial of the right of a State under the Constitution to have its fugitives returned, it could use no force for the vindication of the right against a State in default, nor could it even enter into any negotiation or form any agreement with such State in regard to the subject. The consequence would be, that the State upon which the wrong is inflicted would be in a worse condition as to the vindication of a right against another State, founded upon a compact of reclamation, than it would be in if it were an independent State, and had never entered into the compact of union. For by that compact it has surrendered all right and power to redress its own injury.

It follows that a construction of the Constitution which would deny to the federal government all jurisdiction and power over this subject of the reclamation of fugitives must be unreasonable and false. For we cannot suppose that those who formed the Constitution intended to declare a right which should be incapable of enforcement, or to place a State as to its rights, or the rights of its citizens, in a worse position than that in which it would stand as an independant Power. The Constitution was a remedial instrument as well as one of order and union, and it must be construed as creating the powers necessary to the enforcement and vindication of the rights declared by it. It is claimed for the system of English law, that it announces no legal right without providing an adequate remedy, and it would be an odious imputation upon our ancestors to assert that they did not make full provision for a like perfection in our laws, in creating the Constitution and government of the United States.

This subject of the return of fugitives became highly important in forming an intimate union of the States, which involved the surrender of many powers of independent action by them, and gave to criminals, slaves, bound servants, and apprentices, increased facilities for absconding from one State to another. And it was adjusted in the clauses already cited, by an emphatic declaration of the right of reclamation, in the case of criminals upon demand of the executive of the State from which they have fled, and in the case of "persons held to service and labor," upon claim of "the party to whom such service or labor may be due." And as to the latter class of fugitives there is an express provision that they shall not be discharged from service or labor in consequence of any law or regulation of the State into which they shall escape. The right of the claimant, under the laws of his own State, to the service and labor of the fugitive, is to stand intact and unaffected at all times, in the new jurisdiction to which the

fugitive has escaped. And "he shall be delivered up." To whom is this injunction directed? It is general; it does not specify any authority or person by whom the delivery shall be made; and being thus general and unqualified, it may be held to include any person or official in whose hands, or under whose control, the fugitive may be. And he is to be delivered up on claim, without anything further; upon an open assertion by the claimant of his rights. No judicial proceeding is suggested, no warrant is required. The clause is clear in indicating a right of recaption by the person to whom the service or labor is due, and is descriptive of such right as that described by Blackstone, in his Commentaries, (3 Com., 4.) He says: "Recaption or reprisal is another species of remedy by the mere act of the party injured. This happens when any one has deprived another of his property in goods or chattels personal, or wrongfully detains one's wife, child, or servant; in which case the owner of the goods, and the husband, parent or master, may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace." But it does not follow that this constitutional right is independent of all statute law. The regulation of legal rights, though they be founded in a Constitution, must pertain to the legislative power. A Constitution cannot treat of details, nor establish the incidents of a right, nor the forms through which it shall be asserted. The right of recaption in the master exists, and has always existed, in every State possessing servile labor; but the exercise of this right in a free State is only by virtue of the Constitution. Would it not be very unreasonable to hold that while this right is subject to legal regulation (and it is in fact regulated) in the States from which a fugitive escapes, it shall be exercised without any regulation whatsoever in the State to which he has escaped?

This right, then, like other rights created or asserted by the Constitution, may give occasion for statute laws, and the inquiry arises, what political authority has jurisdiction over the subject? Does the government of the United States possess such power, or does it pertain to the States? By what has been already shown, it appears that such power must reside in the government of the United States, and it can be exercised uniformly, certainly, and beneficially by it alone. And the federal government has exercised such power, without serious question, until recently.

In consequence of a question of the reclamation of a fugitive from justice, arising between the States of Pennsylvania and Virginia, and a communication from the former State to President Washington, the subject of legislation by Congress in aid of the reclamation of fugitives came to be considered as early as 1791. The question was submitted to Congress by the President in that year, but no final action being then had, its consideration was resumed at the following session. At last, after debate and amendment, a bill entitled "An act respecting fugitives from justice, and persons escaping from their masters," was enacted into a law, February 12, 1793. This act is yet in force, though amended in 1850. By the first two sections, fugitives from justice in States and Territories are to be delivered up to the executive of the State or Territory from which they fled; and provision is made for the manner in which it shall be done, and to punish any person concerned in a rescue of the fugitive. The third and fourth sections authorize the claimant of a fugitive from labor in any State or Territory, by himself, his agent, or attorney, to arrest the fugitive and take him before a judge of a United States court, or before any magistrate of the county, city, or town, where the arrest may be made, and upon proper proof to obtain a certificate which shall be a sufficient warrant to remove him to the State or Territory from which he fled. And then follows a provision for the punishment of any person obstructing the claimant, his agent, or attorney, in the reclamation.—(Annals of Congress, 1791–'93, pages 1914–'15.)

This act appears to have been debated and fully considered in both houses,

passing the Senate without a division, and in the House of Representatives by a vote of 48 to 7.

The act of 1850 was simply amendatory of the act of 1793, and it had become necessary in order to secure to claimants their rights under the Constitution. That portion of the act of 1793 which authorized State magistrates to act, had become inoperative, and in the case of many States, their assistance in the execution of the law had been forbidden by statute. One main object of the act of 1850 was to substitute commissioners appointed under the authority of the United States, in place of the State officials designated by the act of 1793. Other provisions of the amendatory act were drawn with reference to the experience of the country in cases of reclamation, and were necessary or at least appropriate to the execution of the constitutional provision. The act was agreed to in the Senate upon the question of engrossment by a vote of 27 to 12, and passed the House finally on the 12th day of September, 1850, by a vote of 109 to 75.

These are the laws which it is now proposed to repeal, and their repeal will leave the constitutional right of reclamation without any statute provision whatever for its vindication.

The most important argument urged against these laws by the majority of the committee is this: That the duty of returning fugitives is charged upon the *States* by the Constitution, and that Congress has no jurisdiction over the subject.

But it is not proposed by those who seek a repeal of these laws that the States shall perform any duty in returning fugitives from labor. In point of fact they are as much opposed to State action upon this subject as to federal, and will be found resisting it to the utmost wherever and whenever proposed. Therefore, the argument is not made by them in good faith, for the purpose of inducing an execution of the constitutional provision in question, but for the purpose of defeating it by preventing the reclamation of fugitives at all. The repeal of these laws by Congress is not to be accompanied or followed by State laws or State action, in aid of the master, but by measures and action of an exactly opposite character. The claimant is to encounter opposition under personal liberty laws of the States and other devices of hostile sentiment, and is to receive no aid whatever from State officials in the vindication of his right. What is proposed and intended by the advocates of repeal is not a new and more appropriate remedy for a constitutional right, the substitution of State for federal action, but the defeat and virtual destruction of the right itself, by withholding all government aid whatsoever from the claimant in pursuing it.

But the question of the power of Congress to enact fugitive laws has been most fully determined in favor of the power, by the appropriate constitutional tribunal.

In the case of *Prigg* vs. *The Commonwealth of Pennsylvania*, 16. *Peter's Reports*, p. 543, the Supreme Court decided that "The act of 12th of February, 1793, relative to fugitive slaves is clearly constitutional in all its leading provisions, and, indeed, with the exception of that part which confers authority upon State magistrates, is free from reasonable doubt or difficulty." And Judge McLean declared in the same case that "Congress have legislated on the constitutional power, and have directed the mode in which it shall be executed. The act of 1793 it is admitted covers the whole ground, and that it is constitutional there seems to be no reason to doubt."—(Ib., 669.)

In the case of *Ableman* vs. *Booth*, 21 *Howard's Reports, p.* 526, the Supreme Court say, speaking of the act of 1850: "In the judgment of this court the act of Congress commonly called the fugitive slave law, is, in all of its provisions, fully authorized by the Constitution of the United States."

These decisions would solidly establish the doctrine already maintained by us upon the question of power, if authority were needed to support it.

The Constitution having declared the right of reclamation of fugitives from justice and labor, a power is necessarily implied in the government of the United States for its execution. It is a reasonable and necessary power, resting upon the express provision declaring the right in question. And from the foundation of the government the power has been exercised without any hostile decision, from any tribunal or authority entitled to pronounce conclusively upon it; in fact, there has been less difference of opinion upon this subject than upon almost any other important provision of the Constitution which has been subjected to debate.

It is true that while the majority of the Supreme Court held, upon one occasion, that this power was exclusively in the United States, the minority held that it was a concurrent power, and might be exercised by the States in aid of the claimant's right, in the absence of Congressional action. But it is quite immaterial which of these views be accepted, so far as our present purpose is concerned. If the power exist in either form in the United States, the right of Congress to pass proper laws pursuant to it is indisputable; for, by the concluding clause of the eighth section of the first article of the Constitution, Congress is authorized "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, [those enumerated expressly,] *and all other powers vested by this Constitution in the government of the United States*, or in any department or officer thereof."

Having now stated the case upon the question of power, we proceed to submit some observations upon particular points contained in the report of the majority, and will then state some general considerations which stand opposed to the repeal of the fugitive acts:

1. The majority say, in speaking of the delivery of the fugitive, "It restores to the claimant the complete control over the person of the victim, so that he may be conveyed to any part of the country where it is possible to hold a slave, or he may be sold on the way. From these circumstances it is evident that the proceedings cannot be regarded, in any just sense, as preliminary or auxiliary to some future formal trial, as in the case of the surrender of a fugitive from justice, but as complete in themselves, final and conclusive."

The answer to this is furnished by the laws themselves. The act of 1793, section 3, says: "It shall be the duty of such judge, or magistrate, to give a certificate to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor *to the State or Territory from which he or she fled.*"

The act of 1850 provides, in section 4, that the commissioners who hear fugitive cases "shall grant certificates to such claimants upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, *to the State or Territory from which such persons may have escaped or fled.*"—(See also section 6.)

These citations constitute a sufficient reply, without more, to the statement of the majority. That statement is obviously unfounded.

2. The majority say: "It is because of the contempt with which, to the shame of our country, under the teachings of slavery, men have thus far regarded the rights of colored persons, that courts have been willing for a moment to recognize the constitutional right to hurl a human being into bondage without a trial by jury. Had the victims been, in point of fact, white, it is easy to see that the rule would have been different. But it is obvious that, under the Constitution, the rule must be the same for all, whether black or white."

To which we answer: that the laws are not confined to persons of color, that is, to negroes and mulattoes, but embrace "all persons held to service or labor under the laws of a State." The majority in another part of their report state that white apprentices have been returned to their masters under the laws in question, and doubtless under a just construction of them; and by those parts of

these laws which relate to fugitives from justice, white persons merely *accused* of crime in the State from which they flee are to be returned upon executive demand, and without trial in the States where they are found.

3. The majority say: "As it is for the public weal that there should be an end of suits, so, by the consent of civilized nations, these must be instituted within fixed limitations of time; but this act, [of 1850,] exalting slavery above even this practical principle of universal justice, ordains proceedings against freedom without any reference to lapse of time."

To this we answer: that the right of reclamation under the Constitution being without limitation of time, it was not within the power of Congress to apply a clause of limitation to it.

4. The majority say: "Contrary to the declared purpose of the framers of the Constitution, it sends the fugitive back 'at the public expense.'" The allusion here is to what occurred in the constitutional convention, August 28, 1787, when it was moved to require fugitive slaves and servants "to be delivered up *like criminals;*" to which Mr. Wilson objected, "because it would oblige the executive of the State to do it at the public expense"—that is, at the expense of the State. The form of the proposition was subsequently modified, and the objection thus made by one member of the convention has no relation to the act of 1850, which imposes no expense upon a State. The expenses are borne by the claimant, or by the United States.

5. The majority further say: "Adding meanness to the violation of the Constitution, it bribes the commissioner, by a double fee, to pronounce against freedom. If he dooms a man to slavery, the reward is ten dollars; but saving him to freedom, his dole is five dollars." To this statement it may be answered: that the pay of the commissioner is simply proportioned to the service performed, as is usual in relation to all officers who receive fees. No certificates or other papers are to be issued to claimants when fugitives are discharged, and therefore the compensation is less. If there were any substance in this small objection, the law would be corrected by Congress without hesitation, upon application made to it.

6. The majority insist at much length, that where words have a double intendment, or are ambiguous in their meaning, that construction should be given them which is favorable to liberty, or least odious. We do not propose to impeach the authority of the several authors who are cited in confirmation of this doctrine, or the doctrine itself. But we are quite unable to perceive what application it has to the subject before us—the construction of the Constitution and the fugitive laws. Negro slaves are persons held to service and labor under the laws of some of our States, and we are not aware of any words which would more certainly designate them. It is true that these words describe apprentices; but because they describe them it does not follow that we are at liberty to exclude slaves from their application. These words, as used in the Constitution, have no double intendment, and are not ambiguous. They exactly describe negro slaves, and it does not derogate from their clearness, propriety, or force that they describe other persons also. Admitting that they are more extensive in meaning than the word slaves, they still contain the signification of that term.

Against the conclusion sought to be drawn from verbal criticisms of the majority, stand opposed the declarations of those who made, and were cotemporaneous with, the making of the Constitution; the clear language of the fugitive act of 1793 and of other statutes; the decisions of courts of the United States, authorized to construe the Constitution; and the general understanding and consent of the country, when the Constitution was made and subsequently. To which may be added, as we think, the clear import, the plain meaning, of the language itself. Slaves were mentioned in the convention in connexion with this

clause, as the majority themselves show, and they were also mentioned in such connexion in conventions which adopted the Constitution, and yet the majority assert that the clause does not apply to them because the language used does not sufficiently declare the intention. This we conceive to be a remarkable argument—that the Constitution is not to be taken in the sense in which it was made and adopted, and, in fact, acted upon and applied by the government of the United States, but according to some strained and unnatural interpretation, founded upon slight verbal criticisms made more than half a century afterwards! In this case we do not know which to admire most, the folly of the proposition or the exuberance of bad faith which it implies.

7. We are not impressed by the argument of the majority that this proceeding of reception, or extradition, is a suit at common law, and therefore falling within the constitutional provision requiring a trial by jury. It is a proceeding by virtue of a special provision of the Constitution of the United States, and, instead of involving or requiring a suit at law, is the personal assertion of a claim by an individual in his own right.

Judge McLean says (16 Peters, p. 567) "both the Constitution and the act of 1793 require the fugitive from labor to be delivered up on claim being made by the party, or his agent, to whom the service is due. Not that a suit should be regularly instituted. The proceeding authorized by the law is summary and informal." The objectors to our legislation upon the subject of fugitives would be the last men in the world to admit that, in the absence of the constitutional provision in question, a claimant could enforce his claim to the possession of his servant in a State to which the servant had fled, because the common law there existed.

8. The majority mention "that, according to the census, less than one thousand slaves escaped during the year ending June 1, 1860." We are not informed as to the accuracy of the census upon this subject; but, assuming its correctness, we have to remark that the number of fugitives who may escape when the fugitive acts are in existence does not measure the utility of the laws. Because the loss was small, compared to the whole number of slaves in the country, it does not follow that these laws were unnecessary or inoperative. Their value does not consist so much in returning fugitives who may escape as in deterring slaves from escaping, and in deterring white men from assisting them to escape. Therefore, it does not follow from what is stated by the majority that these laws should be repealed upon the ground of inutility.

9. The majority quote declarations of Oliver Ellsworth, Elbridge Gerry, and Roger Sherman, hostile to slavery, and argue therefrom that the constitutional clause relating to persons escaping from service and labor did not relate to slaves, because those statesmen, as members of the convention, would not have assented to a provision which included slaves. We content ourselves with stating, in reply, that all those distinguished men were members of Congress in 1793, *and supported the fugitive slave act of that year!*

10. The majority make the extraordinary statement, that while Mr. Webster supported the fugitive act of 1850, "so far as his personal authority could go he condemned it as unconstitutional;" and a citation is given to support that statement, and citations follow from Judge Butler and Mr. Mason, to show that they concurred in his opinion. What was said by Mr. Webster was in substance this, that in his opinion it was a duty of the States to deliver up fugitives; but there was not the slightest intimation by him or the others named, that the States possessed the *exclusive* power to legislate upon the subject. They held that a duty was imposed upon the States, but they did not deny the power of Congress, which is the point in question. Mr. Butler, the chairman of the Judiciary Committee, in a speech delivered in the Senate on the 19th of April, 1850, insisted that the power was *concurrent;* and said, "in the position I have taken I stand sustained by Chief Justice Taney, and the justices alluded

to, [in the Prigg case,] as well as by the opinions of the distinguished gentleman, lately a member of this body, and now Secretary of State." And again, after quoting from an opinion of Judge Taney, maintaining the doctrine of a concurrent power in the federal and State governments upon this subject, he said, "there is the view of the chief justice entirely in accordance with the one uttered the other day by the gentleman [Mr. Webster] lately representing Massachusetts in this body." An illustration of Mr. Butler's view is furnished by the laws of Congress on the subject of returning fugitives from justice. It is the duty of the States to which crimmals flee to return them, but the proceeding for their return is regulated by act of Congress.

Let it be remembered that whether the power in question be concurrent, or exist exclusively in the United States as held by a majority of the judges of the Supreme Court, is of no consequence in an investigation into the validity of the fugitive slave laws. We may add, that in case of a concurrent power, so far as it is exercised by the federal government, State action is precluded. For the laws of the United States "are the supreme law of the land."

11. We regret to perceive in the majority report an appeal to prejudice, in the reference made to the authors of the act of 1850. It is said the bill was reported to the Senate by Mr. Butler, of South Carolina, and the statement is strictly true. But any good reason for now stating that fact for public contemplation is not manifest. Senator Butler (now dead) was in 1850 chairman of the Judiciary Committee of the Senate, and to that committee properly belonged the consideration of such a bill. That he should report it to the Senate was both natural and proper. Nor does the fact that the bill was amended upon motion of one of the senators from Virginia, (since engaged in revolt,) deserve the prominence given it by the majority. His subsequent misconduct can give no odious character to the enactment in question, unless we accept a principle of mere prejudice or antipathy as our standard of judgment upon this subject. Virginia was a border State of the south; she sought additional securities against loss and injury in the escape of her slaves; her legislature passed resolutions on the subject of reclamation, and it was quite appropriate that one of her senators should act a prominent part in giving form to the bill.

But if names are to be mentioned, these laws of 1793 and 1850 have a sanction which can be claimed for but few of our statutes,

That of 1793 has to it the hand of George Washington, and there were given for it in Congress the votes of Fisher Ames, Abraham Baldwin, Jonathan Dayton, William Findley, Elbridge Gerry, Nathaniel Macon, Frederick A. Muhlenberg, Theodore Sedgwick, and Thomas Sumpter. These are names from the list of yeas in the House. At the same session, John Langdon, Oliver Ellsworth, Roger Sherman, Rufus King, Philemon Dickinson, George Read, Robert Morris, and James Monroe, were members of the Senate.

In favor of the act of 1850, there are princely names of the second generation of our statesmen—men from the east, the west, and the south—the very latchets of whose shoes these abolition petitioners before us were not worthy to unloose. For we were not then left bare and destitute of greatness in the high places of power. In that hour of peril and of passion, the republic possessed men of great endowments, of established reputation and tried patriotism, who stood forward to save their country from convulsion, and they accomplished their purpose. Discord retired before them; fanaticism, scenting blood and carnage in the distance, was whipped back baffled to its retreats in the north; southern revolt was checked and prevented, and once more the Constitution and the laws were made to triumph over both secret and open foes. The men who accomplished all this, and at least secured to their country ten additional years of peace, and growth and glory, gave their support to this law. It constituted one of their measures of adjustment, and it stands open to no just objection on account of its origin.

Having now concluded our observations upon the majority report, we have to state our conviction that the repeal of the reclamation laws, as now proposed, would be unwise, untimely, and unjust. That the grounds stated by the majority of the committee upon which to place the measure, are insufficient, appears from the examination to which we have subjected them. But further, it is clear that there are citizens of the United States, distributed through many States, who are entitled to the full and complete enjoyment of a right under the constitutional provision in question. To the enjoyment of that right these acts of Congress, or other acts similar to them in purpose and character, are indispensable, and their repeal, without the substitution of other appropriate enactments in their stead, would be a denial of the right itself, because it would deny what is necessary to its exertion. There would seem to be some vague notion entertained by the majority that this measure is a blow aimed at the existing rebellion. But such is not its character. It applies itself to the extinguishment of remedies valuable at this time only to men who have refused to engage in revolt, and can have no effect in the so-called Confederate States, unless it be to inspirit resistance to our arms. And so far as it offends those who support the government of the United States in this contest, its effect will be directly injurious to the public cause.

It was asserted by those who organized the revolt against the United States that it was the intention of the northern States, acting through this government as well as at home, to prevent all execution of the constitutional provision for returning fugitives. Is it expedient that we make good this assertion, or give to it a coloring of truth, by enacting this proposed measure of repeal?

Besides, it may be well worth some inquiry whether it is good policy to encourage, invite, or even allow, the migration of negroes northward, from those parts of the country where they are most suitably placed, and subject them to collision with a superior race, under conditions which tend irresistibly to their corruption and ultimate destruction. Their physical structure and characteristics denote adaptation to southern latitudes, and they are misplaced when, as fugitives or emigrants, they appear in the north, to undergo the competition, contempt and hostility of superior laboring populations, native to the soil or introduced from northern Europe. The structure of society, the climate, and the industrial pursuits of the north, are inimical to the welfare or even to the prolonged existence of the negro, and upon his account our efforts should be directed to all proper measures for discouraging and preventing his migration thither. Any policy which leads to the destruction of a race created by the Almighty must, before any tribunal in which the moral government of the world is recognized, be described as evil and criminal, and those who support it can only avert just condemnation from themselves by showing that they act under the pressure of dire necessity, or are ignorant of the consequences of their conduct.

But the policy is bad also with reference to the interests of our own race. It is true that a negro element of population in any northern State will die out eventually—will be extinguished by the operation of natural laws, as certain as those which regulate the winds of heaven, or the tides of the ocean—unless accessions continue to be made to it by immigration. But during the protracted process of death, it is a most injurious and pestilential element to the State. Despised, oppressed, hated; ostracised from honorable employments; hutted in the purlieus of cities and the outskirts of towns, it contaminates the social and burdens the political body into which it is intruded, and by which it is to be destroyed. And the corruption it induces, the debasement of social life which comes from it, will extend into the future and be known long after it has itself disappeared from the observation of men. It is, therefore, an object of high utility to exclude a negro population from our northern States, where it is mis-

placed and injurious, and confine it to the southern country, where natural, industrial, and social conditions permit its existence.

But the main point, and it is the conclusive one, upon which we insist in opposing the repeal of the fugitive laws, is the right of those who "hold persons to service and labor under the laws of a State" to require from government the maintenance in full force of such laws as may be "necessary and proper" to vindicate and enforce their right of reclamation under the Constitution. Those only need take considerations of expediency or of policy into account whose views of constitutional duty are unfixed, or formed upon principles of political philosophy which were unknown to, or at least unaccepted by, the illustrious men who established the government of the United States.

C. R. BUCKALEW.
JNO. S. CARLILE.