

Judge Smith's decision, that Congress has no constitutional power to legislate on the subject of fugitives from service or labor, is in accordance with the opinion once delivered by Chief Justice Shaw, of Massachusetts, and with the opinion of Daniel Webster, emphatically declared in the Senate, during the debates in that body, of 1850. What is of still more importance, it is in accordance with the strict construction of the Constitution itself, which, neither in terms, nor by implication, confers upon Congress the right to legislate upon the subject. We hope to see this example of judicial independence and integrity yet followed in all the State Courts.

DECISION OF JUDGE SMITH.

THE FUGITIVE SLAVE ACT DECLARED UNCONSTITUTIONAL.

Judge Smith gave his decision this morning, in a very able manner, discharging us from arrest in the Glover case, on the ground both of defectiveness in the warrant, and the unconstitutionality of the Fugitive Slave Act of 1850. He held the Fugitive Slave Act to be unconstitutional, because—

1. Congress has no constitutional power to legislate on the subject of reclaiming fugitive slaves;
2. Nor to clothe court commissioners with the power to determine the liberties of the people; and,
3. Because this Act denies the right of trial by jury.

He fully sustained the positions taken by Byron Paine in his argument.

The following is the order of the court:

In the matter of the Petition of Sherman M. Booth for a Writ of Habeas Corpus, and to be discharged from Imprisonment.

This matter having been heard upon the petition, and return to the writ issued herein, and the return of the respondent, Stephen V. R. Ableman, thereto, and having been argued by counsel; and there appearing no sufficient cause or warrant for the detention of the said Sherman M. Booth, and no sufficient reason being shown why he should be restrained of his liberty by reason of the premises, or of anything contained in the return to the said writ of habeas corpus, or for any other cause; it is therefore hereby ordered, that the said Sherman M. Booth be, and he is hereby, discharged from the said imprisonment whereof he has complained, and that he go hence, and at large, without day.

A. D. SMITH,
Associate Justice of Sup. Court of Wisconsin.

We copy the foregoing from the *Daily Free Democrat* of the 7th June, published at Milwaukee, Wisconsin.