28th CONGRESS, 1st Session. Rep. No. 29. Ho. OF REPS.

WILLIAM JONES.

[To accompany bill H. R. No. 56.]

JANUARY 13, 1844.

Mr. WILKINS, from the Committee on the Judiciary, made the following

REPORT:

The Committee on the Judiciary, to whom was referred the petition of William Jones, beg leave to make report:

In the material parts of his memorial, the petitioner represents himself to be a free-born citizen; that, whilst in the enjoyment of his liberty in Washington city, he was arrested and imprisoned without any charge of crime; that he remains in confinement, and is advertised by the marshal of the District to be sold as a slave, for the purpose of obtaining payment of the expenses of his imprisonment; and he concludes by asking Congress for the protection of the weak, and to procure for him that liberty and justice which are his right.

The memorial is silent as to the particular fact—the African color of the petitioner—which has controlled and given direction to the inquiries and investigation of your committee. In one of the official papers of the case, he is designated as "a negro;" and in another, as "a very dark mulatto."

The city of Washington, possessing a charter of incorporation, has various police and corporate regulations extending over the cases of free blacks, and which are presumed to authorize the arrest and restraint of the idle and wandering of that class of persons, so as to secure the citizens of the metropolis against their vagrancy, idleness, evil example, and pauperism.

Your committee have not thought it necessary, or that they are authorized by the reference under which they now act, to go into an examination of those regulations, justified by the exercise of the police power, because the present case of William Jones stands entirely independent of them, and arises solely under the practice which obtained at a distant period, and has been continued to the present day, under the very early laws of Maryland, enacted when she was in the condition of a province.

It appears that the petitioner, upon the presumption he was "a runaway servant," was seized in Washington city on the 2d day of last month, by a private individual, having no official authority, named Judson Richardson, jr.; and was carried by him before James Marshall, a justice of the peace of the county of Washington, in the District of Columbia, formerly a county of the State of Maryland. The justice of the peace, acting upon the principle of evidence which prevails within the District of Columbia, (and, it is presumed, in all of the slave-holding States,) that "color is *prima facie* evidence of slavery," forthwith issued a warrant of commitment, directed

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to the marshal of the District; by virtue of which, the accused, a man of African color, was delivered into prison, and now remains there, under the safe custody of the officer to whom the precept was directed.

That warrant of commitment is in the following words:

DISTRICT OF COLUMBIA, *Washington county, to wit:*

To the marshal of the District of Columbia.

Whereas Judson Richardson, jr., of the said county, has apprehended and brought before me, the subscriber, one of the justices of the peace in and for the county aforesaid, negro William Jones, charged with being a runaway; and whereas no proof has been adduced before me that the said William Jones is not a runaway, you are therefore hereby commanded to receive into your jail and custody the said William Jones, and him safely keep until he be thence delivered by due course of law. Hereof fail not at your peril.

Given under my hand and seal, this 2d day of December, 1843.

JAMES MARSHALL, *J. P.* [SEAL.]

To JUDSON RICHARDSON, Jr.

A true copy from the original.

Teste: P. H. MINOR.

Upon the very face of this warrant of commitment, it is readily to be perceived that the justice of the peace, without an information upon oath, without the proof of probable cause, and without a recital of his own examination and conviction that the accused was a runaway, gave his signature and his seal to an instrument which immediately operated to deprive a man of his freedom, and to cast him into jail as a criminal fugitive from the home of his master.

This warrant of commitment is rendered still more objectionable, because it manifests a disregard of the express provisions of the old provincial law of 1715, under which the arrests of those "deemed runaways" are authorized. The fifth section of that law distinctly requires "the magistrate" before whom an apprehended runaway, or person travelling without a pass, shall be brought, "to judge thereof;" and if by such magistrate the party arrested "shall be deemed and taken as a runaway," he shall then "suffer the penalties provided against runaways." These enactments, in order to justify the warrant of commitment, obviously impose the duty on the magistrate not to rest satisfied with the presumption arising from color, but to go further, and examine into the case himself; to exercise his own judgment; and, finally, to come to the conclusion that he convicts the person in arrest of being "a runaway." The warrant in question is not distinguished by any one of those legal characteristics. It merely recites that negro William Jones was apprehended and brought before the magistrate "*charged with being a runaway;*" and, inasmuch as the prisoner did not prove a negative, and had adduced no proof that "he was not a runaway," he was therefore committed to the jail and the safekeeping of the marshal of the District of Columbia.

Your committee, not disposed to cast censure upon any one concerned in this transaction, deem it to be their duty to state that the magistrate, in the present instance, appears to have pursued a practice and a form of warrant of commitment always and uniformly adopted within the District of Columbia. It is well understood that this practice had its origin in a law

enacted by the General Assembly of Maryland at so remote a date as the 3d day of June, 1715. That brief but comprehensive law (chap. 44, sec. 22) is in the following words: "That all negroes and other slaves already imported, or hereafter to be imported, into this province, and all children now born, or hereafter to be born, of such negroes and slaves, shall be slaves during their natural lives." This enactment, so universal in its language, and embracing the entire black race found within the limits of the then province of Maryland, very naturally gave rise to the rule of evidence that "color is *prima facie* evidence of slavery."

At the first session of Congress held in Washington city, a law was passed, entitled "An act concerning the District of Columbia;" the first section of which declares "that the laws of the State of Maryland, as they now exist, shall be and continue in force in that part of the said District which was ceded by that State to the United States, and by them accepted."

It appears that the passage of this comprehensive section produced the general impression, and the popular and professional opinion, that the old laws of Maryland of 1715, 1719, 1792, and 1796, relative to runaways and absconding servants and slaves, were introduced in full effect and operation within the District of Columbia, and carried with them, and gave vitality to, all the practice, forms of precepts, and rules of evidence, which had prevailed prior to the cession by the State of Maryland. This general opinion, too, has been uniformly sanctioned by the course of judicial proceedings, without regard to the provision to be found in the third clause of the second section and fourth article of the constitution; the act of Congress of the 12th of February, 1793, passed for the purpose of facilitating the arrest and removal of "persons escaping from the service of their masters;" and the act of the 3d of March, 1801, designed to extend the last-mentioned law to the District of Columbia.

The important inquiry seems to have escaped attention, whether the constitutional provision, and the legislative action of Congress, upon a subject exclusively within their control, did not come in conflict with the old laws of Maryland upon the same subject, and supersede and render them inoperative.

Without regard, however, to that inquiry, and overlooking the decisions of the highest judicial tribunal of the country, the old practice under the laws of Maryland is still invariably pursued; and in compliance with which, the marshal of the District has given notice, in the Globe newspaper of this city, of the commitment of William Jones to the jail of the county of Washington, by the following advertisement:

"NOTICE.—Was committed to the jail of Washington county, D. C., on the 2d December, 1843, a negro man, who calls himself William Jones. He is a very dark mulatto, about five feet six and a half inches high, and between 24 and 25 years of age; had on, when committed, blue cassinet pantaloons, and light linsey roundabout. He says he is free; lives, when at home, in Richmond county, Virginia. He has a scar on the outside of the right arm, between the elbow and the wrist. He says the last person he lived with was Mr. Dawson, who keeps a tavern about three miles this side of Richmond. He also says that Mr. John Ferrall and Mr. Thomas Holmes (farmers in the same neighborhood of Mr. Dawson) know him. He says he was brought here by a Captain Fugitt, who runs a vessel, and lives about the navy-yard.

"The owner or owners of the above described negro man are hereby required to come forward, prove him, and take him away; or he will be sold for his prison and other expenses, as the law directs.

"ROBERT BALL, for
"A. HUNTER, *Marshal.*

"DECEMBER 21."

This public advertisement, upon the generally received opinion that the law is applicable to the District of Columbia, is alleged to be required by, and in conformity to, the act of the State of Maryland passed the 22d of December, 1792, chapter 72, section 2, which requires the sheriff, upon the commitment of *any runaway*, "to cause the same to be advertised in some public newspaper within twenty days after such commitment." And the third section requires "that, if no person shall apply for such runaway within the space of thirty days from such commitment, then it shall be the duty of such sheriff, if residing on the Western Shore, to cause the said runaway to be advertised, as heretofore directed, in the Maryland Journal and Georgetown Weekly Ledger; and, if residing on the Eastern Shore, to cause the same to be advertised in the Maryland Herald and Maryland Journal, within sixty days from such commitment; and to continue the same therein, until the said runaway is released by due course of law."

"If no person shall apply for such runaway," or if the prisoner, being a freeman, should remain inactive, or unable to establish the fact of his freedom, he would, at the expiration of the sixty days, agreeably to the usage which prevails within the District, (unless the marshal should think proper to prolong the notice,) be liable to be sold at public auction, upon the presumption, arising from his African color, that he was a fugitive servant or slave.

It is not pretended that these sales, by the marshal, of persons thus arrested and committed as "runaways," change the condition of the objects of them, and convert the freeman into a slave. If he happens to be a freeman, the sale is unauthorized and inoperative; and he can at all times assert his rights and obtain his liberation, by pursuing against his purchaser the remedy by petition, amply secured by the law of Maryland of 1796, ch. 67, secs. 21, 22, 23, 24, and 25. If, in the prosecution of this judicial remedy, he establishes his right to freedom, the invalidity of the sale follows; and the purchaser, upon the principle of "*cavêat emptor*," sustains the loss of his purchase-money. But, if the result proves the petitioner for his freedom to have been an absconding slave, the marshal's vendee will hold him in that condition; and the sale, sanctioned by the law, becomes conclusive against his former owner, whose only relief will be found in his right to receive the residue of the purchase-money of his fugitive servant remaining in the hands of the marshal, after the deduction of the costs and expenses of his arrest, confinement, and sale.

It is very obvious, from their plain language and import, that all those old laws of the State of Maryland bearing upon this subject, and deemed to be operative in Washington county of this District, were intended for the arrest and safekeeping, not of free persons, but of runaway servants and slaves; and also having in view, as a prominent object, the coercion of the owner to come forward, claim his fugitive, and discharge the costs and expenses of his apprehension and custody. Notwithstanding the objects of those laws are so distinctly expressed, and the jurisdiction given by them so clearly

limited, yet, under the practice which has sprung from that maxim of evidence to which your committee have already made reference, free persons of color are continually liable to arrest and imprisonment.

Your committee, without advancing an opinion upon the question of how far a legislative act releasing the prisoner from his confinement would be sustained by any authority possessed by Congress, or justified by public policy, have thought it more advisable to recommend that he be left to prosecute his claim to freedom by an appeal to the judicial power of the District. They have, therefore, not undertaken to entertain and examine the question whether William Jones be a freeman or an absconding servant; nor have they attempted to inquire into and ascertain the facts which bear upon that question. If the petitioner is a freeman, he can very readily assert and maintain his right by an appeal to that speedy and constitutional remedy, the prosecution of the writ of *habeas corpus*. That writ would be promptly granted, and made returnable *instanter*. Upon the hearing, if he rebuts the implication arising from the African color, he would be immediately released. But, upon that hearing, he would have a still more easy and decisive step to adopt in the support of the assertion of his right to a discharge. Upon the simple production and inspection of the warrant of commitment, it would be pronounced to be illegal and void; and, consequently, the authority to hold the prisoner in custody would fall to the ground.

This legal opinion, thus confidently delivered by your committee, rests upon, and is sanctioned by, the defects apparent on the face of the warrant of commitment itself, and already adverted to in this report. It is also positively sustained by the opinions and judgment of Chief Justice Cranch and Judge Morsell, declared in the year 1837, in the case of William Richardson, a free colored man who had been arrested and held in confinement under the authority of a warrant of commitment precisely similar to the one which now restrains William Jones of his liberty.

Upon the hearing and discharge of a free person of color arrested under the circumstances which attend the case of the petitioner William Jones, he is not, by any law or judicial practice of the District of Columbia known to your committee, rendered liable for the payment of costs, nor for the expenses incurred by the marshal for his support whilst in prison.

There are, it is true, some provisions in the general law of June, 1715, chap. 44, which refer to the arrest, custody, and discharge of suspected runaway "servants and slaves," (the two classes mentioned in the title of the act,) which might have led, by construction, to the adoption of a different practice.

The 7th section of that act provides a reward for the apprehension of "runaways travelling without passes;" but declares, if such "*suspected runaways be not servants*," and yet shall refuse to pay the reward for their arrests, they "shall make satisfaction," at the discretion of the justices and provincial county courts where the arrest shall take place.

The 8th section provides for the reimbursement of rewards paid for arrests in particular cases, to the county, "by servitude or otherwise," when it happens, and is proved, that the party apprehended "is not a slave."

The 20th section makes provision for the cases of "runaway servants and slaves" apprehended in Pennsylvania or Virginia, and brought into the province of Maryland; and, after specifying the rewards, declares: "but if such person, so apprehended, brought, and delivered up, be a free man, and

refuses to pay the reward," the magistrate "shall forthwith commit the said person so refusing to prison, until he shall give sufficient security, or make full satisfaction by servitude or otherwise."

These enactments relate to specific rewards for arrests, payable in money or tobacco, and advanced either by the county or the supposed master of the apprehended and suspected runaway; but omit entirely any reference to the expenses of imprisonment, and the costs incurred by judicial precepts and proceedings.

The committee report the accompanying bill.

MINORITY REPORT.

The minority of the Committee on the Judiciary find themselves constrained to dissent from the recommendations of the majority, as set forth in their report on the petition of William Jones. The undersigned would not have considered it a matter of sufficient importance to have called for a dissenting report, but for the interest which has been given to the subject, and for its connexion with a question which they deem of vital importance to the country. The petitioner complains of his illegal arrest and confinement in the common jail of the District; of his being advertised by the marshal as a runaway; alleging that he is a free man, and calling on Congress to interfere in his behalf. The undersigned had supposed the committee were only required to investigate the truth of these statements; to inquire into the facts, as connected with the case of the petitioner; and to see how far they called for any special act of legislation on the part of Congress.

The committee have ascertained that the petitioner is a man of color; that he was arrested on the suspicion of being a runaway slave; carried before a magistrate of the District, and by him committed to the jail, because of his failure to offer any evidence of his being a free person. Such being a brief statement of the facts, the committee were led to examine into the provisions of the existing laws, as applicable to cases of the kind. They find the laws, under which the proceedings were had against the petitioner, to have been such as existed in the State of Maryland at the period of the cession by that State of the county of Washington to the United States, which now forms a part of the District of Columbia. These laws are to be found in the Maryland Code, chap. 44, secs. 6, 7, 8, and 9, enacted in the year 1715; chap. 11, in the year 1719; and chap 72, sec. 11, in the year 1792. They authorize the arrest of persons of color on suspicion of being runaways, and direct their commitment by the magistrate on the failure of the party to offer proof of being free. It is rendered the duty of the sheriff to give due notice of their commitment; and, should the master fail to apply for their discharge, and to pay the costs, they are to be sold.

It is proper to state, that the act of 1796 provides for registering free persons of color with the clerks of the respective counties, and renders it the duty of the clerk to furnish the persons so registered with certificates, which secures the evidence of their freedom, and protects them in their rights and privileges as freemen. In this District, as in all of the slave-holding States, the legal presumption is, that persons of color going at large without occupation, are runaway slaves, and, as such, are liable to the

penalties of the law, unless they shall offer some proof of their being free. This legal prescription arises, in Maryland, from the positive enactment by the Legislature as early as 1715, that all persons of color then in the State, or who might be brought therein, and their descendants, should be held and deemed to be slaves. The presumption of every black person being a slave, is a rule of evidence in all of the slave-holding States, and is founded on the fact, as is held by their highest judicial tribunals, "that the negroes originally brought to this country were slaves, and their descendants must continue slaves until manumitted by proper authority." If, therefore, any person shall be arrested as a slave, he must establish his right of freedom by such evidence as shall destroy the force of the presumption arising from his color. The undersigned are well satisfied of the necessity of this rule of evidence, as essential to the security of this species of property, for the protection of the rights and interest of the slave-owner; and though it may in some cases operate as an inconvenience to the party, still, so important do they consider the principle, so long as slavery shall be tolerated, that they are unwilling to see it abrogated. To hold that all persons of color found at large in the District should be deemed and held as free until the contrary appeared, would make it not only the favorite resort, but the common receptacle of fugitive slaves, to the great loss of the slave-owner, and the insupportable annoyance of the inhabitants of the District. The law, as it now stands, affords to the party the means of preserving the evidence of his freedom, by having himself registered; and, as we learn, practically, there is neither hardship nor difficulty in offering proof to repel the presumption, if, in truth, the party be free; as it is held by the judicial tribunals of the District that the affidavit of a single credible witness that the person is free, or has been so reported in the place where he may have resided, is sufficient to repel the presumption, and to entitle the party to his discharge. In the present case, the committee have not learned to a certainty whether the petitioner be free or a slave. But there can be no doubt that the judicial tribunals of the District, if the case should be carried before them, would investigate the fact, and discharge the party on any reasonable proof of his being a freeman—*and that, without cost.* They learn from the present marshal, as well as from the statement made by his predecessor, that in all cases of commitment, by a magistrate, of any person of color as a runaway, if he should not have at his command the evidence of his freedom, but allege himself to be free, the marshal has felt it his duty to write to any part of the United States for the proof; and, in such cases, certificates duly authenticated have operated to the party's discharge.

This being the case, and there being no instance (so far as the committee have been able to learn) in which a free person has been held in confinement where he has offered any proof of freedom, the undersigned are unable to perceive the necessity of any legislation whatever. There can be no necessity for repealing the laws as they now exist, as they are not only administered in a spirit of humanity, but in a way to protect the rights of the master; to save the District from the annoyance of runaways; and, at the same time, not to oppress the free persons of color, who have a right to claim protection here. The undersigned cannot concur in the necessity of further legislation in regard to the act of 1793, providing for the apprehension and recovery of fugitive slaves, as the act has already been substantially extended to the District by the act of 1801. Much less can they concur with the majority of the committee in the proposed repeal of the various

acts of Maryland as applicable to runaway slaves; laws which have been long in force, and which, as they believe, have been administered with the most beneficial results. There is no application by any one for the change of the act of 1793, as now in force in the District; nor have the inhabitants here called for any repeal or modification of the laws in regard to slaves, as they now exist. Whilst the undersigned are not prepared to concur with the Supreme Court of the United States in the extent to which a majority of the court go, in the case of Priggs *vs.* the Commonwealth of Pennsylvania, (16 Peters, 625,) they do recognise that decision as establishing the law, "that the power of legislation by Congress, under the constitution, for the recovery of fugitives from service or labor, is exclusive; and that no State can pass any law to superadd to, control, qualify, or impede a remedy enacted by Congress for the recovery of slaves." So the undersigned do fully concur in that part of the opinion of the court, as delivered by Judge Story, in which he says: "The States, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and remove them from their borders, and otherwise to secure themselves against their depredations and evil example, as they certainly may do in cases of idlers, vagabonds, and paupers." Such, the undersigned submit, is the character of the laws now proposed to be repealed—which have been so administered in their operation as police regulations, "for the protection, safety, and peace" of the District, and, at the same time, "essentially to promote and aid the interest of the owners of the slaves." To repeal these laws, as the undersigned believe, would not only have the tendency to impede the remedy of the owner in the recovery of his slaves, but would have the effect of overrunning the District with hordes of free negroes and runaways. Already the free negroes in the District have increased to the enormous number of 8,361; and to repeal the laws, as proposed, could not fail to add to the number. The evil of concentrating such a number of persons of this description in the District, would not only operate prejudicially to the inhabitants here, but would extend throughout the slave-holding States. The consequences would be such as must be apparent to every candid mind, and such as the undersigned forbear to point out. The undersigned, being thus impressed, are unable to concur in the necessity or policy of the legislation as recommended by a majority of the committee, and would most respectfully ask of the House to be discharged from the further consideration of the petition, and that the same be laid on the table.

R. M. SAUNDERS,
ARMISTEAD BURT,
RICHARD FRENCH.