30th CONGRESS, 1st Session. [SENATE.] REP. COM., No. 143.

IN SENATE OF THE UNITED STATES.

MAY 3, 1848.

Submitted, and ordered to be printed, and 10,000 additional copies be printed for the use of the Senate.

Mr. BUTLER made the following

REPORT:

[To accompany bill S. No. 239.]

The Committee on the Judiciary, to whom were referred certain resolutions of the Legislature of Kentucky, "in favor of the passage of a law by Congress to enable citizens of slaveholding States to recover slaves, when escaping into non-slaveholding States," have had the same under consideration, and have bestowed upon them that degree of attention and deliberation which resolutions of such grave import should at all times demand from the Legislature of the confederacy. The facts and circumstances which occasioned these proceedings are fully set forth in the report of the committee, and the action of the government of Kentucky, and are as follows:

Resolutions of the Legislature of Kentucky, in favor of the passage of a law by Congress to enable citizens of slaveholding States to recover slaves when escaping into non-slaveholding States.

REPORT AND RESOLUTIONS of the General Assembly of the commonwealth o Kentucky.

The committee on federal relations, to whom were referred the proceedings of a meeting of the people of the counties of Trimble and Carroll, in relation to a recent abolition mob in the town of Marshal, State of Michigan, have had the same under consideration and submit the following report:

It appears to the satisfaction of the committee that one Francis Troutman was employed as agent and attorney in fact for Francis Giltner, of the county of Carroll, to go to the said town of Marshal, in the State of Michigan, to reclaim, take and bring back to the State of Kentucky certain fugitive and runaway slaves, the property of said Giltner; that said Troutman proceeded, under the authority thus given him, to said town of Marshall, for the purpose of reclaiming and bringing home to the owner the slaves aforesaid; and whilst endeavoring to arrest said slaves, a mob, composed of free negroes, runaway slaves, and white men, to the number of from two to three hundred, forbid said Troutman, and those who ac-

companied him for that purpose, to arrest and take into their possession the slaves aforesaid, and by their threats, riotous and disorderly conduct, did prevent said Troutman, and those associated with him for that purpose, from taking into their possession the slaves aforesaid.

Your committee regret that the citizens of the town of Marshal, in the State aforesaid, have thus acted and conducted themselves; and such conduct and such outrages committed upon the rights and citizens of the State of Kentucky, or any other State of this Union, must necessarily result in great mischief, and is well calculated, and must, if persisted in by the citizens of Michigan, or any other of the free States of this Union, terminate in breaking up and destroying the peace and harmony that is desirable by every good citizen of all the States of this Union, should exist between the several States, and is in violation of the laws of the United States and the constitutional rights of the citizens of the slave States. The affidavit of said Troutman is appended to this report and made part hereof, (marked A.) Wherefore,

Be it resolved by the General Assembly of the commonwealth of Kentucky, That the legislature of the State of Michigan be, and is hereby, respectfully but earnestly requested to give the subject that consideration which its importance demands, and to take such action thereon as in the judgment of said legislature is deemed proper and right, with a view to maintain that peace, amity, and good feeling which ought to exist between the citizens of the States of Michigan and Kentucky, and for the purpose of enabling the citizens of Kentucky to reclaim their runaway and fugitive slaves to the State of Michigan.

Resolved further, That our Senators and Representatives in Congress be requested to turn their attention to the subject embraced in the foregoing report and resolution, and urge upon the consideration of Congress the importance of passing such laws as will fully enable the citizens of the State of Kentucky, and the other slave States, to reclaim and obtain their slaves that may run away to the free or non-slaveholding States of this Union; that they also declare by said laws the severest penalty for their violation that the constitution of the United States will tolerate.

Resolved, That the governor be requested to forward to the governor of the State of Michigan a copy of the foregoing report and resolutions, with a request that he submit the same to the legislature of his State, for its consideration and action; that he also forward a copy of the same to each of our Senators and Representatives in Congress.

LESLIE COMBS,
Speaker of the House of Representatives.
ARCHIBALD DIXON,
Speaker of the Senate.

Approved March 1, 1847.

WM. OWSLEY.

By the Governor:

G. B. KINKEAD,
Secretary of State.

A.

The Affidavit of Francis Troutman.

This affiant states that, as the agent and attorney of Francis Giltner, of Carroll county, Kentucky, he proceeded to the town of Marshall, in the county of Calhoun, and State of Michigan, and in company with the deputy sheriff and three Kentuckians, on the morning of the 27th January, went to a house in which they found six fugitive slaves, the property of Giltner. The slaves were directed to accompany us to the office of a magistrate; some of them were preparing to obey the summons, but before affiant could get them started, he was surrounded by a mob, which, by its violent threats, menaces, and assaults, prevented the removal of the slaves to the office of the magistrate. Affiant directed the sheriff, time after time, to discharge his duty, and he as often made an effort to do so, but so great was the excitement and violence of the mob that the officer was afraid to seize the slaves. Resolutions were offered by some of the most influential citizens of the town, which were calculated greatly to excite and encourage the negroes and abolition rabble, who constituted a part of the mob.

The negroes engaged in the mob were estimated at from forty to fifty, many of whom are fugitive slaves from Kentucky, as affiant was informed and believes. The number of persons engaged in the mob were variously estimated at from two to three hundred. All the resolutions offered by those engaged in the mob were sustained by general acclamation; many of the mob pledged their lives to sustain them, and at the same time had guns, clubs, and other weapons in their hands with which to execute their purposes. Affiant contended for some hours with the mob, and still insisted on taking the slaves before the magistrate for trial; but the influential men of the mob told affiant that there was no need of a trial, and that any further attempt to remove the slaves would jeopard the lives of all who might make the attempt, and they were determined to prevent affiant from removing the slaves from town, even if he proved his right to do so; they stated, further, that public sentiment was opposed to southerners reclaiming fugitive slaves; and that although the law was in our favor, yet public sentiment must and should supersede the law in this and similar cases. Affiant then called upon some of the most active members of the mob to give him their names, and inform him if they considered themselves responsible for their words and actions on that occasion; they promptly gave their names to affiant, and he was told to write them in capital letters and bear them back to Kentucky, the land of slavery, as an evidence of their determination to persist in the defence of a precedent already established. The following resolution was then offered: *Resolved*, That these Kentuckians shall not remove from this place these (naming the slaves) by moral, physical, or legal force. It was carried by general acclamation. Affiant then directed the sheriff to summon those leading men of this mob to assist in keeping the peace; he did so, but they refused their

aid, and affiant understood them to say that they would assist in preventing the arrest of the slaves. A consultation was then held by eight or ten of the mob, out some distance from the main crowd, as to whether affiant might take them before the magistrate; the decision was in the negative, and the following resolution was then offered: *Resolved*, That these Kentuckians shall leave the town in two hours; (some penalty in the event of a failure was attached, which affiant does not recollect.) It was sustained by the unanimous vote of the mob.

A warrant for trespass was then issued and served upon the sheriff, affiant and company; we stood trial; the magistrate, who was an abolitionist, fined us $100. A warrant was then taken out against affiant for drawing a pistol upon a negro, and telling him to stand back, when said negro was making an attempt to force himself upon affiant and into the house where affiant had the slaves. On trial affiant proved his agency, and that the slaves were the property of Giltner, for whom he was acting as agent, yet the court recognised this affiant to appear at the next circuit court for trial.

Many were the insults offered affiant by the leading men of the mob, who informed him at the same time that it was just such treatment as a Kentuckian deserves when attempting to re-capture a slave, and that they intended to make an example of him, that others might take warning. That there had been attempts by slaveholders to reclaim slaves in their town, but that they had always been repulsed, and always shall be. The insults offered this affiant, as a private individual, were treated with a veto of silent contempt; but such as were offered him as a Kentuckian, during the time of the mob and the progress of two days' trial which succeeded, were resented in such a manner as this affiant believed the honor, dignity and independence of a Kentuckian demanded.

Given under my hand this 15th February, 1847.

F. TROUTMAN.

FRANKLIN COUNTY, *sct:*

Personally before the undersigned, a justice of the peace for said county, this day came the above named Francis Troutman, who made oath, in due form of law, to the truth of the statements as set forth in the foregoing affidavit.

Given under my hand this 15th day of February, 1847.

H. WINGATE, *J. P.*

EXECUTIVE DEPARTMENT,
Frankfort, Ky., Dec. 11, 1847.

SIR: The last general assembly adopted the annexed report and resolutions in reference to certain proceedings had in a meeting of the people of Trimble and Carroll counties, in this State, which I

now have the honor to forward, agreeably to the directions of the legislature.

I have the honor to be, very respectfully, your obedient servant,

WM. OWSLEY,
Governor.
W. D. REED,
Secretary of State.

To Hon. Joseph R. Underwood.

These proceedings disclose a state of things affecting deeply the relations of the States to each other and to their common Union under the constitution; and the rights and duties of both are essentially involved. What laws may be and ought to be adopted by Congress, for the protection of slave owners in reclaiming their fugitive slaves escaping into non-slaveholding States, depends upon the provisions of the federal constitution, and the laws of Congress made for their enforcement, as well as upon the laws of the non-slaveholding States, that may in anywise affect or interfere with the remedies which the citizens of the slaveholding States supposed were to be found in and were affected by them. The second resolution urges upon Congress the "importance of passing such laws as will fully enable the citizens of Kentucky, and the other slave States, to reclaim those slaves that may runaway to the free or non-slaveholding States of the Union; that they declare by the said laws the severest penalty for their violation that the constitution of the United States will tolerate."

This plainly expresses a fearful truth that the laws now in force are inadequate to remedy the evil; or, that the non-slaveholding States will not recognize and enforce them according to the obligation which it was intended they should impose on the parties to the federal compact.

That compact originated in the interest, and was intended for the mutual security of all its members. It was adopted by wise and practical statesmen in a mutual spirit of concession, of compromise and of justice; and the abiding guarantee for its harmony and preservation, and perpetuity, must be GOOD FAITH. When that ceases to operate on the confederate States, these guaranties will lose the sustaining breath of their life. They will be appealed to in vain, when there is a reluctance or aversion to observe and enforce them. There were some elements of discord, arising from dissimilarity of sectional feeling more than sectional interest, to be adjusted by those who framed the federal compact. But the great and wise men upon whom the task devolved did not look upon these elements as theoretical philosophers, or *speculative* legislators. Nor did they suffer sectional prejudice, much less sectional bigotry, to control their counsels. All the different parties had their peculiar rights, and it was the object of all to respect and secure them in subservience to the common desire—mutual security—as one people involved in a common destiny.

The slaveholding States, at that time, the strongest portion, but from obvious causes, likely to have a peculiar position, would not have entered into the confederacy without express recognition of their institutions, and without, what they supposed, some practical guaranty of their rights to use and enjoy them, capable of enforcement. Whilst they reserved to themselves the right of determining their own policy in reference to slavery, they claimed the right in the constitution of prohibiting Congress from interfering with them. Nay more, that Congress should protect them against the interference of others, both against foreign powers and against the legislation of their confederate members. The latter entered into a constitutional pledge to give to the slaveholding States the full dominion and control over their slaves escaping into their territory, with express stipulations to *deliver up* to their masters or owners, such fugitives as might effect their escape into a free territory.

The clause of the constitution more immediately involved in the subject matter of this report is, as follows: See 4th article of the constitution, section 1.

2. "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*."

3d clause. "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."

The latter clause becomes especially important in the consideration of this subject; whilst the first will shew in what point of view, the States from which fugitives may have gone, had a right to regard them. In both, the character of the person fleeing must be referred to the understanding and laws of the State having the original right and jurisdiction over him.

For many years, the clause immediately under consideration had a self-sufficing efficacy; having all the incidents and advantages conceded to it of an extradition treaty. The common practice of the times was, an honest and imposing commentary on the intention and object of the provision. A slave escaping into a non-slaveholding State, could be pursued, and, in general, could be as easily apprehended there as in the State from which he had made his escape. It was not uncommon, as your committee have been informed, for judges to remand to a slave State to be tried, a person of color, an issue involving his freedom; and State courts, and judicial and ministerial officers of non-slaveholding States, were in the constant habit of using, as a matter of recognized obligation, their power and agency in bringing about the delivery of a fugitive slave to his pursuing master. The right of the owner to apprehend, where the slave could be identified as a fugitive, was not disputed, much less impeded by State laws or the violence of irresponsible mobs. The paramount authority of the constitution, and its active

energy, were acknowledged by common consent. It executed its provisions by the active co-operation of State authority, in the fulfilment of what they then recognized as a constitutional duty. The duty to "*deliver up*" seemed to be regarded as equal to the right of the owner to demand his escaping servant. The term "*deliver up*" had a meaning so pregnant and obvious that it carried with it all the obligations, by common consent, growing out of its use; as it imparted a conceded right, so it was regarded as containing a perfect obligation. The dictate of good faith found in the non-slaveholding States no disposition to evade or deny its obligations. The framers of the constitution were then the living and honest expounders of its meaning and active operation. The jealousy of political interest was then not strong enough for hostile and unconstitutional legislation. Your committee are not informed that there was, in the early days of this government, any real occasion calling for remedial legislation on the part of Congress, for the purpose of enforcing the provisions of the clause of the constitution last referred to. How long it would have continued to execute itself, must now be a matter of conjecture; and in the end, it may be regarded as unfortunate that Congress ever undertook to assume any legislation on the subject, as there are many reasons to suppose that the States might have gone on in the spirit of concurrent duties, to discharge their obligations under the constitution. Until 1793, and for many years afterwards, such had been the tendency of events. The clause of the constitution relative to persons escaping from service, had never been brought to an actual test for its enforcement.

It appears from statements now before the committee, "that, in the year 1791, the governor of Pennsylvania, under the provision of the constitution relative to fugitives from *justice*, made a demand on the governor of Virginia for the surrender and delivery of three persons who had been indicted in Pennsylvania for kidnapping a negro, and carrying him into Virginia. The governor of Virginia hesitated as to the course to be pursued, and referred the matter to the attorney general of the State, who advised that the demand ought not to be complied with. Upon this refusal, the governor of Pennsylvania addressed a communication to Congress through the President. The President accordingly laid the proceedings before Congress, and their deliberations finally resulted in the act of 1793, which was passed without opposition, and is as follows:

AN ACT respecting fugitives from justice, and persons escaping from the service of their masters.

SECTION 1. *Be it enacted, &c.*, That whenever the executive authority of any State in the Union, or of either of the Territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such State or Territory to which such person shall have fled, and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any State or Territory as aforesaid,

charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged fled, it shall be the duty of the executive authority of the State or Territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear: But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.

SEC. 2. That any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transmit him or her to the State or Territory from which he or she has fled. And if any person or persons shall, by force, set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

SEC. 3. That when a person held to labor in any of the United States, or in either of the Territories northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said States or Territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested doth, under the laws of the State or Territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof 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 is fled.

SEC. 4. That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal such person, after notice that he or she was a fugitive from labor, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by the action of debt, in any court proper to try the same; saving, moreover, to the

person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them.

[Approved, February 12, 1793.]

The clauses of these acts are statutory commentaries upon the understanding of the times, by the decision of an unanimous Congress, that the owner or his agent had a right to apprehend and seize his own slave wherever he could find him, without let or hindrance; and, that he had a right to apply as well to the State courts as to the United States officers, for assistance in procuring a certificate for the removal of a fugitive slave. The act was but the confirmation of previous usage, and only prescribed an uniform and convenient mode of dealing with the subject. It may well be said that it instituted no new practice, but only enforced an old one. "The colonial history of the country would show that, at one period, slavery was recognized as a legal institution in all the colonies; and, that in all of them a conventional or customary law prevailed, which conferred on the owner of a fugitive slave the right to reclaim him wherever he might be found." After the revolution, the public sentiment of some of the northern States, in which slave labor had become of little value, commenced undergoing a change. In 1780, Pennsylvania passed an act for the gradual abolition of slavery; and, in the same year, Massachusetts made provision for the prospective emancipation of her slaves. In a few years afterwards, these examples were followed by all or nearly all the New England States. The southern States, however, for obvious causes, from soil and climate and local relations, continued to retain the institution. This state of things was calculated, and, in fact, was leading to angry controversies, and to conflicting and retaliatory legislation, unpropitious to the harmony and peace of the States. The compromises of the constitution, under which we entered into the Union, arrested this tendency of things, by containing such guaranties as gave confidence and supposed security to the slaveholders of the south. These guaranties and solemn pledges were generally observed in good faith until about 1819. About that time, the institution of absolute slavery (it still being continued in a modified form) was expiring under the acts of previous legislation in New York. About the same time, the voice of discord was heard in the debates on the Missouri question. It was, as Mr. Jefferson expressed it, "like the sound of a fire bell in the night." It roused dormant elements of mischief. Sectional prejudice and sectional ambition have assumed an alarming shape, well calculated to arrest the profound attention of all patriots who are interested in the perpetuity of the Union.

From the date referred to, the legislation of the non-slaveholding States has taken the direction of design, and has assumed a form well calculated to undermine the guaranties of the constitution and to put in jeopardy the rights of the slaveholding portion of this confederacy. A justification of these remarks will be found by a reference to the acts of several non-slaveholding States, all pervaded by a common feeling, and all having, apparently, a system-

atic aim; to make war, both upon slavery and the political power of slaveholders—a design deprecated by many non-slaveholding citizens, but promoted by more. It is certain that legislative enactments, and even judicial decisions, from the time referred to, have assumed a new character in the non-slaveholding States. In New York, 17 Johnson's Reports, 4, it has been decided that the State courts have no power or right to exercise any jurisdiction conferred on them by an act of Congress; and, as a consequence, that Congress cannot vest in the State magistrates and sheriffs and constables power to execute the act of 1793, as is attempted by that act. Without questioning the soundness of the decision, it gives to the constitution a different construction from that which Congress unanimously entertained at the time the act was passed, and, in effect, deprives the non-slaveholding States of a recognised remedy for the security and protection of their property.

The legislation of some of the non-slaveholding States has been of a less equivocal character, and more palpably unconstitutional, as it has been determined, by judicial decisions, the paramount law of the land. In all, or nearly all, the eastern and northern non-slaveholding States, laws have been passed, since 1820, prohibiting, under high penalties, the owner of a fugitive slave from apprehending such slave without the previous authority of a magistrate; and, after an apprehension so effected, in many cases, giving the slave the writ of habeas corpus and the right of trial by jury, thus throwing vexatious and hostile impediments in the way of the owner, well calculated to deter him from asserting his rights, and in palpable violation of the constitution.

Your committee have not time to refer specifically to these laws in detail; and, as they are generally of the same purport, it is unnecessary. One, however, must be referred to, not by way of invidious distinction, because it was not as objectionable in its provisions as others, but for the reason that it has undergone an elaborate judicial investigation, and its character settled by an authoritative judgment of the Supreme Court. We refer to a law of Pennsylvania, passed in 1826. It may be remarked here that New Jersey, Connecticut, Massachusetts, and several other States, had laws going beyond this in design and operation.

The first section of that act provides that, "if any person shall, by force and violence, take and carry away, or shall cause to be taken and carried away, or shall, by fraud and false pretence, seduce or cause to be seduced, or shall attempt to take and carry away, or to seduce any negro or mulatto from any part of that commonwealth, with a design of selling and disposing of, or causing to be sold, or of keeping and detaining, or of causing to be kept and detained such negro or mulatto as a slave or servant for life, or for any term whatsoever, every such person, by aiding and abetting, &c., shall, on conviction thereof, be deemed guilty of felony, and shall forfeit and pay a sum not less than five hundred or more than one thousand dollars; and, moreover, shall undergo imprisonment for any term or terms of years not less than seven nor

more than twenty-one years, and shall be kept and confined to hard labor."

There are other provisions of the statute in express conflict with the act of 1793, to which it is unnecessary to advert on this occasion.

One Prigg was indicted under this statute for taking and carrying away a certain negro woman, named Margaret, into the State of Maryland, with the design and intention of selling and disposing of and keeping her as a servant for life contrary to the statute. The defendant pleaded not guilty to the indictment, and, at the trial, the jury found a special verdict, which, in substance, states that the negro woman, Margaret Morgan, was a slave for life, and held to labor and service under, and according to, the laws of Maryland, to a certain Margaret Ashmore, a citizen of Maryland; that the slave escaped and fled to Pennsylvania in 1832; that the defendant, as the legally constituted agent of Margaret Ashmore, in 1837, caused the said woman, Margaret, to be taken and apprehended as a fugitive from labor by a State constable, under a warrant from a Pennsylvania magistrate; that the said woman was thereupon brought before the said magistrate, who refused to take further cognizance of the cause; and thereupon the defendant did take and carry away the said negro, &c., out of Pennsylvania into Maryland, and did deliver her to her owner, Margaret Ashmore.

Upon this state of facts, the courts in Pennsylvania, both on the circuit and on appeal, adjudged that the defendant was guilty of the crime charged. In effect, holding that a citizen of a slaveholding State could not pursue and apprehend his fugitive slave in a non-slaveholding State.

The cause was carried to the supreme court of the United States, and there underwent discussion and investigation becoming the magnitude of the questions involved in it. The case is to be found reported 16 Peters, 611. The essential question, involving the guilt or innocence of the accused, depended upon the proper construction of the article of the constitution relative to fugitive slaves, and the act of 1793 made to enforce it. And that question presented this important consideration to the court: Had the owner of a fugitive slave, escaping into a non-slaveholding State, the right to apprehend and seize him or her in such State, as one of the incidents of perfect ownership? The act of Pennsylvania had made it criminal for one to make such seizure of his own slave while in the territorial limits of Pennsylvania. Judge Story delivered the judgment of the supreme court, reversing, on all the points, the judgment below. Upon the point just referred to, his judgment is full and instructive. He uses the following language:

"Historically, it is well known 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 from the State where they were held in servitude. The full recognition of the right and title was indispensable to the security of this species of property in all the slave-

holding States; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted that it constitu'ed a fundamental article, without the adoption of which the Union could not have been formed."

This clause was of such controlling and paramount importance to the southern States, that they in effect made it a *sine qua non*; the non-slave holding States seemed to have regarded it in the same light, for the clause was adopted into the constitution by the unanimous consent of the framers of it.

The clause manifestly contemplates the existence of a positive unqualified right on the part of the owner of the slave, which no State law or regulation can, in any way, qualify, regulate, control, or restrain. It puts the rights of the owner, with all its incidents, upon the same ground in all the States. His right, to be perfect, must be the same in all the non-slave holding States, as in the State from which the fugitive fled. The owner must, therefore, have the right to seize and repossess the slave, which the local laws of his own State confer on him as property, and that is a right recognized in all the slave holding States.

Thus far, the right of the owner to apprehend his slave is well recognized and maintained by the opinion; but there is another question of more complexity involved in the discussion of the case: How shall he obtain the possession when there is a detention or denial of right on the part of individuals? The constitution is explicit that a slave escaping into a non-slave holding State shall not be discharged from service or labor, but *shall be delivered up*, on the claim of the party to whom such labor may be due. For many years, as has been stated, the State authority, both judicial and ministerial, contributed actively to aid in measures for the delivery of the fugitive to his master. The act of 93 presupposes such an agency to be implied as an obligation of duty. One of the grounds taken in the case adverted to was, that Congress, having exclusive jurisdiction over the subject, was bound to supply and enact all the legislation that might be required to carry fully into effect the article of the constitution; and that, therefore, the States had no authority to legislate one way or the other on the subject—that is, either to provide for the delivery of a fugitive, or to impair the rights of the citizens of slave holding States in a remedy afforded by the laws of the Union. The court decided that the power of legislation being exclusive in Congress, could not, for any purpose, be concurrent in the States. The consequences of the decision could not have been forseen; and inferences have been drawn from it by most of the non-slave holding States, certainly repugnant to the drift of the decision, and in violation of the spirit of the constitution, and in opposition to ancient usage and contemporaneous construction.

The views which were taken by Chief Justice Taney, evince the circumspection and wisdom of a great constitutional magistrate. They are the views which the framers of the constitution had

taken, and which seemed to have been confirmed by a mutual understanding of the States for many years.

The chief justice concurred with the court entirely in all that was said in relation to the right of the master, by virtue of the 3d clause of the 2d section of 4th art. of the constitution, to arrest his slave in any State wherein he might find him; and in pronouncing the law of Pennsylvania, under which Prigg was indicted, unconstitutional and void. His reasons for this opinion are strikingly put. He does not regard any other question as necessarily involved in the case, so far as it regarded the innocence or guilt of the party charged—nor do the committee.

The court did, however, go on to say, and perhaps to decide, that the power to provide a remedy for the master was exclusively vested in Congress; and that all laws upon the subject, passed by the States since the adoption of the constitution, are null and void; even although they were intended, in good faith, to protect the owner in the exercise of his rights of property, and do not in any way conflict with the act of Congress. So far from maintaining that the States are prohibited from interfering by legislation to protect and aid the master, the learned chief justice says: "They are not prohibited; but, on the contrary, it is enjoined upon them, as a duty, to protect and support the owner when he is endeavoring to obtain possession of his property found within their respective territories." It does seem to the committee, that this view of the matter is unanswerable. The argument so ably sustained is summed up in one sentence: "The States are, in express terms, forbidden to make any regulation to impair the master's right; but there the prohibition stops." Justices Thompson and Daniel, in well sustained judgements, concurred with the chief justice. Judge Thompson said he had filed his opinion principally to guard against the conclusion "that, by my silence, I assent to the doctrine that all legislation on the subject rested exclusively in Congress, and that all State legislation, in the absence of any law of Congress, is unconstitutional and void." Several of the non-slaveholding States, those to the east and north especially, have, since the above decision was made, which was in 1842, shaped their legislation in such a manner as to repeal all State laws in favor of a master in pursuit of his fugitive slave, holding such laws as unconstitutional, and as a dead letter on the statute book. And these States, or many of them, have gone much further, and have passed laws making it penal for the judicial and ministerial officers to interfere or give aid in the apprehension and delivery of a fugitive slave to his owner. Instead of being friends under the constitution to afford active aid in the delivery, they have devised a system of hostile legislation to deprive him of aid. Instead of being allies to discharge an obligation imposed on them, they have become hostile opponents to defeat it.

Let these laws speak for themselves. The following are the laws of Massachusetts and Rhode Island. Having an identity of design, they use the same language:

Section 1. No judge of any court of record in this State, and no

justice of the peace, shall hereafter take cognizance or grant a certificate in cases that may arise under the third section of the act of Congress, passed February 12, 1793, and entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," to any person who claims any other person as a fugitive slave within the jurisdiction of the State.

SEC. 2. No sheriff, deputy sheriff, coroner, constable, jailor, or other officer of this State, shall hereafter arrest or detain, or aid in the arrest or detention or imprisonment, in any jail or other building belonging to this State, or to any county, city, or town thereof, of any person for the reason that he is claimed as a fugitive slave.

SEC. 3. Any justice of the peace, sheriff, deputy sheriff, coroner, constable, or jailor, who shall offend against the provisions of this law in any way, directly or indirectly, under the power conferred by the third section of the act of Congress aforementioned, shall forfeit a sum, not exceeding, five hundred dollars for every such offence, to the use of the State, or shall be subject to imprisonment, not exceeding six months, in the county jail.

Laws of the same effect are now in force in all the northern and eastern States, and in some of the northwestern non-slaveholding States.

This subject was very much discussed during the last session of the Legislature of New York; and, as an evidence of public opinion in that State, it may be stated that one of the branches of that legislature gave its sanction to a bill to prohibit the State officers from interfering to assist a master, imposing high penalties on such as should give active aid to the owner in his efforts to apprehend his fugitive slave. It seems that this bill did not pass, upon the ground that State officers had no authority under State laws, they being a dead letter; and that, therefore, there was an implied inhibition on State officers from interfering in such cases.

What remedy have the slaveholding States now left for the enforcement of their constitutional right to the delivery of their property escaping into non-slaveholding communities. They have the *parchment guaranty of the constitution*, without ability to enforce it themselves, and with the hostile legislation of the non-slaveholding States to defeat them.

What now is left for the citizens of the slaveholding States, as the available means, under the constitution, to protect those rights intended to be secured by it. Public opinion, the only great political agent in a republic to sustain good faith, has been turned against them under the forms of law. The constitution, which, in the primitive days of the republic, was supposed to have, in all that involved the mutual duties of the States, the essential elements of self-execution, has neither State nor federal law to sustain and vindicate its authority. The States have withdrawn their support, and Congress is inefficient in its legislation to supply it. A single clause of the act of 1793 is all that is left, and is a dead letter, so far as it regards the power of giving it practical efficacy. All that is left of it is the right to bring an action against those in the non-slaveholding States who may conceal, or protect from seizure,

a runaway slave. The right to sue a mob of irresponsible persons, without the power of procuring witnesses, and before a tribunal administering justice in a hostile community. Who would venture on such litigation? The right of seizure and apprehension is conceded, but how to be executed? why, at the risk of the owner's life. The proceedings which have given rise to this report, as well as similar and even of more aggravated character in other States, are full evidence of the truth of this remark. The remedy may induce the master to place himself in circumstances in which he would become the victim of irresponsible insult and violence; or cause him, by his efforts to reclaim his property, to afford some pretext for an action against him, by which, under the form of a verdict, his whole estate might be confiscated to appease the demands of popular prejudice. Let it not be said that he could apply to an United States marshal; before such an officer could be procured, effectual escape might be accomplished.

The opportunity to apprehend a fugitive is emergent, not waiting for the delay of distant and perhaps reluctant officers.

But whatever remedy may be allowed by the act of 1793, nominal and hollow as it is, it will not remain long on the statute book, if it can be repealed by the influence of the non-slaveholding States. Already has a memorial come to Congress from a large number of citizens of Pennsylvania, praying for the repeal of that law. That memorial has been referred to your committee, and it is a memorial as numerously signed, probably, as any other that has come before Congress. These persons "represent that the law of the United States, imposing $500 for what is called harboring or concealing a slave, is unjust and ought to be repealed.

"1st. Because it is contrary to the spirit and word of God.

"2d. Because the law is intended to prop up a system which makes it criminal to teach God's creatures his holy word, depraves the master and the slave, and is the fruitful source of great evils, both religious and political."

Your committee will not undertake to say that the law of 1793 will, even by any amendments that can be made to it, have any great remedial influence in giving the owner the protection he is entitled to under the constitution. The assault upon it is, however, a significant indication of the progress of public opinion. It is making its advances with crushing effects. It is in vain to appeal to compacts and constitutional provisions to arrest it.

The slaveholding States are bound in the Union, and are willing to perform all their duties under it.

They have kept in good faith all that they promised.

They have not allowed the importation of slaves since 1808.

They have given to their northern fellow citizens of the Union all the benefits of their trade and commerce.

They have yielded to them the almost exclusive benefit of the navigation interest of the Union, under laws for its protection.

And they have co-operated with them in all that has been demanded for the common prosperity and welfare of the confederacy,

and have faithfully fulfilled all the obligations imposed upon them by the constitution, as coequal confederates.

They have now a high duty devolving on them: to require, in some certain manner, the other parties to do justice to the requirements of constitutional obligations. As much as Congress can do, they have a right to suppose will be done towards maintaining the common rights and claims of all the parties to the federal compact.

Your committee have not implicit confidence in the efficacy of the only measure which they have ventured to propose, and which will be found in the bill which they beg leave to submit.

That bill will, in general terms, contain provisions by which the penalties under the act of 1793 will be increased, and requiring all the marshals of the United States, wherever called on, and other federal officers, to give protection and aid to the owner or his agent, of a fugitive slave in his efforts, for the apprehension of such slaves as may effect their escape into a non-slaveholding State.