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**Prigg Vs. Pennsylvania**

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**Court** : US Supreme Court

**Decided On :** 1842

**Appeal No.** : 41 U.S. 539

**Appellant** : Prigg

**Respondent** : Pennsylvania

**Judgement** :

Prigg v. Pennsylvania - 41 U.S. 539 (1842)
U.S. Supreme Court Prigg v. Pennsylvania, 41 U.S. 16 Pet. 539 539 (1842)

**Prigg v. Pennsylvania**

**41 U.S. (16 Pet.) 539**

*ERROR TO THE SUPREME COURT OF PENNSYLVANIA*

## SYLLABUS

A writ of error to the Supreme Court of Pennsylvania, brought under the twenty-fifth section of the Judiciary Act of 1789, to revise the judgment of that Court on a case involving the construction of the Constitution and laws of the United States.

Edward Prigg, a citizen of the State of Maryland, was indicted for kidnapping in the Court of Oyer and Terminer of York County, Pennsylvania, for having forcibly taken and carried away from that county to the State of Maryland a negro woman named Margaret Morgan with the design and intention of her being held, sold, and disposed of as a slave for life, contrary to a statute of Pennsylvania passed on the twenty-sixth day of March, 1826. Edward Prigg pleaded not guilty, and the jury found a special verdict on which judgment was rendered for the Commonwealth of Pennsylvania. The case was removed to the Supreme Court of the State, and the judgment of the Court of Oyer and Terminer was *pro forma* affirmed, and the case was carried to the Supreme Court of the United States, the constitutionality of the law under which the indictment was found being denied by the counsel of the State of Maryland, which State had undertaken the defense for Edward Prigg and prosecuted the writ of error. The cause was brought to the Supreme Court, with the sanction of both the States of Maryland and Pennsylvania, with a view to have the questions in the case settled. Margaret Morgan was the slave for life, under the laws of Maryland, of Margaret Ashmore, a citizen of that State. In 1832, she escaped and fled from the State into Pennsylvania. Edward Prigg, having been duly appointed the agent and attorney of Margaret Ashmore and having obtained a warrant from a justice of the peace of York County, caused Margaret Morgan to be taken, as a fugitive from labor, by a constable of the State of Pennsylvania, before the magistrate, who refused to take cognizance of the case, and thereupon Edward Prigg carried her and her children into Maryland and delivered them to Margaret Ashmore. The children were born in Pennsylvania, one of them more than a year after Margaret Morgan had fled and escaped from Maryland.

By the first section of the act of Assembly of Pennsylvania of 25th March, 1826, it is provided that if any person shall, by force and violence, take and carry away, or shall by fraud or false pretence attempt to take, carry away, or seduce any negro or mulatto from any part of the Commonwealth, with a design or intention of selling and disposing of, or keeping or detaining, such negro or mulatto as a slave or servant for life, or for any other term whatsoever, such person, and all persons aiding and abetting him, shall, on conviction thereof, be deemed guilty of a felony, and shall forfeit and pay a sum not less than five hundred nor more than three

thousand dollars, and shall be sentenced to undergo a servitude for any term or terms of years not less than seven years nor exceeding twenty-one years, and shall be confined and kept at hard labor, &c.; Other provisions are contained in the act, and it was passed in 1826, as declared in its title, to aid in carrying into effect the Constitution and laws of the United States relating to fugitives from labor, and, on the application to the legislature by commissioners from the State of Maryland,

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with a view to meet the supposed wishes of the State of Maryland on the subject of fugitive slaves, but it had failed to produce the good effects intended.

By the Court:

It will probably be found, when we look to the character of the Constitution of the United States itself, the objects which it seeks to attain, the powers which it confers, the duties which it enjoins, and the rights which it secures, as well as to the known historical fact that many of its provisions were matters of compromise of opposing interests and opinions, that no uniform rule of interpretation can be applied which may not allow, even if it does not positively demand, many modifications in its actual application to particular clauses. Perhaps the safest rule of interpretation, after all, will be found to be to look to the nature and objects of the particular powers, duties, and rights, with all the light and aids of contemporary history, and to give to the words of each just such operation, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed.

It is historically well known that the object of the clause in the Constitution of the United States relating to persons owing service and labor in one state escaping into other states was to secure to the citizens of 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 this right and title was indispensable to the security of this species of property in all the slaveholding States, and indeed was so vital 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. Its true design was to guard against the doctrines and principles prevailing in the non-slaveholding States by preventing them from intermeddling with or obstructing or abolishing the rights of the owners of slaves.

By the general law of nations, no nation is bound to recognize the state of slavery as to foreign slaves within its territorial dominions when it is opposed to its own policy and institutions in favor of the subjects of other nations where slavery is recognized. If it does it, it is as a matter of comity, and not as a matter of international right. The state of slavery is deemed to be a mere municipal regulation founded upon and limited to the range of the territorial laws.

The clause of the Constitution of the United States relating to fugitives from labor 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. Any state law or regulation which interrupts, limits, delays, or postpones the rights of the owner to the immediate command of his service or labor operates *pro tanto* a discharge of the slave therefrom. The question can never be how much he is discharged from, but whether he is discharged from any by the natural or necessary operation of the state laws or state regulations. The question is not one of quantity or degree, but of withholding or controlling the incidents of a positive right.

The owner of a fugitive slave has the same right to seize and take him in a State to which he has escaped or fled that he had in the State from which he escaped, and it is well known that this right to seizure or recapture is universally acknowledged in all the slaveholding States. The Court have not the slightest hesitation in holding that, under and in virtue of the Constitution, the owner of the slave is clothed with

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the authority in every State of the Union to seize and recapture his slave wherever he can do it without any breach of the peace or illegal violence. In this sense and

to this extent, this clause in the Constitution may properly be said to execute itself, and to require no aid from legislation, state or national.

The Constitution does not stop at a mere annunciation of the rights of the owner to seize his absconding or fugitive slave in the State to which he may have fled. If it had done so, it would have left the owner of the slave, in many cases, utterly without any adequate redress.

The Constitution declares that the fugitive slave shall be delivered up on claim of the party to whom service or labor may be due. It is exceedingly difficult, if not impracticable, to read this language and not to feel that it contemplated some further remedial redress than that which might be administered at the hand of the owner himself. "A claim" is to be made.

"A claim," in a just juridical sense, is a demand of some matter as of right, made by one person upon another to do or to forbear to do some act or thing as a matter of duty.

It cannot well be doubted that the Constitution requires the delivery of the fugitive on the claim of the master, and the natural inference certainly is that the National Government is clothed with the appropriate authority and functions to enforce it. The fundamental principle applicable to all cases of this sort would seem to be that, where the end is required, the means are given, and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted.

The clause relating to fugitive slaves is found in the national Constitution, and not in that of any State. It might well be deemed an unconstitutional exercise of the power of interpretation to insist that the States are bound to provide means to carry into effect the duties of the National Government nowhere delegated or entrusted to them by the Constitution. On the contrary, the natural, if not the necessary, conclusion is that the National Government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, executive, or judiciary, as the case may require, to carry into effect all

the rights and duties imposed upon it by the Constitution.

A claim to a fugitive slave is a controversy in a case "arising under the Constitution of the United States" under the express delegation of judicial power given by that instrument. Congress, then, may call that power into activity for the very purpose of giving effect to the right, and, if so, then it may prescribe the mode and extent to which it shall be applied, and how and under what circumstances the proceedings shall afford a complete protection and guaranty of the right.

The provisions of the sections of the act of Congress of 12th February, 1793, on the subject of fugitive slaves, as well as relative to fugitives from justice, cover both the subjects not because they exhaust the remedies which may be applied by Congress to enforce the rights if the provisions shall be found, in practice, not to attain the objects of the Constitution, but because they point out all the modes of attaining those objects which Congress have as yet deemed expedient and proper. If this is so, it would seem upon just principles of construction that the legislation of Congress, if constitutional, must supersede all state legislation upon the same subject, and, by necessary implication, prohibit it. For, if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it is a given manner,

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and in a certain form, it cannot be that the state legislatures have a right to interfere. This doctrine was fully recognized in the case of *Houston v. Moore,* 5 Wheat. 1, 18 U. S. 21 -22. Where Congress have exclusive power over a subject, it is not competent for state legislation to add to the provisions of Congress on that subject.

Congress have, on various occasions, exercised powers which were necessary and proper as means to carry into effect rights expressly given and duties expressly enjoined by the Constitution. The end being required, it has been deemed a just and necessary implication that the means to accomplish it are given also, or, in other words, that the power flows as a necessary means to accomplish

the ends.

The constitutionality of the act of Congress relating to fugitives from labor has been affirmed by the adjudications of the state tribunals, and by those of the Courts of the United States. If the question of the constitutionality of the law were one of doubtful construction, such long acquiescence in it, such contemporaneous expositions of it, and such extensive and uniform recognitions would, in the judgment of the Court, entitle the question to be considered at rest. Congress, the Executive, and the Judiciary have, upon various occasions, acted upon this as a sound and reasonable doctrine. Cited, *Stuart v. Laird,* 1 Cranch 299; *Martin v. Hunter's Lessee,* 1 Wheat. 304; *Cohens v. Virginia,* 6 Wheat. 264.

The provisions of the act of 12th 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 on state magistrates, is free from reasonable doubt or difficulty. As to the authority so conferred on state magistrates, while a difference of opinion exists, and may exist on this point in different States, whether state magistrates are bound to act under it, none is entertained by the Court that state magistrates may, if they choose, exercise the authority unless prohibited by state legislation.

The power of legislation in relation to fugitives from labor is exclusive in the National Legislature. Cited, *Sturgis v. Crowninshield,* 4 Wheat. 122, 17 U. S. 193 .

The right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever State of the Union they may be found is, under the Constitution, recognized as an absolute positive right and duty pervading the whole Union with an equal and supreme force uncontrolled and uncontrollable by state sovereignty or state legislation.

The right and duty are coextensive and uniform in remedy and operation throughout the whole Union. The owner has the same security, and the same remedial justice, and the same exemption from state regulations and control,

through however many State he may pass with the fugitive slave in his possession *in transitu* to his domicile.

The Court are by no means to be understood in any manner whatever to doubt or to interfere with the police power belonging to the States in virtue of their general sovereignty. That police power extends over all subjects within the territorial limits of the States, and has never been conceded to the United States. It is wholly distinguishable from the right and duty secured by the provision of the Constitution relating to fugitive slaves, which is exclusively derived from the Constitution and obtains its whole efficiency therefrom.

The Court entertain no doubt whatsoever that the States, in virtue of their general police power, possess full jurisdiction to arrest and restrain runaway slaves, and to remove them from their borders and otherwise to secure themselves against their depredations

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and evil example, as they certainly may do in cases of idlers, vagabonds, and paupers. The rights of the owners of fugitive slaves are in no just sense interfered with or regulated by such a course, and, in many cases, they may be promoted by the exercise of the police power. Such regulations can never be permitted to interfere with or obstruct the just rights of the owner to reclaim his slave derived from the Constitution of the United States or with the remedies prescribed by Congress to aid and enforce the same.

The act of the Legislature of Pennsylvania upon which the indictment against Edward Prigg is founded is unconstitutional and void. It purports to punish as a public offense against the State the very act of seizing and removing a slave by his master which the Constitution of the United States was designed to justify and uphold.

The defendant in error, Edward Prigg, with Nathan S. Bemis, Jacob Forward, and Stephen Lewis, Jr., were indicted by the grand jury of York county, Pennsylvania, for that, on the first day of April 1837, upon a certain negro woman, named

Margaret Morgan, with force and violence, they made an assault, and with force and violence, feloniously did take and carry her away from the County of York, within the Commonwealth of Pennsylvania, to the State of Maryland, with a design and intention there to sell and dispose of the said Margaret Morgan, as and for a slave and servant for life.

Edward Prigg, one of the defendants, having been arraigned, pleaded not guilty.

The cause was tried before the court of quarter sessions of York county, on the 22d day of May 1839; and the jury found the following special verdict:

"That, at a session of the General Assembly of the Commonwealth of Pennsylvania, holden at the City of Philadelphia, on the first day of March, 1780, the following law was passed and enacted, to-wit,"

" An act for the gradual abolition of slavery:"

" 1. Sec. III. All persons, as well negroes and mulattoes, as others, who shall be born within this State shall not be deemed and considered as servants for life or slaves, and all servitude for life, or slavery of children, in consequence of slavery of their mothers, in the case of all children born within this State, from and after the passing of this act as aforesaid shall be and hereby is utterly taken away, extinguished and forever abolished."

" 2. Sec. IV. Provided always, that every negro and mulatto



child, born within this State, after the passing of this act as aforesaid (who would, in case this act had not been made, have been born a servant for years, or life, or a slave) shall be deemed to be, and shall be, by virtue of this act, the servant of such persons, or her or his assigns, who would, in such case, have been entitled to like relief, in case he or she shall be evilly treated by his or her master or mistress, and to like freedom dues and other privileges, as servants bound by indenture for four years are or may be entitled, unless the person to whom the service of any such child shall belong, shall abandon his or her claim to the same,

in which case, the overseers of the poor of the city, or township or district, respectively, where such child shall be so abandoned shall, by indenture, bind out every child so abandoned as an apprentice for a time not exceeding the age hereinbefore limited for the service of such children."

" 3. Sec. V. Every person who is, or shall be, the owner of any negro or mulatto slave or servants for life, or till the age of thirty-one years, now within this State, or his lawful attorney, shall, on or before the first day of November next, deliver or cause to be delivered in writing to the clerk of the peace of the county, or to the clerk of the court of sessions of the City of Philadelphia, in which he or she shall respectively inhabit, the name and surname, and occupation or profession, of such owner, and the name of the county and township, district or ward wherein he or she resideth; and also the name and names of any such slave and slaves, and servant and servants for life, and till the age of thirty-one years, within this State, who shall be such on the said first day of November next, from all other persons; which particulars shall, by said clerk of the sessions and clerk of the said city court, be entered in books to be provided for that purpose by the said clerks; and no negro or mulatto now within this State shall, from and after the said first day of November, be deemed a slave or servant for life, or till the age of thirty-one years, unless his or her name shall be entered as aforesaid on such records, except such negro or mulatto slaves and servants as are hereinafter excepted; the said clerk to be entitled to a fee of two dollars for each slave or servant so entered as aforesaid, from the treasury of the county, to be allowed to him in his accounts."

" 4. Sec. VI. Provided always, that any person in whom the

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ownership or right to the service of any negro or mulatto shall be vested at the passing of this act, other than such as are hereinbefore excepted, his or her heirs, executors, administrators and assigns, and all and every of them, severally, shall be liable to the overseers of the poor of the city, township or district to which any such negro or mulatto shall become chargeable, for such necessary expense, with costs of suit thereon, as such overseers may be put to, through the neglect of the

owner, master or mistress of such negro or mulatto, notwithstanding the name and other descriptions of such negro or mulatto shall not be entered and recorded as aforesaid, unless his or her master or owner shall, before such slave or servant obtain his or her twenty-eighth year, execute and record in the proper county, a deed or instrument securing to such slave or servant his or her freedom."

" 6. Sec. VIII. In all cases wherein sentence of death shall be pronounced against a slave, the jury before whom he or she shall be tried shall appraise and declare the value of such slave, and in case such sentence be executed, the court shall make an order on the state treasurer, payable to the owner for the same, and for the costs of prosecution, but in case of remission or mitigation, for the costs only."

" 7. Sec. IX. The reward for taking up runaway and absconding negro and mulatto slaves and servants, and the penalties for enticing away, dealing with, or harboring, concealing or employing negro and mulatto slaves and servants, shall be the same, and shall be recovered in like manner, as in case of servants bound for four years."

" 8. Sec. X. No man or woman of any nation or color, except the negroes or mulattoes who shall be registered as aforesaid, shall at any time hereafter be deemed adjudged or holden within the territories of this Commonwealth as slaves or servants for life, but as free men and free women; except the domestic slaves attending upon delegates in Congress from the other American States, foreign ministers and consuls, and persons passing through or sojourning in this State, and not becoming resident therein, and seamen employed in ships not belonging to any inhabitant of this State, nor employed in any ship owned by any such inhabitant; provided, such domestic slaves shall not be alienated or sold to any inhabitant, nor (except in the case of members of Congress,

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foreign ministers and consuls) retained in this State longer than six months."

" 9. Sec. XI. (Repealed 25th March, 1826.)"

" Sec. XII. And whereas, attempts may be made to evade this act by introducing into this State negroes and mulattoes bound by covenant to serve for long and unreasonable terms of years if the same be not prevented: Therefore --"

" 10. Sec. XIII. No covenant of personal servitude or apprenticeship whatsoever shall be valid or binding on a negro or mulatto for a longer time than seven years, unless such servant apprentice were at the commencement of such servitude or apprenticeship under the age of twenty-one years, in which case such negro or mulatto may be holden as a servant or apprentice, respectively, according to the covenant, as the case shall be, until he or she shall attain the age of twenty-eight years, but no longer."

" Sec. XIV. That this act, or anything herein contained, shall not give any relief or shelter to any absconding or runaway negro or mulatto slave or servant who has absconded himself, or shall abscond himself, from his or her owner, master or mistress residing in any other State or country, but such owner, master or mistress shall have like right and aid to demand, claim, and take away his slave or servant as he might have had in case this act had not been made, and that all negro and mulatto slaves now owned and heretofore resident in other States who have absconded themselves or been clandestinely carried away, or who may be employed abroad as seamen, and have not absconded or been brought back to their owners, masters, or mistresses before the passing of this act may, within five years, be registered as effectually as is ordered by this act concerning those who are not within this State, on producing such slave before any two justices of the peace, and satisfying the said justices, by due proof, of his former residence, absconding, running away, or absence of such slaves as aforesaid, who thereupon shall direct and order the said slaves to be entered on the record as aforesaid."

And the jurors further found, that, at a session of the General Assembly of the Commonwealth of Pennsylvania, holden at the City of Philadelphia, on the 29th day of March 1788, the

following law was passed and enacted,

"An act to explain and amend 'an act for the gradual abolition of slavery,'"

"Sec. I. For preventing many evils and abuses arising from ill-disposed persons availing themselves of certain defects in the act for the gradual abolition of slavery, passed on the first day of March, in the year of our Lord 1780, be it enacted:"

"Sec. II. The exception contained in the tenth section of the act of the first of March, 1780, relative to domestic slaves, attending upon persons passing through or sojourning in this State and not becoming resident therein, shall not be deemed or taken to extend to the slaves of such persons as are inhabitants of, or resident in, this State, or who shall come here, with an intention to settle and reside; but all and every slave or slaves who shall be brought into this State by persons inhabiting or residing therein or intending to inhabit or reside therein shall be immediately considered, deemed, and taken to be free to all intents and purposes."

"Sec. III. No negro or mulatto slave, or servant for term of years (except as in the last exception of the tenth section of the said act, is excepted), shall be removed out of this State, with the design and intention that the place of abode or residence of such slave or servant shall be thereby altered or changed, or with the design and intention that such slave or servant, if a female and pregnant, shall be detained and kept out of this State till her delivery of the child of which she is or shall be pregnant, or with the design and intention that such slave or servant shall be brought again into this State, after the expiration of six months from the time of such slave or servant having been first brought into this State, without his or her consent, if of full age, testified upon a private examination, before two justices of the peace of the city or county in which he or she shall reside, or being under the age of twenty-one years, without his or her consent, testified in manner aforesaid, and also without the consent of his or her parents, if any such there be, to be testified in like manner aforesaid, whereof the said justices, or one of them, shall make a record, and deliver to the said slave or servant a copy thereof, containing the name, age, condition and the place of abode of such slave or servant, the

reason of such removal, and the place to which he

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or she is about to go; and if any person or persons whatsoever shall sell or dispose of any such slave or servant, to any person out of this State, or shall send or carry, or cause to be sent or carried, any such slave or servant, out of this State for any of the purposes aforesaid, whereby such slave or servant would lose those benefits and privileges which by the laws of this State are secured to him or her, and shall not have obtained all such consent as by this act is required, testified in the manner before mentioned, every such person and persons, his and their aiders and abettors, shall severally forfeit and pay, for every such offense, the sum of seventy-five pounds, to be recovered in any court of record, by an action of debt, bill, plaint or information at the suit of any person who will sue for the same; one moiety thereof, when recovered, for the use of the plaintiff, the other moiety for the use of the poor of the city, township or place from which such slave or servant shall be taken and removed."

"Sec. IV. All persons who now are, or hereafter shall be, possessed of any child or children, born after the first day of March, 1780, who would, by the said act, be liable to serve till the age of twenty-eight years, shall on or before the first day of April, 1789, or within six months next after the birth of any such child, deliver or cause to be delivered, in writing, to the clerk of the peace of the county, or the clerk of the court of record of the City of Philadelphia, in which they shall respectively inhabit, the name, surname, and occupation or profession of such possessor, and of the county, township, district or ward in which they reside, and also the age (to the best of his or her knowledge), name and sex of every such child or children, under the pain and penalty of forfeiting and losing all right and title to every such child and children, and of him, her or them immediately becoming free; which said return or account in writing shall be verified by the oath or affirmation of the party, which the said clerks are hereby respectively authorized and required to administer, and the said clerks shall make and preserve records thereof, copies and extracts of which shall be good evidence in all courts of justice, when certified under their hands and seals of office; for which oath or affirmation,

and entry or extract, the said clerks shall be respectively entitled to one shilling and six-pence, and no more,

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to be paid by him or her, who shall so as aforesaid make such entry, or demand the extract aforesaid."

"And whereas it has been represented to this House that vessels have been fitted out and equipped in this port for the iniquitous purpose of receiving and transporting the natives of Africa to places where they are held in bondage, and it is just and proper to discourage, as far as possible, such proceedings in future:"

"Sec. V. If any person or persons shall build, fit, equip, man or otherwise prepare any such ship or vessel within any port of this State, or shall cause any ship or other vessel to sail from any port of this State for the purpose of carrying on a trade or traffic in slaves to, from, or between Europe, Asia, Africa, or America, or any place or countries whatsoever, or of transporting slaves to or from one port or place to another in any part or parts of the world, such ship or vessel, her tackle, furniture, apparel, and other appurtenances shall be forfeited to the Commonwealth, and shall be liable to be seized and prosecuted by any officer of the customs or other person, by information *in rem,* in the supreme court or in the county court of common pleas for the county wherein such seizure shall be made, whereupon such proceedings shall be had, both unto and after judgment, as in and by the impost laws of this Commonwealth in case of seizure is directed. And moreover, all and every person and persons so building, fitting out, manning, equipping, or otherwise preparing or sending away any ship or vessel, knowing or intending that the same shall be employed in such trade or business contrary to the true intent and meaning of this act, or in any wise aiding or abetting therein, shall severally forfeit and pay the sum of one thousand pounds, one moiety thereof to the use of the Commonwealth and the other moiety thereof to the use of him or her who will sue for the same, by action, debt, bill, plaint, or information."

"And whereas, the practice of separating, which is too often exercised by the masters and mistresses of negro and mulatto slaves, or servants for term of years, in separating husbands and wives, and parents and children, requires to be checked so far as the same may be done without prejudice to such masters or mistresses:"

"Sec. VI. If any owner or possessor of any negro, mulatto slave or slaves, or servant or servants for term of years, shall, from and

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after the first day of July next separate or remove, or cause to be separated or removed, a husband from his wife, or wife from her husband, a child from his or her parents, or a parent from a child, or any or either of the descriptions aforesaid, to a greater distance than ten miles, with the design and intention of changing the habitation or place of abode of such husband or wife, parent or child, unless such child shall be above the age of four years, without the consent of such slave or servant for life or years shall have been obtained and testified in the manner hereinbefore described, such person or persons shall severally forfeit and pay the sum of fifty pounds, with costs of suit, for every such offense, to be recovered by action of debt, bill, plaint, or information in the supreme court or in any court of common pleas at the suit of any person who will sue for the same, one moiety thereof, when recovered, for the use of the plaintiffs, the other moiety for the use of the poor of the city, township, or place from which said husband or wife, parent or child, shall have been taken and removed."

(Sec. VII. Repealed 27th March, 1820, and 25th March, 1826.)

And the jurors further found, that, at a session of the General Assembly of the Commonwealth of Pennsylvania, holden at Harrisburg, on the 25th day of March, 1826, the following law was passed,

"An act to give effect to the provisions of the Constitution of the United States relative to fugitives from labor, for the protection of free people of color, and prevent kidnapping."

"Sec. I. If any person or persons shall, from and after the passing of this act, by force and violence, take and carry away, or cause to be taken or carried away, and shall, by fraud or false pretence, seduce, or cause to be seduced, or shall attempt so to take, carry away or seduce, any negro or mulatto, from any part or parts of this Commonwealth, to any other place or places whatsoever, out of this Commonwealth, with a design and intention of selling and disposing of, or of 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 or persons, his or their aiders or abettors, shall on conviction thereof, in any court of this Commonwealth having competent jurisdiction, be deemed guilty of a felony, and shall forfeit and pay at the discretion of the court

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passing the sentence, a sum not less than five hundred, nor more than one thousand dollars, one-half whereof shall be paid to the person or persons who shall prosecute for the same, and the other half to this Commonwealth, and moreover shall be sentenced to undergo a servitude for any term or terms not less than seven years nor exceeding twenty-one years, and shall be confined and kept to hard labor, fed, and clothed in the manner as is directed by the penal laws of this Commonwealth for persons convicted of robbery."

"Sec. II. If any person or persons shall, hereafter, knowingly sell, transfer or assign, or shall, knowingly, purchase, take or transfer an assignment of any negro or mulatto for the purpose of fraudulently removing, exporting or carrying said negro or mulatto out of this State, with the design or intent, by fraud or false pretences, of making him or her a slave or servant for life, or for any term whatsoever, every person so offending shall be deemed guilty of a felony, and on conviction thereof, shall forfeit and pay a fine of not less than five hundred dollars nor more than two thousand dollars, one-half whereof shall be paid to the person or persons who shall prosecute for the same, and the other half to the Commonwealth, and moreover shall be sentenced, at the discretion of the court, to undergo a servitude for any term or time not less than seven years, nor exceeding

twenty-one years, and shall be confined, kept to hard labor, fed and clothed in the same manner as is directed by the penal laws of this Commonwealth for persons convicted of robbery."

"Sec. III. When a person held to labor or servitude in any of the United States, or in either of the territories thereof, under the laws thereof, shall escape into this Commonwealth, the person to whom such labor or service is due, his or her duly authorized agent or attorney, constituted in writing, is hereby authorized to apply to any judge, justice of the peace or alderman, who, on such application, supported by the oath or affirmation of such claimant, or authorized agent or attorney as aforesaid, that the said fugitive hath escaped from his or her service, or from the service of the person for whom he is duly constituted agent or attorney, shall issue his warrant, under his hand and seal, and directed to the sheriff, or any constable of the proper city or county, authorizing and empowering said sheriff or constable, to

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arrest and seize the said fugitive, who shall be named in said warrant, and to bring said fugitive before a judge of the proper county, which said warrant shall be in the form or to the following effect:"

"State of Pennsylvania, _____ county, ss."

" The Commonwealth of Pennsylvania, to the sheriff or any constable of _____ county, greeting: Whereas, it appears by the oath, or solemn affirmation, of _____ _____, that _____ _____, was held to labor or service to _____ _____, of _____ county, in the State of _____, and the said _____ _____ hath escaped from the labor and service of the said _____ _____: You are therefore commanded, to arrest and seize the body of the said _____ _____, if he be found in your county, and bring him forthwith before the person issuing the warrant, if a judge (or if a justice of the peace or alderman) before a judge of the court of common pleas, or of the district court, as the case may be, of your proper county, or recorder of a city, so that the truth of the matter may be inquired into, and the said _____ _____

be dealt with as the Constitution of the United States, and the laws of this Commonwealth direct."

" Witness our said judge (or alderman, or justice, as the case may be) at this ___ day of _____, in the year of our Lord one thousand eight hundred and _____."

"By virtue of such warrant the person named therein may be arrested by the proper sheriff or constable to whom the same shall be delivered, within the proper city or county."

"Sec. IV. No judge, justice of the peace or alderman shall issue a warrant on the application of any agent or attorney, as provided in the said third section, unless the said agent or attorney shall, in addition to his own oath or affirmation, produce the affidavit of the claimant of the fugitive, taken before and certified by a justice of the peace or other magistrate authorized to administer oaths, in the State or territory in which such claimant shall reside, and accompanied by the certificate of the authority of such justice or other magistrate, to administer oaths, signed by the clerk or prothonotary, and authenticated by the seal of a court of record, in such State or territory; which affidavit shall state the

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said claimant's title to the service of such fugitive and also the name, age and description of the person of such fugitive."

"Sec. V. It shall be the duty of any judge, justice of the peace, or alderman, when he grants or issues any warrant under the provisions of the third section of this act, to make a fair record on his docket of the same in which he shall enter the name and place of residence of the person on whose oath or affirmation the said warrant may be granted, and also, if an affidavit shall have been produced under the provisions of the fourth section of this act, the name and place of residence of the person making such affidavit, and the age and description of the person of the alleged fugitive contained in such affidavit, and shall, within ten days thereafter, file a certified copy thereof in the office of the clerk of the court of general quarter sessions of the peace, or mayor's court of the proper city or county; and any judge,

justice of the peace or alderman who shall refuse or neglect to comply with the provisions of this section shall be deemed guilty of a misdemeanor in office, and shall, on conviction thereof, be sentenced to pay, at the discretion of the court, any sum not exceeding one thousand dollars, one-half to the party prosecuting for the same, and the other half to the Commonwealth. And any sheriff or constable, receiving and executing the said warrant shall, without unnecessary delay, carry the person arrested before the judge, according to the exigency of the warrant. And any sheriff or constable who shall refuse or wilfully neglect so to do shall, on conviction thereof, be sentenced to pay at the discretion of the court any sum not exceeding five hundred dollars, one-half to the party prosecuting for the same and the other half to the Commonwealth, or shall also be sentenced to imprisonment at hard labor for a time not exceeding six months, or both."

"Sec. VI. The said fugitive from labor or service, when so arrested, shall be brought before a judge as aforesaid and, upon proof to the satisfaction of such judge that the person so seized or arrested doth, under the laws of the State or authority from which she or he fled from service or labor, to the person claiming him or her, it shall be the duty of such judge to give a certificate thereof to such claimant, his or her duly authorized agent or attorney, which shall be sufficient warrant for removing the said fugitive to the State or territory from which she or he fled:



Provided, that the oath of the owner or owners, or other person interested, shall in no case be received in evidence before the judge, on the hearing of the case."

"Sec. VII. When the fugitive shall be brought before the judge, agreeably to the provisions of this act, and either party allege and prove to the satisfaction of the said judge that he or she is not prepared for trial, and have testimony material to the matter in controversy that can be obtained in a reasonable time, it shall and may be lawful, unless security satisfactory to the said judge be given for the appearance of the said fugitive on a day certain, to commit the said fugitive to the common jail for safekeeping, there to be detained at the expense of the owner,

agent, or attorney for such time as the judge shall think reasonable and just, and to a day certain, when the said fugitive shall be brought before him by habeas corpus in the courthouse of the proper county, or in term-time at the chamber of the said judge, for final hearing and adjudication: Provided, that if the adjournment of the hearing be requested by the claimant, his agent or attorney, such adjournment shall not be granted unless the said claimant, his agent or attorney, shall give security satisfactory to the judge to appear and prosecute his claim on the day to which the hearing shall be adjourned: Provided that, on the hearing last mentioned, if the judge committing the said fugitive or taking the security as aforesaid should be absent, sick, or otherwise unable to attend, it shall be the duty of either of the other judges, on notice given, to attend to the said hearing and to decide thereon."

"Sec. VIII. The officer which may or shall be employed in the execution of the duties of this act shall be allowed the same fees for service of process that sheriffs within this Commonwealth are now allowed for serving process in criminal cases, and two dollars and fifty cents per day for each and every day necessarily spent in performing the duties enjoined on them by this acts to be paid by the owner, agent, or attorney immediately on the performance of the duties aforesaid."

"Sec. IX. No alderman or justice of the peace of this Commonwealth shall have jurisdiction or take cognizance of the case of any fugitive from labor from any of the United States or territories, under a certain act of Congress, passed on the tenth day of February 1793,

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entitled 'an act respecting fugitives from justice, and persons escaping from the service of their masters;' nor shall any alderman or justice of the peace of this Commonwealth issue or grant any certificate or warrant of removal of any such fugitive from labor as aforesaid, except in the manner and to the effect provided in the third section of this act, upon the application, affidavit or testimony of any person or persons whatsoever, under the said act of Congress, or under any other law, authority or act of the Congress of the United States; and if any alderman or

justice of the peace of this Commonwealth shall, contrary to the provision of this act, take cognizance or jurisdiction of the case of any such fugitive as aforesaid except in the manner hereinbefore provided, or shall grant or issue any certificate or warrant of removal as aforesaid, then and in either case he shall be deemed guilty of a misdemeanor in office and shall, on conviction thereof, be sentenced to pay at the discretion of the court any sum not less than five hundred dollars nor exceeding one thousand dollars, one-half thereof to the party prosecuting for the same and the other half to the use of the Commonwealth."

"Sec. X. It shall be the duty of the judge or recorder of any court of record in this Commonwealth, when he grants or issues any certificate or warrant of removal of any negro or mulatto claimed to be a fugitive from labor to the State or territory from which he or she fled, in pursuance of an act of Congress passed the 12th day of February 1793 entitled 'an act respecting fugitives from justice and persons escaping from the service of their masters,' and of this act, to make a fair record of the same in which he shall enter the age, name, sex, and general description of the person of the negro or mulatto for whom he shall grant such certificate or warrant of removal, together with the evidence and the name of the places of residence of the witnesses, and the party claiming such negro or mulatto, and shall, within ten days thereafter, file a certified copy thereof in the office of the clerk of the court of general quarter sessions of the peace, or mayor's court of the city or county in which he may reside."

"Sec. XI. Nothing in this act contained shall be construed as a repeal or alteration of any part of an act of assembly passed the first day of March, 1780,



entitled 'an act for the gradual abolition of slavery,' except the eleventh section of said act, which is hereby repealed and supplied, nor of any part of an act of assembly passed on the 28th day of March 1788, entitled 'an act to explain and amend an act for the gradual abolition of slavery,' except the 7th section of this last-mentioned act, which is hereby supplied and repealed."

And the jurors further found that the negro woman, Margaret Morgan, in the within indictment mentioned, came into the State of Pennsylvania from the State of Maryland, some time in the year 1832; that, at that time, and for a long period before that time, she was a slave for life, held to labor, and owing service or labor, under and according to the laws of the said State of Maryland, one of the United States, to a certain Margaret Ashmore, a citizen of the State of Maryland, residing in Harford county; and that the said negro woman, Margaret Morgan, escaped and fled from the State of Maryland, without the knowledge and consent of the said Margaret Ashmore; that, in the month of February, 1837, the within-named defendant, Edward Prigg, was duly and legally constituted and appointed by the said Margaret Ashmore her agent or attorney to seize and arrest the said negro woman, Margaret Morgan, as a fugitive from labor, and to remove, take, and carry her from this State into the State of Maryland, and there deliver her to the said Margaret Ashmore; that, as such agent or attorney, the said Edward Prigg, afterwards and in the same month of February, 1837, before a certain Thomas Henderson, Esquire, then being a justice of the peace in and for the county of York in this State, made oath that the said negro woman Margaret Morgan had fled and escaped from the State of Maryland, owing service or labor for life, under the laws thereof to the said Margaret Ashmore; that the said Thomas Henderson, so being such justice of the peace as aforesaid, thereupon issued his warrant, directed to one William McCleary, then and there being a regularly appointed constable in and for York county, commanding him to take the said negro woman, Margaret Morgan, and her children, and bring them before the said Thomas Henderson, or some other justice of the peace for said county; that the said McCleary, in obedience



to said warrant, did accordingly take and apprehend the said negro woman, Margaret Morgan, and her children, in York county aforesaid, and did bring her and them before the said Thomas Henderson; that the said Henderson thereupon refused to take further cognizance of said case, and that the said Prigg afterwards, and without complying with the provisions of the said act of the General Assembly

of the Commonwealth of Pennsylvania, passed the 25th of March 1826, entitled

"an act to give effect to the provisions of the Constitution of the United States relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping,"

did take, remove and carry away the said negro woman, Margaret Morgan, and her children, mentioned in said warrant, out of this State, into the State of Maryland, and did there deliver the said woman and children into the custody and possession of the said Margaret Ashmore.

And further say, that one of the said children so taken, removed and carried away, was born in this State, more than one year after the said negro woman, Margaret Morgan, had fled and escaped from the State of Maryland as aforesaid.

But whether or not, upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, the said Edward Prigg be guilty in manner and form as he stands indicted, the jurors aforesaid are altogether ignorant, and therefore, pray the advice of the court; and if, upon the whole matter aforesaid, it shall seem to the said court that the said Edward Prigg is guilty, then the jurors aforesaid, upon their oaths aforesaid, say that the said Edward Prigg is guilty in manner and form as he stands indicted.

But if, upon the whole matter aforesaid, it shall seem to the said court that the said Edward Prigg is not guilty, then the jurors aforesaid, upon their oaths aforesaid, say that the said Edward Prigg is not guilty in manner and form as he stands indicted.

This special verdict was, under an agreement between Messrs. Meredith and Nelson, counsel for Edward Prigg, and Mr. Johnson, Attorney-General of Pennsylvania, taken under the provision of an act of the Assembly of Pennsylvania passed 22d of May, 1839, and, by agreement, the court gave judgment



against Edward Prigg on the finding of the jury and the indictment.

The defendant prosecuted a writ of error to the Supreme Court of Pennsylvania, to May Term, 1840. On the 23d May, 1840, the following errors were assigned before the Court by Mr. Meredith and Mr. Nelson, who represented the State of Maryland, as well as the defendant.

The plaintiff in error suggests to the Supreme Court here that the judgment rendered in the Court of Oyer and Terminer of York county in this case should be reversed for the reason following, *viz:* That the Act of Assembly of the Commonwealth of Pennsylvania set out in the record in the said cause is repugnant to the provisions of the Constitution of the United States, and is therefore void.

The Supreme Court affirmed *pro forma* the judgment of the Court of Oyer and Terminer, and the defendant Edward Prigg prosecuted this writ of error.

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MR. JUSTICE STORY delivered the opinion of the court.

This is a writ of error to the Supreme Court of Pennsylvania, brought under the 25th section of the Judiciary Act of 1789, ch. 20, for the purpose of revising the judgment of that court, in a case involving the construction of the Constitution and laws of the United States. The facts are briefly these:

The plaintiff in error was indicted in the Court of Oyer and Terminer for York County, for having, with force and violence, taken and carried away from that county, to the State of Maryland, a certain negro woman, named Margaret Morgan, with a design and intention of selling and disposing of, and keeping her, as a slave or servant for life, contrary to a statute of Pennsylvania, passed on the 26th of March, 1826. That statute, in the first section, in substance provides that, if any person or persons shall, from and after the passing of the act, by force and violence, take and carry away, or cause to be taken and carried away, and shall, by fraud or false pretence, seduce, or cause to be seduced, or shall attempt to take, carry away or seduce, any negro or mulatto from any part of that

Commonwealth, with a design and intention 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 or persons, his or their aiders or abettors, shall, on conviction thereof, be deemed guilty of felony, and shall forfeit and pay a sum not less than five hundred, nor more than one thousand dollars, and moreover shall be sentenced to undergo servitude for any term or terms of years, not less than seven years nor exceeding twenty-one years, and shall be confined and kept to hard labor, &c.; There are many other provisions in the statute, which is recited at large in the record but to which it is in our view unnecessary to advert upon the present occasion.

The plaintiff in error 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

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laws of Maryland, to a certain Margaret Ashmore, a citizen of Maryland; that the slave escaped and fled from Maryland into Pennsylvania in 1832; that the plaintiff in error, being legally constituted the agent and attorney of the said Margaret Ashmore, in 1837 caused the said negro woman to be taken and apprehended as a fugitive from labor by a state constable under a warrant from a Pennsylvania magistrate; that the said negro woman was thereupon brought before the said magistrate, who refused to take further cognizance of the case; and thereupon the plaintiff in error did remove, take and carry away the said negro woman and her children out of Pennsylvania into Maryland, and did deliver the said negro woman and her children into the custody and possession of the said Margaret Ashmore. The special verdict further finds that one of the children was born in Pennsylvania more than a year after the said negro woman had fled and escaped from Maryland.

Upon this special verdict, the Court of Oyer and Terminer of York County adjudged that the plaintiff in error was guilty of the offense charged in the indictment. A writ of error was brought from that judgment to the Supreme Court of Pennsylvania, where the judgment was, *pro forma,* affirmed. From this latter judgment, the present writ of error has been brought to this Court.

Before proceeding to discuss the very important and interesting questions involved in this record, it is fit to say that the cause has been conduced in the court below, and has been brought here by the cooperation and sanction, both of the State of Maryland and the State of Pennsylvania in the most friendly and courteous spirit, with a view to have those questions finally disposed of by the adjudication of this Court so that the agitations on this subject in both States, which have had a tendency to interrupt the harmony between them, may subside, and the conflict of opinion be put at rest. It should also be added that the statute of Pennsylvania of 1826 was (as has been suggested at the bar) passed with a view of meeting the supposed wishes of Maryland on the subject of fugitive slaves, and that, although it has failed to produce the good effects intended in its practical construction, the result was unforeseen and undesigned.

1. The question arising in the case as to the constitutionality of the statute of Pennsylvania, has been most elaborately argued at the

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bar. The counsel for the plaintiff in error have contended that the statute of Pennsylvania is unconstitutional, first, because Congress has the exclusive power of legislation upon the subject matter under the Constitution of the United States and under the act of the 12th of February 1793, ch. 51, which was passed in pursuance thereof; secondly, that, if this power is not exclusive in Congress, still the concurrent power of the state legislatures is suspended by the actual exercise of the power of Congress; and thirdly, that, if not suspended, still the statute of Pennsylvania, in all its provisions applicable to this case, is in direct collision with the act of Congress, and therefore, is unconstitutional and void. The counsel for Pennsylvania maintain the negative of all those points.

Few questions which have ever come before this Court involve more delicate and important considerations, and few upon which the public at large may be presumed to feel a more profound and pervading interest. We have accordingly given them our most deliberate examination, and it has become my duty to state the result to which we have arrived, and the reasoning by which it is supported.

Before, however, we proceed to the points more immediately before us, it may be well, in order to clear the case of difficulty, to say that, in the exposition of this part of the Constitution, we shall limit ourselves to those considerations which appropriately and exclusively belong to it, without laying down any rules of interpretation of a more general nature. It will indeed probably be found, when we look to the character of the Constitution itself, the objects which it seeks to attain, the powers which it confers, the duties which it enjoins, and the rights which it secures, as well as the known historical fact, that many of its provisions were matters of compromise of opposing interests and opinions, that no uniform rule of interpretation can be applied to it which may not allow, even if it does not positively demand, many modifications in its actual application to particular clauses. And perhaps the safest rule of interpretation, after all, will be found to be to look to the nature and objects of the particular powers, duties, and rights with all the lights and aids of contemporary history, and to give to the words of each just such operation

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and force, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed.

There are two clauses in the Constitution upon the subject of fugitives, which stands in juxtaposition with each other and have been thought mutually to illustrate each other. They are both contained in the second section of the fourth Article, and are in the following words:

"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."

The last clause is that the true interpretation whereof is directly in judgment before us. Historically, it is well known that the object of this clause was to secure to the citizens of the slave-holding 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 this 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 constituted a fundamental article without the adoption of which the Union could not have been formed. Its true design was to guard against the doctrines and principles prevalent in the non-slaveholding States, by preventing them from intermeddling with, or obstructing, or abolishing the rights of the owners of slaves.

By the general law of nations, no nation is bound to recognize the state of slavery as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favor of the subjects of other nations where slavery is recognized. If it does it, it is as a matter of comity, and not as a matter of international right. The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws. This was fully recognized in *Somerset's Case,*

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Lofft 1; S.C. 11 State Trials, by Harg. 340, S.C. 20 How. State Trials 79, which decided before the American revolution. It is manifest from this consideration that, if the Constitution had not contained this clause, every non-slaveholding State in

the Union would have been at liberty to have declared free all runaway slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters -- a course which would have created the most bitter animosities and engendered perpetual strife between the different States. The clause was therefore of the last importance to the safety and security of the southern States, and could not have been surrendered by them, without endangering their whole property in slaves. The clause was accordingly adopted into the Constitution by the unanimous consent of the framers of it -- a proof at once of its intrinsic and practical necessity.

How then are we to interpret the language of the clause? The true answer is in such a manner as, consistently with the words, shall fully and completely effectuate the whole objects of it. If, by one mode of interpretation, the right must become shadowy and unsubstantial, and without any remedial power adequate to the end, and, by another mode, it will attain its just end and secure its manifest purpose, it would seem, upon principles of reasoning, absolutely irresistible, that the latter ought to prevail. No court of justice can be authorized so to construe any clause of the Constitution as to defeat its obvious ends when another construction, equally accordant with the words and sense thereof, will enforce and protect them.

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. The slave is not to be discharged from service or labor in consequence of any state law or regulation. Now certainly, without indulging in any nicety of criticism upon words, it may fairly and reasonably be said that any state law or state regulation which interrupts, limits, delays, or postpones the right of the owner to the immediate possession of the slave and the immediate command of his service and labor operates *pro tanto* a discharge of the slave therefrom. The question can never be how much the slave is discharged from, but whether he is

discharged from any, by the natural or necessary operation of state laws or state regulations. The question is not one of quantity or degree, but of withholding or controlling the incidents of a positive and absolute right.

We have said that the clause contains a positive and unqualified recognition of the right of the owner in the slave, unaffected by any state law or legislation whatsoever, because there is no qualification or restriction of it to be found therein, and we have no right to insert any which is not expressed and cannot be fairly implied. Especially are we estopped from so doing when the clause puts the right to the service or labor upon the same ground, and to the same extent, in every other State as in the State from which the slave escaped and in which he was held to the service or labor. If this be so, then all the incidents to that right attach also. The owner must, therefore, have the right to seize and repossess the slave, which the local laws of his own State confer upon him, as property, and we all know that this right of seizure and recaption is universally acknowledged in all the slaveholding States. Indeed, this is no more than a mere affirmance of the principles of the common law applicable to this very subject. Mr. Justice Blackstone (3 Bl. Com. 4) lays it down as unquestionable doctrine.

"Recaption or reprisal [says he] is another species of remedy by the mere act of the party injured. This happens when anyone hath 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."

Upon this ground, we have not the slightest hesitation in holding that, under and in virtue of the Constitution, the owner of a slave is clothed with entire authority, in every State in the Union, to seize and recapture his slave whenever he can do it without any breach of the peace or any illegal violence. In this sense and to this extent, this clause of the Constitution may properly be said to execute itself, and to require no aid from legislation, state or national.

But the clause of the Constitution does not stop here, nor, indeed, consistently with its professed objects, could it do so. Many



cases must arise in which, if the remedy of the owner were confined to the mere right of seizure and recaption, he would be utterly without any adequate redress. He may not be able to lay his hands upon the slave. He may not be able to enforce his rights against persons who either secrete or conceal or withhold the slave. He may be restricted by local legislation as to the mode of proofs of his ownership, as to the courts in which he shall sue, and as to the actions which he may bring or the process be may use to compel the delivery of the slave. Nay, the local legislation may be utterly inadequate to furnish the appropriate redress, by authorizing no process *in rem,* or no specific mode of repossessing the slave, leaving the owner, at best, not that right which the Constitution designed to secure, a specific delivery and repossession of the slave, but a mere remedy in damages, and that, perhaps, against persons utterly insolvent or worthless. The state legislation may be entirely silent on the whole subject, and its ordinary remedial process framed with different views and objects, and this may be innocently, as well as designedly, done, since every State is perfectly competent, and has the exclusive right, to prescribe the remedies in its own judicial tribunals, to limit the time as well as the mode of redress, and to deny jurisdiction over cases which its own policy and its own institutions either prohibit or discountenance.

If, therefore, the clause of the Constitution had stopped at the mere recognition of the right, without providing or contemplating any means by which it might be established and enforced, in cases where it did not execute itself, it is plain that it would have been, in a great variety of cases, a delusive and empty annunciation. If it did not contemplate any action, either through state or national legislation, as auxiliaries to its more perfect enforcement in the form of remedy, or of protection, then, as there would be no duty on either to aid the right, it would be left to the mere comity of the States to act as they should please, and would depend for its security upon the changing course of public opinion, the mutations of public policy, and the general adaptations of remedies for purposes strictly according to the *lex*

*fori.*

And this leads us to the consideration of the other part of the clause, which implies at once a guarantee and duty. It says, "but he [the slave] shall be delivered up on claim of the party to

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whom such service or labor may be due." Now we think it exceedingly difficult, if not impracticable, to read this language and not to feel that it contemplated some further remedial redress than that which might be administered at the hands of the owner himself. A claim is to be made! What is a claim? It is, in a just juridical sense, a demand of some matter, as of right, made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. A more limited but, at the same time, an equally expressive, definition was given by Lord Dyer, as cited in *Stowel v. Zouch,* 1 Plowd. 359, and it is equally applicable to the present case: that

"a claim is a challenge by a man of the propriety or ownership of a thing which he has not in possession, but which is wrongfully detained from him."

The slave is to be delivered up on the claim. By whom to be delivered up? In what mode to be delivered up? How, if a refusal takes place, is the right of delivery to be enforced? Upon what proofs? What shall be the evidence of a rightful recaption or delivery? When and under what circumstances shall the possession of the owner, after it is obtained, be conclusive of his right, so as to preclude any further inquiry or examination into it by local tribunals or otherwise, while the slave, in possession of the owner, is *in transitu* to the State from which he fled?

These and many other questions will readily occur upon the slightest attention to the clause; and it is obvious that they can receive but one satisfactory answer. They require the aid of legislation to protect the right, to enforce the delivery, and to secure the subsequent possession of the slave. If, indeed, the Constitution guaranties the right, and if it requires the delivery upon the claim of the owner (as cannot well be doubted), the natural inference certainly is that the National

Government is clothed with the appropriate authority and functions to enforce it. The fundamental principle, applicable to all cases of this sort, would seem to be that, where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. The clause is found in the National Constitution, and not in that of any State. It does not point out any state functionaries, or any state action, to carry its provisions into effect . The States cannot, therefore, be compelled to enforce them, and

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it might well be deemed an unconstitutional exercise of the power of interpretation to insist that the States are bound to provide means to carry into effect the duties of the National Government, nowhere delegated or entrusted to them by the Constitution. On the contrary, the natural, if not the necessary, conclusion is, that the National Government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, judicial or executive, as the case may require, to carry into effect all the rights and duties imposed upon it by the Constitution. The remark of Mr. Madison, in the Federalist (No. 43), would seem in such cases to apply with peculiar force. "A right [says he] implies a remedy, and where else would the remedy be deposited than where it is deposited by the Constitution?" -- meaning, as the context shows, in the Government of the United States.

It is plain, then, that where a claim is made by the owner, out of possession, for the delivery of a slave, it must be made, if at all, against some other person; and, inasmuch as the right is a right of property, capable of being recognized and asserted by proceedings before a court of justice, between parties adverse to each other, it constitutes, in the strictest sense, a controversy between the parties, and a case "arising under the Constitution" of the United States within the express delegation of judicial power given by that instrument. Congress, then, may call that power into activity for the very purpose of giving effect to that right; and, if so, then it may prescribe the mode and extent in which it shall be applied, and how and under what circumstances the proceedings shall afford a complete protection and

guarantee to the right.

Congress has taken this very view of the power and duty of the National Government. As early as the year 1791, the attention of Congress was drawn to it (as we shall hereafter more fully see) in consequence of some practical difficulties arising under the other clause respecting fugitives from justice escaping into other States. The result of their deliberations was the passage of the act of the 12th of February 1793, ch. 51, which, after having, in the first and second sections, provided by the case of fugitives from justice, by a demand to be made of the delivery, through the executive authority of the State where they are found,

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proceeds, in the third section, to provide that, when a person held to labor or service in any of the United States, shall escape into any other of the 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 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 evidence or affidavit, &c.;, 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 fled. The fourth section provides a penalty against 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 rescue such fugitive from the claimant, or his agent or attorney when so arrested, or who shall harbor or conceal such fugitive after notice that he is such; and it also saves to the person claiming such labor or service his right of action for or on account of such injuries.

In a general sense, this act may be truly said to cover the whole ground of the Constitution, both as to fugitives from justice and fugitive slaves -- that is, it covers both the subjects in its enactments, not because it exhausts the remedies which may be applied by Congress to enforce the rights if the provisions of the act shall in practice be found not to attain the object of the Constitution; but because it points out fully all the modes of attaining those objects which Congress, in their discretion, have as yet deemed expedient or proper to meet the exigencies of the Constitution. If this be so, then it would seem, upon just principles of construction, that the legislation of Congress, if constitutional, must supersede all state legislation upon the same subject and, by necessary implication, prohibit it. For, if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot

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be that the state legislatures have a right to interfere and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. This doctrine was fully recognized by this Court, in the case of *Houston v. Moore,* 5 Wheat. 1, 18 U. S. 21 -22, where it was expressly held that, where Congress have exercised a power over a particular subject given them by the Constitution, it is not competent for state legislation to add to the provisions of Congress upon that subject, for that the will of Congress upon the whole subject is as clearly established by what it has not declared as by what it has expressed.

But it has been argued that the act of Congress is unconstitutional because it does not fall within the scope of any of the enumerated powers of legislation confided to that body, and therefore it is void. Stripped of its artificial and technical structure, the argument comes to this -- that although rights are exclusively secured by, or duties are exclusively imposed upon, the National Government, yet, unless the

power to enforce these rights or to execute these duties can be found among the express powers of legislation enumerated in the Constitution, they remain without any means of giving them effect by any act of Congress, and they must operate solely *proprio vigore,* however defective may be their operation -- nay! even although, in a practical sense, they may become a nullity from the want of a proper remedy to enforce them or to provide against their violation. If this be the true interpretation of the Constitution, it must in a great measure fail to attain many of its avowed and positive objects as a security of rights and a recognition of duties. Such a limited construction of the Constitution has never yet been adopted as correct either in theory or practice. No one has ever supposed that Congress could constitutionally, by its legislation, exercise powers or enact laws beyond the powers delegated to it by the Constitution. But it has on various occasions exercised powers which were necessary and proper as means to carry into effect rights expressly

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given and duties expressly enjoined thereby. The end being required, it has been deemed a just and necessary implication that the means to accomplish it are given also, or, in other words, that the power flows as a necessary means to accomplish the end.

Thus, for example, although the Constitution has declared that representatives shall be apportioned among the States according to their respective federal numbers and, for this purpose, it has expressly authorized Congress by law to provide for an enumeration of the population every ten years, yet the power to apportion representatives after this enumeration is made is nowhere found among the express powers given to Congress, but it has always been acted upon as irresistibly flowing from the duty positively enjoined by the Constitution. Treaties made between the United States and foreign powers often contain special provisions which do not execute themselves, but require the interposition of Congress to carry them into effect, and Congress has constantly, in such cases, legislated on the subject; yet, although the power is given to the executive, with the consent of the senate, to make treaties, the power is nowhere in positive terms

conferred upon Congress to make laws to carry the stipulations of treaties into effect; it has been supposed to result from the duty of the National Government to fulfill all the obligations of treaties. The senators and representatives in Congress are, in all cases except treason, felony and breach of the peace, exempted from arrest during their attendance at the sessions thereof, and in going to and returning from the same. May not Congress enforce this right by authorizing a writ of habeas corpus to free them from an illegal arrest in violation of this clause of the Constitution? If it may not, then the specific remedy to enforce it must exclusively depend upon the local legislation of the States, and may be granted or refused according to their own varying policy or pleasure. The Constitution also declares that the privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require it. No express power is given to Congress to secure this invaluable right in the nonenumerated cases, or to suspend the writ in cases of rebellion or invasion. And yet it would be difficult to say, since this great writ of liberty is usually provided for by the ordinary functions of legislation, and can be effectually

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provided for only in this way, that it ought not to be deemed, by necessary implication, within the scope of the legislative power of Congress.

These cases are put merely by way of illustration, to show that the rule of interpretation, insisted upon at the argument, is quite too narrow to provide for the ordinary exigencies of the National Government in cases where rights are intended to be absolutely secured and duties are positively enjoined by the Constitution.

The very Act of 1793 now under consideration affords the most conclusive proof that Congress has acted upon a very different rule of interpretation, and has supposed that the right, as well as the duty, of legislation on the subject of fugitives from justice and fugitive slaves was within the scope of the constitutional authority conferred on the national legislature. In respect to fugitives from justice, the Constitution, although it expressly provides that the demand shall be made by

the executive authority of the State from which the fugitive has fled, is silent as to the party upon whom the demand is to be made and as to the mode in which it shall be made. This very silence occasioned embarrassments in enforcing the right and duty at an early period after the adoption of the Constitution; and produced a hesitation on the part of the executive authority of Virginia to deliver up a fugitive from justice upon the demand of the executive of Pennsylvania in the year 1791; and, as we historically know from the message of President Washington and the public documents of that period, it was the immediate cause of the passing of the Act of 1793, which designated the person (the state executive) upon whom the demand should be made, and the mode and proofs upon and in which it should be made. From that time down to the present hour, not a doubt has been breathed upon the constitutionality of this part of the act, and every executive in the Union has constantly acted upon and admitted its validity. Yet the right and the duty are dependent, as to their mode of execution, solely on the act of Congress, and, but for that, they would remain a nominal right and passive duty the execution of which being entrusted to and required of no one in particular, all persons might be at liberty to disregard it. This very acquiescence, under such circumstances, of the highest state functionaries is a most decisive proof of the universality of the opinion that the

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act is founded in a just construction of the Constitution independent of the vast influence which it ought to have as a contemporaneous exposition of the provisions by those who were its immediate framers or intimately connected with its adoption.

The same uniformity of acquiescence in the validity of the Act of 1793 upon the other part of the subject matter that of fugitive slaves has prevailed throughout the whole Union until a comparatively recent period. Nay, being from its nature and character more readily susceptible of being brought into controversy in courts of justice than the former, and of enlisting in opposition to it the feelings, and it may be, the prejudices, of some portions of the non-slaveholding States, it has naturally been brought under adjudication in several States in the Union, and particularly in

Massachusetts, New York, and Pennsylvania, and, on all these occasions, its validity has been affirmed. The cases cited at the bar, of *Wright v. Deacon,* 5 Serg. & Rawle 62; *Glen v. Hodges,* 9 Johns. 67; *Jack v. Martin,* 12 Wend. 311; S.C. 12 *ibid.* 507; and *Commonwealth v. Griffin,* 2 Pick. 11, are directly in point. So far as the judges of the courts of the United States have been called upon to enforce it, and to grant the certificate required by it, it is believed that it has been uniformly recognized as a binding and valid law, and as imposing a constitutional duty. Under such circumstances, if the question were one of doubtful construction, such long acquiescence in it, such contemporaneous expositions of it, and such extensive and uniform recognition of its validity would, in our judgment, entitle the question to be considered at rest unless, indeed, the interpretation of the Constitution is to be delivered over to interminable doubt throughout the whole progress of legislation and of national operations. Congress, the executive, and the judiciary have, upon various occasions, acted upon this as a sound and reasonable doctrine. Especially did this Court, in the cases of *Stuart v. Laird,* 1 Cranch 299, and *Martin v. Hunter's Lessee,* 1 Wheat. 304, and in *Cohens v. Virginia,* 6 Wheat. 264, rely upon contemporaneous expositions of the Constitution, and long acquiescence in it, with great confidence in the discussion of questions of a highly interesting and important nature.

But we do not wish to rest our present opinion upon the ground

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either of contemporaneous exposition or long acquiescence, or even practical action; neither do we mean to admit the question to be of a doubtful nature, and therefore as properly calling for the aid of such considerations. On the contrary, our judgment would be the same if the question were entirely new and the act of Congress were of recent enactment. We hold the act to be clearly constitutional in all its leading provisions and, indeed, with the exception of that part which confers authority upon state magistrates, to be free from reasonable doubt and difficulty upon the grounds already stated. As to the authority so conferred upon state magistrates, while a difference of opinion has existed, and may exist still, on the point in different States, whether state magistrates are bound to act under it, none

is entertained by this Court that state magistrates may, if they choose, exercise that authority unless prohibited by state legislation.

The remaining question is whether the power of legislation upon this subject is exclusive in the National Government or concurrent in the States until it is exercised by Congress. In our opinion, it is exclusive, and we shall now proceed briefly to state our reasons for that opinion. The doctrine stated by this Court in *Sturgis v. Crowninshield,* 4 Wheat. 122, 17 U. S. 193 , contains the true, although not the sole, rule or consideration which is applicable to this particular subject. "Wherever," said Mr. Chief Justice Marshall in delivering the opinion of the Court,

"the terms in which a power is granted to Congress, or the nature of the power, require that it should be exercised exclusively by Congress, the subject is as completely taken from the state legislatures, as if they had been forbidden to act."

The nature of the power, and the true objects to be attained by it, are then as important to be weighed, in considering the question of its exclusiveness, as the words in which it is granted.

In the first place, it is material to state (what has been already incidentally hinted at) that the right to seize and retake fugitive slaves and the duty to deliver them up, in whatever State of the Union they may be found, and, of course, the corresponding power in Congress to use the appropriate means to enforce the right and duty, derive their whole validity and obligation exclusively from the Constitution of the United States, and are there, for the first time, recognized and established in that peculiar character.

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Before the adoption of the Constitution, no State had any power whatsoever over the subject except within its own territorial limits, and could not bind the sovereignty or the legislation of other States. Whenever the right was acknowledged, or the duty enforced, in any State, it was as a matter of comity, and not as a matter of strict moral, political, or international obligation or duty. Under

the Constitution, it is recognized as an absolute, positive right and duty, pervading the whole Union with an equal and supreme force, uncontrolled and uncontrollable by state sovereignty or state legislation. It is, therefore, in a just sense, a new and positive right, independent of comity, confined to no territorial limits, and bounded by no state institutions or policy. The natural inference deductible from this consideration certainly is, in the absence of any positive delegation of power to the state legislatures that it belongs to the Legislative Department of the National Government, to which it owes its origin and establishment. It would be a strange anomaly and forced construction to suppose that the National Government meant to rely for the due fulfillment of its own proper duties, and the rights it intended to secure, upon state legislation, and not upon that of the Union. *A fortiori,* it would be more objectionable to suppose that a power which was to be the same throughout the Union should be confided to state sovereignty, which could not rightfully act beyond its own territorial limits.

In the next place, the nature of the provision and the objects to be attained by it require that it should be controlled by one and the same will, and act uniformly by the same system of regulations throughout the Union. If, then, the States have a right, in the absence of legislation by Congress, to act upon the subject, each State is at liberty to prescribe just such regulations as suit its own policy, local convenience, and local feelings. The legislation of one State may not only be different from, but utterly repugnant to and incompatible with, that of another. The time and mode and limitation of the remedy, the proofs of the title, and all other incidents applicable thereto may be prescribed in one State which are rejected or disclaimed in another. One State may require the owner to sue in one mode, another in a different mode. One State may make a statute of limitations as to the remedy, in its own tribunals, short and summary; another



may prolong the period and yet restrict the proofs. Nay, some States may utterly refuse to act upon the subject of all, and others may refuse to open its courts to any remedies *in rem* because they would interfere with their own domestic policy, institutions, or habits. The right, therefore, would never, in a practical sense, be the

same in all the States. It would have no unity of purpose or uniformity of operation. The duty might be enforced in some States, retarded or limited in others, and denied as compulsory in many, if not in all. Consequences like these must have been foreseen as very likely to occur in the non-slaveholding States where legislation, if not silent on the subject and purely voluntary, could scarcely be presumed to be favorable to the exercise of the rights of the owner.

It is scarcely conceivable that the slaveholding States would have been satisfied with leaving to the legislation of the non-slaveholding States a power of regulation, in the absence of that of Congress, which would or might practically amount to a power to destroy the rights of the owner. If the argument, therefore, of a concurrent power in the States to act upon the subject matter, in the absence of legislation by Congress, be well founded, then, if Congress had never acted at all, or if the act of Congress should be repealed without providing a substitute, there would be a resulting authority in each of the States to regulate the whole subject at its pleasure, and to dole out its own remedial justice or withhold it at its pleasure and according to its own views of policy and expediency. Surely such a state of things never could have been intended under such a solemn guarantee of right and duty. On the other hand, construe the right of legislation as exclusive in Congress, and every evil and every danger vanishes. The right and the duty are then coextensive and uniform in remedy and operation throughout the whole Union. The owner has the same security, and the same remedial justice, and the same exemption from state regulation and control through however many States he may pass with his fugitive slave in his possession *in transitu* to his own domicile. But, upon the other supposition, the moment he passes the state line, he becomes amenable to the laws of another sovereignty whose regulations may greatly embarrass or delay the exercise of his rights, and even be repugnant to those of the State where he first arrested the fugitive. Consequences like these show that

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the nature and objects of the provisions imperiously require that, to make it effectual, it should be construed to be exclusive of state authority. We adopt the

language of this Court in *Sturgis v. Crowninshield,* 4 Wheat. 193, and say that

"it has never been supposed that the concurrent power of legislation extended to every possible case in which its exercise by the States has not been expressly prohibited; the confusion of such a practice would be endless."

And we know no case in which the confusion and public inconvenience and mischiefs thereof could be more completely exemplified than the present.

These are some of the reasons, but by no means all, upon which we hold the power of legislation on this subject to be exclusive in Congress. To guard, however, against any possible misconstruction of our views, it is proper to state that we are by no means to be understood in any manner whatsoever to doubt or to interfere with the police power belonging to the States in virtue of their general sovereignty. That police power extends over all subjects within territorial limits of the States, and has never been conceded to the United States. It is wholly distinguishable from the right and duty secured by the provision now under consideration, which is exclusively derived from and secured by the Constitution of the United States and owes its whole efficacy thereto. We entertain no doubt whatsoever that the States, in virtue of their general police power, possesses 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. The rights of the owners of fugitive slaves are in no just sense interfered with or regulated by such a course, and, in many cases, the operations of this police power, although designed generally for other purposes -- for protection, safety and peace of the State -- may essentially promote and aid the interests of the owners. But such regulations can never be permitted to interfere with or to obstruct the just rights of the owner to reclaim his slave, derived from the Constitution of the United States, or with the remedies prescribed by Congress to aid and enforce the same.

Upon these grounds, we are of opinion that the act of Pennsylvania upon which this indictment is founded is unconstitutional

and void. It purports to punish as a public offense against that State the very act of seizing and removing a slave by his master which the Constitution of the United States was designed to justify and uphold. The special verdict finds this fact, and the state courts have rendered judgment against the plaintiff in error upon that verdict. That judgment must, therefore, be reversed, and the cause remanded to the Supreme Court of Pennsylvania with directions to carry into effect the judgment of this Court rendered upon the special verdict, in favor of the plaintiff in error.

MR. CHIEF JUSTICE TANEY.

I concur in the opinion pronounced by the Court that the law of Pennsylvania, under which the plaintiff in error was indicted, is unconstitutional and void, and that the judgment against him must be reversed. But, as the questions before us arise upon the construction of the Constitution of the United States, and as I do not assent to all the principles contained in the opinion just delivered, it is proper to state the points on which I differ.

I agree entirely in all that is said in relation to the right of the master, by virtue of the third clause of the second section of the Fourth Article of the Constitution of the United States, to arrest his fugitive slave in any State wherein he may find him. He has a right peaceably to take possession of him and carry him away without any certificate or warrant from a judge of the district or circuit court of the United States, or from any magistrate of the State, and whoever resists or obstructs him is a wrongdoer, and every state law which proposes directly or indirectly to authorize such resistance or obstruction is null and void, and affords no justification to the individual or the officer of the State who acts under it. This right of the master being given by the Constitution of the United States, neither Congress nor a state legislature can, by any law or regulation, impair it or restrict it.

I concur also in all that is contained in the opinion concerning the power of Congress to protect the citizens of the slaveholding States in the enjoyment of this right, and to provide by law an effectual remedy to enforce it, and to inflict penalties upon those who shall violate its provisions, and no State is authorized to pass any law that comes in conflict in any respect with the remedy provided by Congress.

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The act of February 12th, 1793, is a constitutional exercise of this power, and every state law which requires the master, against his consent, to go before any state tribunal or officer before he can take possession of his property, or which authorizes a state officer to interfere with him when he is peaceably removing it from the State, is unconstitutional and void.

But, as I understand the opinion of the Court, it goes further, and decides that the power to provide a remedy for this right is vested exclusively in Congress, and that all laws upon the subject passed by a State since the adoption of the Constitution of the United States 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 conflict in any degree with the act of Congress.

I do not consider this question as necessarily involved in the case before us, for the law of Pennsylvania under which the plaintiff in error was prosecuted is clearly in conflict with the Constitution of the United States, as well as with the law of 1793. But, as the question is discussed in the opinion of the Court, and as I do not assent either to the doctrine or the reasoning by which it is maintained, I proceed to state very briefly my objections.

The opinion of the Court maintains that the power over this subject is so exclusively vested in Congress that no State, since the adoption of the Constitution, can pass any law in relation to it. In other words, according to the opinion just delivered, the state authorities are prohibited from interfering for the purpose of protecting the right of the master and aiding him in the recovery of his

property. I think the States are not prohibited, and that, 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.

The language used in the Constitution does not, in my judgment, justify this construction given to it by the court. It contains no words prohibiting the several States from passing laws to enforce this right. They are, in express terms, forbidden to make any regulation that shall impair it, but there the prohibition stops. And, according to the settled rules of construction for all written instruments, the prohibition being confined to laws injurious

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to the right, the power to pass laws to support and enforce it is necessarily implied. And the words of the article which direct that the fugitive "shall be delivered up" seem evidently designed to impose it as a duty upon the people of the several States to pass laws to carry into execution, in good faith, the compact into which they thus solemnly entered with each other. The Constitution of the United States, and every article and clause in it, is a part of the law of every State in the Union, and is the paramount law. The right of the master, therefore, to seize his fugitive slave is the law of each State, and no State has the power to abrogate or alter it. And why may not a State protect a right of property acknowledged by its own paramount law? Besides, the laws of the different States in all other cases constantly protect the citizens of other States in their rights of property when it is found within their respective territories, and no one doubts their power to do so. And, in the absence of any express prohibition, I perceive no reason for establishing by implication a different rule in this instance where, by the national compact, this right of property is recognized as an existing right in every State of the Union.

I do not speak of slaves whom their masters voluntarily take into a non-slaveholding State. That case is not before us. I speak of the case provided for in the Constitution -- that is to say, the case of a fugitive who has escaped from the

service of his owner and who has taken refuge and is found in another State.

Moreover, the clause of the Constitution of which we are speaking does not purport to be a distribution of the rights of sovereignty by which certain enumerated powers of Government and legislation are exclusively confided to the United States. It does not deal with that subject. It provides merely for the rights of individual citizens of different States, and places them under the protection of the General Government in order more effectually to guard them from invasion by the States. There are other clauses in the Constitution in which other individual rights are provided for and secured in like manner, and it never has been suggested that the States could not uphold and maintain them because they were guarantied by the Constitution of the United States. On the contrary, it has always been held to be the duty

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of the States to enforce them, and the action of the General Government has never been deemed necessary, except to resist and prevent their violation.

Thus, for example, the Constitution provides that no State shall pass any law impairing the obligation of contracts. This, like the right in question, is an individual right placed under the protection of the General Government. And, in order to secure it, Congress have passed a law authorizing a writ of error to the Supreme Court whenever the right thus secured to the individual is drawn in question, and denied to him in a state court, and all state laws impairing this right are admitted to be void. Yet no one has ever doubted that a State may pass laws to enforce the obligation of a contract, and may give to the individual the full benefit of the right so guarantied to him by the Constitution, without waiting for legislation on the part of Congress.

Why may not the same thing be done in relation to the individual right now under consideration?

Again, the Constitution of the United States declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several

States. And, although the privileges and immunities, for greater safety, are placed under the guardianship of the General Government, still the States may, by their laws and in their tribunals, protect and enforce them. They have not only the power, but it is a duty enjoined upon them by this provision in the Constitution.

The individual right now in question stands on the same grounds, and is given by similar words, and ought to be governed by the same principles. The obligation to protect rights of this description is imposed upon the several States as a duty which they are bound to perform, and the prohibition extends to those laws only which violate the right intended to be secured.

I cannot understand the rule of construction by which a positive and express stipulation for the security of certain individual rights of property in the several States is held to imply a prohibition to the States to pass any laws to guard and protect them.

The course pursued by the General Government after the adoption of the Constitution confirms my opinion as to its true construction.

No law was passed by Congress to give a remedy for this right

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until nearly four years after the Constitution went into operation. Yet, during that period of time, the master was undoubtedly entitled to take possession of his property wherever he might find it, and the protection of this right was left altogether to the state authorities. In attempting to exercise it, he was continually liable to be resisted by superior force, or the fugitive might be harbored in the house of someone who would refuse to deliver him. And if a State could not authorize its officers, upon the master's application, to come to his aid, the guarantee contained in the Constitution was of very little practical value. It is true, he might have sued for damages. But, as he would most commonly be a stranger in the place where the fugitive was found, he might not be able to learn even the names of the wrongdoers; and if he succeeded in discovering them, they might prove to be unable to pay damages. At all events, he would be compelled to

encounter the costs and expenses of a suit, prosecuted at a distance from his own home, and to sacrifice, perhaps, the value of his property in endeavoring to obtain compensation.

This is not the mode in which the Constitution intended to guard this important right, nor is this the kind of remedy it intended to give. The delivery of the property itself -- its prompt and immediate delivery -- is plainly required, and was intended to be secured.

Indeed, if the state authorities are absolved from all obligation to protect this right, and may stand by and see it violated without an effort to defend it, the act of Congress of 1793 scarcely deserves the name of a remedy. The state officers mentioned in the law are not bound to execute the duties imposed upon them by Congress unless they choose to do so or are required to do so by a law of the State, and the state legislature has the power, if it thinks proper, to prohibit them. The Act of 1793, therefore, must depend altogether for its execution upon the officers of the United States named in it. And the master must take the fugitive, after he has seized him, before a judge of the district or circuit court, residing in the State, and exhibit his proofs, and procure from the judge his certificate of ownership, in order to obtain the protection in removing his property which this act of Congress profess to give.

Now, in many of the States, there is but one district judge, and

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there are only nine States which have judges of the Supreme Court residing within them. The fugitive will frequently be found by his owner in a place very distant from the residence of either of these judges, and would certainly be removed beyond his reach before a warrant could be procured from the judge to arrest him, even if the act of Congress authorized such a warrant. But it does not authorize the judge to issue a warrant to arrest the fugitive, but evidently relied on the state authorities to protect the owner in making the seizure. And it is only when the fugitive is arrested and brought before the judge that he is directed to take the proof and give

the certificate of ownership. It is only necessary to state the provisions of this law in order to show how ineffectual and delusive is the remedy provided by Congress if state authority is forbidden to come to its aid.

But it is manifest from the face of the law that an effectual remedy was intended to be given by the Act of 1793. It never designed to compel the master to encounter the hazard and expense of taking the fugitive, in all cases, to the distant residence of one of the judges of the courts of the United States, for it authorized him also to go before any magistrate of the county, city, or town corporate wherein the seizure should be made. And Congress evidently supposed that it had provided a tribunal at the place of the arrest capable of furnishing the master with the evidence of ownership, to protect him more effectually from unlawful interruption. So far from regarding the state authorities as prohibited from interfering in cases of this description, the Congress of that day must have counted upon their cordial cooperation; they legislated with express reference to state support. And it will be remembered that, when this law was passed, the Government of the United States was administered by the men who had but recently taken a leading part in the formation of the Constitution. And the reliance obviously placed upon state authority for the purpose of executing this law proves that the construction now given to the Constitution by the Court had not entered into their minds. Certainly it is not the construction which it received in the States most interested in its faithful execution. Maryland, for example, which is substantially one of the parties to this case, has continually passed laws, ever since the adoption of the Constitution of the United States, for the arrest

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of fugitive slaves from other States as well as her own. Her officers are, by law, required to arrest them when found within her territory, and her magistrates are required to commit them to the public prison in order to keep them safely until the master has an opportunity to reclaiming them. And if the owner is not known, measures are directed to be taken by advertisement to apprise him of the arrest, and, if known, personal notice to be given. And as fugitives from the more southern States, when endeavoring to escape into Canada, very frequently pass

through her territory, these laws have been almost daily in the course of execution in some part of the State. But if the States are forbidden to legislate on this subject, and the power is exclusively in Congress, then these state laws are unconstitutional and void, and the fugitive can only be arrested according to the provisions of the act of Congress. By that law, the power to seize is given to no one but the owner, his agent, or attorney. And if the officers of the State are not justified in acting under the state laws, and cannot arrest the fugitive and detain him in prison without having first received an authority from the owner, the territory of the State must soon become an open pathway for the fugitives escaping from other states. For they are often in the act of passing through it by the time that the owner first discovers that they have absconded, and, in almost every instance, they would be beyond its borders (if they were allowed to pass through without interruption) before the master would be able to learn the road they had taken.

I am aware that my brethren of the majority do not contemplate these consequences, and do not suppose that the opinion they have given will lead to them. And it seems to be supposed that laws nearly similar to those I have mentioned might be passed by the State in the exercise of her powers over her internal police, and by virtue of her right to remove from her territory disorderly and evil-disposed persons or those who, from the nature of her institutions, are dangerous to her peace and tranquillity. But it would be difficult, perhaps, to bring all the laws I have mentioned within the legitimate scope of the internal powers of police. The fugitive is not always arrested in order to prevent a dangerous or evil-disposed person from remaining in her territory. He is himself most commonly anxious to escape

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from it, and it often happens that he is seized near the borders of the State when he is endeavoring to leave it, and is brought back and detained until he can be delivered to his owner. He may sometimes be found traveling peaceably along the public highway on his road to another State, in company with and under the protection of a white man who is abetting his escape. And it could hardly be maintained that the arrest and confinement of the fugitive in the public prison,

under such circumstances, until he could be delivered to his owner was necessary for the internal peace of the State, and, therefore, a justifiable exercise of its powers of police.

It has not heretofore been supposed necessary, in order to justify these laws, to refer them to such questionable powers of internal and local police. They were believed to stand upon surer and firmer grounds. They were passed not with reference merely to the safety and protection of the State itself, but in order to secure the delivery of the fugitive slave to his lawful owner. They were passed by the State in the performance of a duty believed to be enjoined upon it by the Constitution of the United States.

It is true that Maryland, as well as every other slaveholding State, has a deep interest in the faithful execution of the clause in question. But the obligation of the compact is not confined to them; it is equally binding upon the faith of every State in the Union, and has heretofore, in my judgment, been justly regarded as obligatory upon all.

I dissent, therefore, upon these grounds, from that part of the opinion of the Court which denies the obligation and the right of the state authorities to protect the master when he is endeavoring to seize a fugitive from his service in pursuance of the right given to him by the Constitution of the United States, provided the state law is not in conflict with the remedy provided by Congress.

MR. JUSTICE THOMPSON.

I concur in the judgment given by the Court in this case. But, not being able to yield my assent to all the doctrines embraced in the opinion, I will very briefly state the grounds on which my judgment is placed.

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The provision in the Constitution upon which the present question arises is 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."

Art. 4, 2. We know historically that this provision was the result of a compromise between the slaveholding and non-slaveholding States; and it is the indispensable duty of all to carry it faithfully into execution according to its real object and intention.

This provision naturally divides itself into two distinct considerations. First, the right affirmed, and secondly, the mode and manner in which that right is to be asserted and carried into execution.

The right is secured by the Constitution, and requires no law to fortify or strengthen it. It affirms in the most unequivocal manner the right of the master to the service of his slave according to the laws of the State under which he is so held. And it prohibits the States from discharging the slave from such service by any law or regulation therein.

The second branch of the provision, in my judgment, requires legislative regulations, pointing out the mode and manner in which the right is to be asserted. It contemplates the delivery of the person of the slave to the owner, and does not leave the owner to his ordinary remedy at law to recover damages on a refusal to deliver up the property of the owner. Legislative provision, in this respect, is essential for the purpose of preserving peace and good order in the community. Such cases, in some parts of our country, are calculated to excite feelings which, if not restrained by law, might lead to riots and breaches of the peace. This legislation, I think, belongs more appropriately to Congress than to the States, for the purpose of having the regulation uniform throughout the United States, as the transportation of the slave may be through several States, but there is nothing in the subject matter that renders state legislation unfit. It is no objection to the right of the States to pass laws on the subject that there is no power anywhere given to compel them to do it; neither is there to compel Congress to pass any law

on the subject; the legislation must be voluntary in both, and governed by a sense of duty. But I cannot concur in that part of the opinion of the Court which asserts that the power of legislation by Congress is exclusive, and that no State can pass any law to carry into effect the constitutional provision on this subject although Congress had passed no law in relation to it. Congress, by the Act of 1793, has legislated on the subject, and any state law in conflict with that would be void according to the provisions of the Constitution which declares that the laws of the United States, which shall be made in pursuance of the Constitution, shall be the supreme law of the land, anything in the laws of any State to the contrary notwithstanding. This provision meets the case of a conflict between Congressional and state legislation, and implies that such cases may exist, growing out of the concurrent powers of the two Governments. The provision in the Constitution under consideration is one under which such conflicting legislation may arise, and harmony is produced by making the state law yield to that of the United States. But to assert that the States cannot legislate on the subject at all in the absence of all legislation by Congress is, in my judgment, not warranted by any fair and reasonable construction of the provision. There is certainly nothing in the terms used in this article, nor in the nature of the power to surrender the slave, that makes legislation by Congress exclusive. And if, as seems to be admitted, legislation is necessary to carry into effect the object of the Constitution, what becomes of the right where there is no law on the subject? Should Congress repeal the law of 1793, and pass no other law on the subject, I can entertain no doubt that state legislation, for the purpose of restoring the slave to his master and faithfully to carry into execution the provision of the Constitution, would be valid. I can see nothing in the provision itself, nor discover any principle of sound public policy, upon which such a law would be declared unconstitutional and void. The Constitution protects the master in the right to the possession and service of his slave, and, of course, makes void all state legislation impairing that right, but does not make void state legislation in affirmance of the right. I forbear enlarging upon this question, but have barely stated the general grounds upon which my opinion rests, and principally to guard against the conclusion that,

by my silence, I assent to the doctrine that all legislation on this subject is vested exclusively in Congress, and that all state legislation in the absence of any law of Congress is unconstitutional and void.

Baldwin, Justice, concurred with the court in reversing the judgment of the Supreme Court of Pennsylvania on the ground that the act of the legislature was unconstitutional inasmuch as the slavery of the person removed was admitted, the removal could not be kidnaping. But he dissented from the principles laid down by the court as the grounds of their opinion.

MR. JUSTICE WAYNE.

I concur altogether in the opinion of the court, as it has been given by my brother Story. In that opinion it is decided:

1. That the provision in the second section of the Fourth Article of the Constitution, relative to fugitives from service or labor, confers upon the owner of a fugitive slave the right, by himself or his agent, to seize and arrest, without committing a breach of the peace, his fugitive slave, as property, in any State of the Union, and that no state law is constitutional which interferes with such right.

2. That the provision authorizes and requires legislation by Congress to guard that right of seizure and arrest against all state and other interference, to make the delivery of fugitive slaves more effectual when the claims of owners are contested, and to insure to owners the unmolested transportation of fugitive slaves, through any of the States, to the State from which they may have fled.

3. That the legislation by Congress upon the provision, as the supreme law of the land, excludes all state legislation upon the same subject, and that no State can pass any law or regulation, or interpose such as may have been a law or regulation when the Constitution of the United States was ratified, to superadd to, control, qualify, or impede a remedy enacted by Congress for the delivery of fugitive slaves to the parties to whom their service or labor is due.

4. That the power of legislation by Congress upon the provision is exclusive, and that no State can pass any law as a remedy upon the subject, whether Congress had or had not legislated upon it.

5. That the act of Congress of the 12th February, 1793, entitled "an act respecting fugitives from justice, and persons escaping from the service of their masters," gives a remedy, but does not exhaust the remedies which Congress may legislate upon the subject.

6. That the points so decided are not intended to interfere in any way, nor do they interfere in any manner, with the police power in the States to arrest and imprison fugitive slaves, to guard against their misconduct and depredations, or to punish them for offenses and crimes committed in the States to which they may have fled.

7. These points being so decided and applied to the case before the Court it follows that the law of Pennsylvania, upon which the plaintiff is indicted, is unconstitutional, and that the judgment given by the Supreme Court of Pennsylvania against the plaintiff must be reversed.

All of the judges of the Court concur in the opinion that the law under which the plaintiff in error was indicted is unconstitutional. All of them concur also in the declaration that the provision in the Constitution was a compromise between the slaveholding and the non-slaveholding States to secure to the former fugitive slaves as property. All of the members of the court, too, except my brother Baldwin, concur in the opinion that legislation by Congress to carry the provision into execution is constitutional, and he contends that the provision gives to the owners of fugitive slaves all the rights of seizure and removal which legislation could give, but he concurs in the opinion, if legislation by Congress be necessary, that the right to legislate is exclusively in Congress.

There is no difference, then, among the judges as to the reversal of the judgment; none in respect to the origin and object of the provision, or the obligation to

exercise it. But differences do exist as to the mode of execution. Three of the judges have expressed the opinion that the States may legislate upon the provision in aid of the object it was intended to secure, and that

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such legislation is constitutional when it does not conflict with the remedy which Congress may enact.

I believe that the power to legislate upon the provision is exclusively in Congress. The provision is that

"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 is due."

The clause contains four substantive declarations, or two conditions, a prohibition, and a direction. First, the fugitive must owe service or labor under the law of the State from which he had escaped; second, he must have fled from it. The prohibition is that he cannot be discharged from service in consequence of any law or regulation of the State in which he may be, and the direction is affirmative of an obligation upon the States and declarative of a right in the party to whom the service or labor of a fugitive is due.

My object, and the only object which I have in view in what I am about to say, is to establish the position that Congress has the exclusive right to legislate upon this provision of the Constitution. I shall endeavor to prove it by the condition of the States when the Constitution was formed, by references to the provision itself, and to the Constitution generally.

Let it be remembered that the conventioners who formed the Constitution were the representatives of equal sovereignties; that they were assembled to form a more perfect union than then existed between the States under the confederacy; that they cooperated to the same end; but that they were divided into two parties,

having antagonist interests in respect to slavery.

One of these parties, consisting of several States, required as a condition, upon which any Constitution should be presented to the States for ratification, a full and perfect security for their slaves as property when they fled into any of the States of the Union; the fact is not more plainly stated by me than it was put in the convention. The representatives from the non-slaveholding States assented to the condition. The provision under review was proposed and adopted by the unanimous vote of the convention. It, with an allowance of a certain portion of slaves with

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the whites for representative population in Congress, and the importation of slaves from abroad for a number of years, were the great obstacles in the way of forming a Constitution. Each of them was equally insisted upon by the representatives from the slaveholding States; and, without all of them being provided for, it was well understood that the convention would have been dissolved without a Constitution's being formed. I mention the facts as they were; they cannot be denied. I have nothing to do, judicially, with what a part of the world may think of the attitude of the different parties upon this interesting topic. I am satisfied with what was done, and revere the men, and their motives for insisting, politically, upon what was done. When the three points relating to slaves had been accomplished, every impediment in they way of forming a Constitution was removed. The agreement concerning them was called, in the convention, a compromise; the provision in respect to fugitives from service or labor was called a guarantee of a right of property in fugitive slaves, wherever they might be found in the Union. The Constitution was presented to the States for adoption with the understanding that the provisions in it relating to slaves were a compromise and guarantee, and, with such an understanding, in every State it was adopted by all of them. Not a guarantee merely in the professional acceptation of the word, but a great national engagement in which the States surrendered a sovereign right, making it a part of that instrument which was intended to make them one nation within the sphere of its action. The provision, then, must be interpreted by those

rules of construction assented to by all civilized nations as obligatory in ascertaining the rights growing out of these agreements. We shall see directly how these rules bear upon the question of the power of legislation upon this subject's being exclusively in Congress, and why the States are excluded from legislating upon it.

The prohibition upon the States to discharge fugitive slaves is absolute.

The provision, however, does not contain, in detail, the manner of asserting the right it was meant to secure. Nor is there in it any expressed power of legislation, nor any expressed prohibition of state legislation. But it does provide that delivery of a fugitive shall be made on the claim of the owner -- that the fugitive

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slave, owing service and labor in the State from which he fled and escaping therefrom, shall be decisive of the owner's right to a delivery. It does not, however, provide the mode of proving that service and labor is due, in a contested case, nor for any such evidence of the right, when it has been established, as will insure to an owner the unmolested transportation of the fugitive, through other States, to the State from which he fled. But the right to convey is the necessary consequence of a right to delivery; the latter would be good for nothing without the former. Proof of ownership gives both, if it gives either or anything, and yet the right might be, in the larger number of instances, unavailing if it were not certified by some official document that the right had been established. A certificate from an officer authorized to inquire into the facts is the easiest way to secure the right to its contemplated intent. It was foreseen that claims would be made which would be contested; some tribunal was necessary to decide them, and to authenticate the fact that a claim had been established. Without such authentication, the contest might be renewed in other tribunals of the State in which the fact had been established and in those of the other States through which the fugitive might be carried on his way to the State from which he fled. Such a certificate too, being required, protects persons who are not fugitives from being seized and transported; it has the effect of securing the benefit of a lawful claim and of

preventing the accomplishment of one that is false. Such a certificate, to give a right to transport a fugitive slave through another State, a State cannot give; its operation would be confined to its own boundaries, and would be useless to assert the right in another sovereignty. This analysis of the provision is given to show that legislation was contemplated to carry it fully into effect in many of the cases that might occur, and to prevent its abuse when attempts might be made to apply it to those who were not fugitives. And it brings me to the point I have asserted -- that Congress has the exclusive right to legislate upon the provision.

Those who contend that the States may legislate in aid of the object of the provision, admit that Congress can legislate to the full extent to carry it into execution. There is, then, no necessity for the States to legislate. This is a good reason why they should not

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legislate, and that is was intended that they should not do so, for legislation by Congress makes the mode of asserting the right uniform throughout the Union, and legislation by the States would be as various as the separate legislative will and policy of the different States might choose to make it. Certainly such an interest as the Constitution was intended to secure we may well think the framers of the Constitution intended to provide for by a uniform law. I admit, however, that such considerations do not necessarily exclude the right of the States to legislate. The argument in favor of the right is that the States are not, in express terms, prohibited from legislating, and that the exclusion is not necessarily implied. I further admit, if it be not necessarily implied, that the right exists. Such is the rule in respect to the right of legislation by the States in all cases under the Constitution when the question of a right to legislate in merely such.

My first remark is, and I wish it to be particularly observed, that the question is not one only of the right of the States to legislate in aid of this provision, unconnected with other considerations bearing directly upon the question. The true question in the case is by what rules shall the compromise or guarantee be construed so that the obligations and rights of the States under the provision may be ascertained

and secured.

It is admitted that the provision raises what is properly termed a perfect obligation upon all of the States to abstain from doing anything which may interfere with the rights secured. Will this be so if any part of what may be necessary to discharge the obligation is reserved by each State, to be done as each may think proper? The obligation is common to all of them to the same extent. Its object is to secure the property of some of the States, and the individual rights of their citizens in that property. Shall, then, each State be permitted to legislate in its own way, according to its own judgment and their separate notions, in what manner the obligation shall be discharged to those States to which it is due? To permit some of the States to say to the others how the property included in the provision was to be secured by legislation, without the assent of the latter, would certainly be to destroy the equality and force of the guarantee and the equality of the States by which it was made. This was

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not anticipated by the representatives of the slaveholding States in the convention, nor could it have been intended by the framers of the Constitution.

Is it not more reasonable to infer, as the States were forming a government for themselves, to the extent of the powers conceded in the Constitution, to which legislative power was given to make all laws necessary and proper to carry into execution all powers vested in it -- that they meant that the right for which some of the States stipulated, and to which all acceded, should, from the peculiar nature of the property in which only some of the States were interested, be carried into execution by that department of the General Government in which they were all to be represented -- the Congress of the United States.

But is not this power of legislation by the States upon this provision a claim for each to use its discretion in interpreting the manner in which the guarantee shall be fulfilled?

Are there no rules of interpretation, founded upon reason and nature, to settle this question and to secure the rights given by the provision better than the discretion of the parties to the obligation? Has not experience shown that those rules must be applied to conventions between nations in order that justice may be done? All civilized nations have consented to be bound by them, and they are a part of the laws of nations. Is not one of those rules the maxim that neither one or the other of the interested or contracting powers has a right to interpret his act or treaty at his pleasure? Such is the rule in respect to the treaties and conventions of nations foreign to each other. It applies with equal necessity and force to States united in one General Government. Especially to States making a provision in respect to property peculiar to some of them which has become so interwoven with their institutions and their representation in the General Government of all of them that the right to such property must be maintained and guarded in order to preserve their separate existence and to keep up their constitutional representation in Congress. Such cannot be the case unless there is uniformity in the law for asserting the right to fugitive slaves, and if the States can legislate, as each of them may think it should be done, a remedy by which the right of property in fugitive slaves is to be ascertained and finally concluded. Nor does it matter that the

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rule to which I have adverted as being exclusive of the right of the States to legislate upon the provision does not appear in it. It is exactly to such cases that the rule applies, and it must be so applied unless the contrary has been expressly provided. The mode of its application is as authoritative as the rule. The rule, too, applies to the provision, without any conflict with the other rule that the States may legislate in all cases when they are not expressly or impliedly prohibited by the Constitution. The latter rule is in no way trenched upon by excluding the States from legislating in this case. This provision is the only one in the Constitution in which a security for a particular kind of property is provided -- provided, too, expressly against the interference by the States in their sovereign character. The surrender of a sovereign right carries with it all its incidents. It differs from yielding

a participation to another government in a sovereign right. In the latter, both may have jurisdiction. The State yielding the right, retaining jurisdiction to the extent of doing nothing repugnant to the exercise of the right by the government to which it has been yielded.

But it is said, all that is contended for is that the States may legislate to aid the object, and that such legislation will be constitutional if it does not conflict with the remedies which Congress may enact. This is a cautious way of asserting the right in the States, and it seems to impose a limitation which makes it unobjectionable. But the reply to it is that the right to legislate a remedy implies so much indefinite power over the subject, and such protracted continuance as to the mode of finally determining whether a fugitive owes service and labor that the requirements of the remedy, without being actually in conflict with the provision or the enactments of Congress, might be oppressive to those most interested in the provision, by interposing delays and expenses more costly than the value of the fugitive sought to be reclaimed. Ordinarily, and when rightly understood, it is true that the abuse of a thing is no argument against its correctness or its use; but that suggestion can only be correctly made, in cases in support of a right or power abstractly and positively right, and which had been abused under the pretence of using it, or where the proper use has been mistaken. In matters of government, however, a power liable to be abused is always a good reason

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for withholding it. It is the reason why the powers of the United States, under the Constitution, are so cautiously given; why the express prohibitions upon the States not to legislate in certain cases were expressed; why the limitation upon the former that the powers not granted are reserved to the States, as it is expressed in the amendment to the Constitution. But, in truth, any additional legislation in this case by a State, acting as a remedy, in aid of the remedy given by the Constitution and by Congress, would be, in practice, in conflict with the latter if it be a process differing from it, though it might make the mode of recovering a fugitive easier than the former, and much more so when it made it more difficult. The right to legislate a remedy implies the ability to do either, and it is because it does so, and may be

the latter, that I deny all right in the States to legislate upon this subject unless it be to aid, by mere ministerial acts, the protection of an owner's right to a fugitive slave, the prevention of all interference with it by the officers of a State or its citizens or an authority to its magistrates to execute the law of Congress, and such legislation over fugitives as may be strictly of a police character.

Admit the States to legislate remedies in this case, besides such as are given by Congress, and there will be no security for the delivery of fugitive slaves in half of the States of the Union. Such was the case when the Constitution was adopted. The States might legislate in good faith, according to their notions how such a right of property should be tried. They have already done so, and the act of Pennsylvania now under consideration shows that the assertion of a right to a fugitive slave is burdened by provisions entailing expenses disproportioned to his value, and that it is only to be asserted by arraying against the claim all of those popular prejudices which, under other circumstances, would be proper feelings against slavery.

But the propriety of the rule of interpretation which I have invoked to exclude the States from legislating upon this provision of the Constitution becomes more obvious when it is remembered that the provision was not intended only to secure the property of individuals, but that, through their rights, the institutions of the States should be preserved so long as any one of the States chose to continue slavery as a part of its policy.

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The subject has usually been argued as if the rights of individuals only were intended to be secured, and as if the legislation by the States would only act upon such rights.

The framers of the Constitution did not act upon such narrow grounds; they were engaged in forming a government for all of the States, by concessions of sovereign rights from all, without impairing the actual sovereignty of any one, except within the sphere of what was conceded. One great object was that all

kinds of property, as well that which was common in all of the States as that which was peculiar to any of them, should be protected in all of the States as well from any interference with it by the United States as by the States. Experience had shown that, under the Confederacy, the reclamation of fugitive slaves was embarrassed and uncertain, and that they were yielded to by the States only from comity; it was intended that it should be no longer so. The policy of the different States, some of them contiguous, had already become marked and decided upon the subject of slavery; there was no doubt it would become more so. It was foreseen that, unless the delivery of fugitive slaves was made a part of the Constitution, and the right of the States to discharge them from service was taken away, that some of the States would become the refuge of runaways, and, of course that, in proportion to the facility and certainty of any State's being a refuge, so would the right of individuals and the institutions of the slaveholding States be impaired. The latter were bound, when forming a General Government with the other States, under which there was to be a community of rights and privileges for all citizens in the several States, to protect that property of their citizens which was essential to the preservation of their state Constitutions. If this had not been done, all of the property of the citizens would have been protected in every State except that which was the most valuable in a number of them. In such a case, the States would have become members of the Union upon unequal terms. Besides, the property of an individual is not the less his because it is in another State than that in which he lives; it continues to be his, and forms a part of the wealth of his State. The provision, then, in respect to fugitive slaves only comprehended within the general rule a species of property not within it before. By doing so, the right of individuals, and that of the

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States in which slavery was continued were preserved. It remained in the States as a part of that wealth from which contributions were to be raised by taxes laid with the consent of the owners to meet the wants of the State as a body politic. If this be so, upon what principle shall the States act by their legislation upon property which is national as well as individual, and direct the mode, when it is

within their jurisdiction, without the consent of the owners, and without the fault of the States where the owners reside, how the right of property should be ascertained and determined. The case of a fugitive slave is not like that of a contest for other property, to be determined between two claimants by the remedy given by the tribunals of the State where the property may be. It is not a controversy between two persons, claiming the right to a thing, but the assertion by one person of a right of property in another, to be determined upon principles peculiar to such relation. If the provision had not been introduced into the Constitution, the States might have adjudged the right in the way they pleased; but, having surrendered the right to discharge, they are not now to be allowed to assume a right to legislate, to try the obligation of a fugitive to servitude, in any other way than in conformity to the principles peculiar to the relation of master and slave. Their legislation, in the way of remedy, would bear upon state as well as individual rights, and I am sure, when the Constitution was formed, the States never intended to give any such right to each other. If it has such an effect, I think I may rightly conclude that legislation in the case before us is forbidden to the States.

But I have a further reason for the conclusion to which I have come upon this point to which I cannot see that an answer can be given.

The provision contemplates, besides the right of seizure by the owner, that a claim may be made, when a seizure has not been effected or afterwards, if his right shall be contested; that the claim shall be good upon the showing by the claimant that the person charged as a fugitive owes service or labor under the laws of the State from which he fled.

The prohibition in the provision is that he shall not be "discharged in consequence of any law or regulation of a State" where he may be. If then, in a controverted case, a person

claimed as a fugitive shall be discharged, under a remedy legislated by a State, to try the fact of his owing service or labor, is he not discharged under a law or regulation of a State? It is no answer to this question to say that the discharge was not made in virtue of any law discharging the fugitive from servitude, and that the discharge occurred only from the mode of trial to ascertain if he owed service and labor. For that is to assume that provision only prevented discharges from being made by the States by enactment or law declaring that fugitive slaves might be discharged. The provision will not admit of such an interpretation. Nor is it any answer to say that state regulations to ascertain whether a fugitive owes service or labor are distinguishable from such as, directly or by construction, would lead to his discharge; for if a discharge be made under one or the other -- whether the discharge be right or wrong -- it is a discharge under the regulation of a State.

I understood the provision to mean, and when its object and the surrender by the States of the right to discharge are kept in mind, its obvious meaning to everyone must be, that the States are not only prohibited from discharging a fugitive from service by a law, but that they shall not make or apply regulations to try the question of the fugitive owing service. The language of the provision, is, "no person, &c.;, shall, in consequence of any law or regulation therein," be discharged from such service or labor. The words "in consequence," meaning the effect of a cause, certainly embrace regulations to try the right of property as well as laws directly discharging a fugitive from service.

If this be not so, the States may regulate the mode of an owner's seizing of a fugitive slave, prohibiting it from being done except by warrant and by an officer, thus denying to an owner the right to use a casual opportunity to repossess himself of this kind of property, which there is a right to do in respect to all other kinds of property where not in the possession of some one else. It may regulate the quantity and quality of the proof to establish the right of an owner to a fugitive, and give compensatory and punitory damages against a claimant, if his right be not established according to such proof. It might limit the trial to particular times and courts, give appeals from one to other courts, and protract the ultimate decision until the value in controversy

was exceeded by the cost of establishing it. Such rights of legislation in the States to try a right of property in a fugitive slave are surely inconsistent with that security which Judge Iredell told the people of North Carolina in the convention that the Constitution gave to them for their slaves when they fled into other States. Speaking of this clause of the Constitution, he says,

"In some of the northern States, they have emancipated all of their slaves; if any one of our slaves go there and remain there a certain time, they would, by the present laws, be entitled to their freedom, so that their masters could not get them again; this would be extremely prejudicial to the inhabitants of the southern States; and, to prevent it, this clause is inserted in the Constitution."

To the same purpose, and with more positiveness, Charles Cotesworth Pinckney said to the people of South Carolina, in the convention of that State, "we have obtained a right to recover our slaves in whatever part of America they may take refuge; which is a right we had not before."

But, further, does not the language of this provision, in the precise terms used, "shall not be discharged from such service or labor," show that the State surrendering the right to discharge, meant to exclude themselves from legislating a mode of trial, which, from the time it would take, would be a qualified or temporary discharge to the injury of the owner? Would not a postponement of the trial of a fugitive owing service or labor for one month be a loss to the owner of his service, equivalent to a discharge for that time? And if a State can postpone, by legislation, the trial for one month, may it not do so for a longer time? And whether it be for a longer or a shorter time, is it not a discharge from service for whatever time it may be? It is no answer to this argument to say that time is necessarily involved in the prosecution of all rights. The question here is not as to a time being more or less necessary, but as to the right of a State, by regulations to try the obligation of a fugitive to service or labor, to fix in its discretion the time it may take.

The subject might be further discussed and illustrated by arguments equally cogent with those already given. But I forbear. For the foregoing reasons, in addition to those given in the opinion of the Court, I am constrained to come to the conclusion that the right of legislating upon that clause in the Constitution

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preventing the States from discharging fugitive slaves is exclusively in the Congress of the United States. I am as little inclined as anyone can be, to deny, in a doubtful case, a right of legislation in the States; but I cannot concede that it exists, under the Constitution, in a case relating to the property of some of the States in which the others have no interest, and whose legislators, from the nature of the subject and the human mind in relation to it, cannot be supposed to be best fitted to secure the right guarantied by the Constitution.

I had intended to give an account of the beginning and progress of the legislation of the States upon this subject, but my remarks are already so much extended that I must decline doing so. It would have shown, perhaps, as much as any other instance, how a mistaken, doubtful, and hesitating exercise of power, in the commencement becomes, by use, a conviction of its correctness. It would also have shown that the legislation of the States in respect to fugitive slaves, and particularly that which has most embarrassed the recovery of fugitive slaves, has been in opposition to an unbroken current of decisions in the courts of the States and those of the United States. Not a point has been decided in the cause now before this Court which has not been ruled in the courts of Massachusetts, New York, and Pennsylvania, and in other state courts. Judges have differed as to some of them, but the courts of the States have announced all of them with the consideration and solemnity of judicial conclusion. In cases, too, in which the decisions were appropriate, because the points were raised by the record.

I consider the point I have been maintaining more important than any other in the opinion of the Court. It removes those causes which have contributed more than any other to disturb that harmony which is essential to the continuance of the Union. The framers of the Constitution knew it to be so, and inserted the provision

in it. Hereafter, they cannot occur, if the judgment of this Court in this cause shall meet with the same patriotic acquiescence which the tribunals of the States and the people of the States have heretofore accorded to its decisions. The recovery of fugitive slaves will hereafter be exclusively regulated by the Constitution of the United States, and the acts of Congress.

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Apart from the position that the States may legislate in all cases where they are not expressly prohibited or by necessary implication, the claim for the States to legislate is mainly advocated upon the ground that they are bound to protect free blacks and persons of color residing in them from being carried into slavery by any summary process. The answer to this is that legislation may be confined to that end, and be made effectual, without making such a remedy applicable to fugitive slaves. There is no propriety in making a remedy to protect those who are free the probable means of freeing those who are not so. It is also said the States may aid, by remedies, the acts of Congress when they are not in conflict with them. I reply, Congress has full power to enact all that such aid could give, and if experience shows any deficiency in its enactments, Congress will no doubt supply it. If there are not now agencies enough to make the assertion of the right to fugitives convenient to their owners, Congress can multiply them. But if it should not be done, better is it that the inconvenience should be borne than that the States should be brought into collision upon this subject, as they have been, and that they should attempt to supply deficiencies upon their separate views of what the remedies should be to recover fugitive slaves within their jurisdictions.

I have heard it suggested also, as a reason why the States should legislate upon this subject, that Congress may repeal the remedy it has given, and leave the provision unaided by legislation, and that then the States might carry it into execution. Be it so, but the latter is not needed, for though legislation by Congress supports the rights intended to be secured, there is energy enough in the Constitution, without legislation upon this subject, to protect and enforce what it gives.

MR. JUSTICE DANIEL.

Concurring entirely, as I do, with the majority of the Court in the conclusions they have reached relative to the effect and validity of the statute of Pennsylvania now under review, it is with unfeigned regret that I am constrained to dissent from some of the principles and reasonings which that majority, in passing to our common conclusions, have believed themselves called on to affirm.

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In judicial proceedings, generally that has been deemed a safe and prudent rule of action which involves no rights or questions not necessary to be considered, but leaves these for adjudication where and when only they shall be presented directly and unavoidably, and when surrounded with every circumstance which can best illustrate their character. If, in ordinary questions of private interest, this rule is recommended by considerations of prudence and accuracy and justice, it is surely much more to be observed when the subject to which it is applicable is the great fundamental law of the Confederacy, every clause and article of which affects the polity and the acts of States.

Guided by the rule just mentioned, it seems to me that the regular action of the Court in this case is limited to an examination of the Pennsylvania statute, to a comparison of its provisions with the third clause of the Fourth Article of the Constitution, and with the act of Congress of 1793, with which the law of Pennsylvania is alleged to be in conflict, and that, to accomplish these purposes, a general definition or contrast of the powers of the state and Federal Governments was neither requisite nor proper. The majority of my brethren, in the conscientious discharge of their duty, have thought themselves bound to pursue a different course, and it is in their definition and distribution of state and federal powers, and in the modes and times they have assigned for the exercising those powers, that I find myself compelled to differ with them.

That portion of the Constitution which provides for the recovery of fugitive shares is the third clause of the second section of the Fourth Article, and is in these

words:

"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 herein, 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 paramount authority of this clause in the Constitution to guarantee to the owner the right of property in his slave, and the absolute nullity of any state power, directly or indirectly, openly or covertly, aimed to impair that right, or to obstruct its enjoyment, I admit, nay, insist upon, to the fullest extent. I contend, moreover that the Act of 1793, made in aid of this clause of the Constitution and for its enforcement, so far as it conforms to the Constitution, is the supreme law to the States; and cannot

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be contravened by them without a violation of the Constitution. But the majority of my brethren, proceeding beyond these positions, assume the ground that the clause of the Constitution above quoted, as an affirmative power granted by the Constitution, is essentially an exclusive power in the Federal Government, and consequently that any and every exercise of authority by the States at any time, though undeniably in aid of the guarantee thereby give, is absolutely null and void.

Whilst I am free to admit the powers which are exclusive in the Federal Government, some of them became so denominated by the express terms of the Constitution, some because they are prohibited to the States, and others because their existence, and much more, their practical exertion by the two governments, would be repugnant, and would neutralize, if they did not conflict with and destroy, each other; I cannot regard the third clause of the Fourth Article as falling either within the definition or meaning of an exclusive power. Such a power I consider as originally and absolutely and at all times incompatible with partition or association; it excludes everything but itself.

There is a class of powers, originally vested in the States, which, by the theory of the Federal Government, have been transferred to the latter; powers which the Constitution of itself does not execute, and which Congress may or may not enforce, either in whole or in part, according to its views of policy or necessity, or as it may find them for the time beneficially executed or otherwise under the state authorities. These are not properly concurrent, but may be denominated dormant powers in the Federal Government; they may at any time be awakened into efficient action by Congress, and from that time, so far as they are called into activity, will, of course, displace the powers of the States. But should they again be withdrawn or rendered dormant, or should their primitive exercise by the States never be interfered with by Congress, could it be properly said that, because they potentially existed in Congress, they were therefore denied to the States? The prosperity, the necessities, of the country and the soundest rules of constitutional construction appear to me to present a decided negative to this inquiry. Nay, I am prepared to affirm that, even in instances wherein Congress may have legislated, legislation by a State which is strictly ancillary would not be unconstitutional or improper.

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The interpretation for which I contend cannot be deemed a novelty in this Court, but rests upon more than one of its decisions upon the constitutional action of state authorities. In the case of *Sturgis v. Crowninshield,* which brought in question the right of the States to pass insolvent or bankrupt laws, Chief Justice Marshall holds the following doctrine (4 Wheat. 17 U. S. 192 -3):

"The counsel for the plaintiff contend that the grant of this power to Congress, without limitation, takes it entirely from the States. In support of this proposition, they argue that every power given to Congress is necessarily supreme, and if, from its nature or from the words of the grant, it is apparently intended to be exclusive, it is as much so as if they were expressly forbidden to exercise it. These propositions have been enforced and illustrated by many arguments drawn from different parts of the Constitution. That the power is both unlimited and supreme is

not questioned; that its is exclusive is denied by the counsel for the defendant. In considering this question, it must be recollected that, previous to the formation of the new Constitution, we were divided into independent States, united for some purposes, but in most respects sovereign. These States could exercise almost every legislative power, and, amongst others, that of passing bankrupt laws. When the American people created a National Legislature with certain enumerated powers, it was neither necessary nor proper to define the powers retained by the States. These powers remain as they were before the adoption of the Constitution, except so far as they may be abridged by that instrument. In some instances, as in making treaties, we find an express prohibition, and this shows the sense of the convention to have been that the mere grant of a power to Congress did not imply a prohibition on the States to the exercise of the same power."

Again, p. 17 U. S. 198 ,

"it does not appear to be a violent construction of the Constitution, and is certainly a convenient one, to consider the powers of the States as existing over such cases as the laws of the Union do not reach. Be this as it may, the power of Congress may be exercised or declined as the wisdom of that body shall decide. It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the States. It has been said that Congress has exercised this power, and, by doing so, has extinguished the power of the States, which cannot

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be revived by repealing the law of Congress. We do not think so. If the right of the States is not taken away by the mere grant of that power to Congress, it cannot be extinguished; it can only be suspended by enacting a general bankrupt law. The repeal of that cannot, it is true, confer the power on the States, but it removes a disability to its exercise which was created by the act of Congress."

In the case of *Houston v. Moore,* 6 Wheat. 1, 18 U. S. 48 , the following doctrine was held by Mr. Justice Story, and in accordance with the opinion of the Court in

that case.

"The Constitution containing a grant of powers, in many instances similar to those already existing in the state governments, and some of these being of vital importance also to state authority and state legislation, it is not to be admitted that a mere grant of powers in affirmative terms to Congress, does *per se* transfer an exclusive sovereignty in such subjects to the latter; on the contrary, a reasonable interpretation of that instrument necessarily leads to the conclusion that the powers so granted are never exclusive of similar powers existing in the States except where the Constitution has, in express terms, given an exclusive power to Congress, or the exercise of a like power is prohibited to the States. The example of the first class is to be found in the exclusive legislation delegated to Congress over places purchased by the consent of the legislature of the State in which the same shall be, for forts, arsenals, dock-yards, &c.; of the second class, the prohibition of a State to coin money or emit bills of credit; of the third class, as this Court have already held, is the power to establish an uniform rule of naturalization, and the delegation of admiralty and maritime jurisdiction. In all other cases not falling within the classes already mentioned, it seems unquestionable that the States retain concurrent authority with Congress not only under the Eleventh Amendment of the Constitution, but upon the soundest principles of general reasoning. There is this reserve, however, that, in cases of concurrent authority, where the laws of the States and of the Union are in direct and manifest collision on the same subject, those of the Union, being the supreme law of the land, are of paramount authority, and the state laws, so far, and so far only, as such incompatibility exists, must necessarily yield. Such are the general principles by which my judgment is guided in

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every investigation of constitutional points. They commend themselves by their intrinsic equity, and have been amply justified by the great men under whose guidance the Constitution was framed, as well as by the practice of the government of the Union. To desert them would be to deliver ourselves over to endless doubts and difficulties, and probably to hazard the existence of the

Constitution itself."

In the case or the *City of New York v. Miln,* 11 Pet. 102, Mr. Justice Barbour, in the delivering the opinion of the Court, lays down the following position (p. 36 U. S. 137 ), as directly deducible from the decision in *Gibbons v. Ogden,* 7 Wheat. 204, and *Brown v. Maryland,* 12 Wheat. 419:

"Whilst a State is acting within the legitimate scope of its power as to the end to be attained, it may use whatever means, being appropriate to that end it may think fit, although they be the same, or so nearly the same as scarcely to be distinguished from those adopted by Congress acting under a different power, subject only to this limitation -- that, in the event of collision, the law of the State must yield to the law of Congress. The Court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power."

In the same case, the following language is held by Mr. Justice Thompson (p. 25 U. S. 145 ):

"In the leading cases upon this question where the state law has been held to be constitutional, there has been an actual conflict between the legislation of Congress and that of the States upon the right drawn in question, and in all such cases, the law of Congress is supreme. But in the case now before the Court, no such conflict arises; Congress has not legislated on this subject in any manner to affect the question."

And again (p. 25 U. S. 146 ), it is said by the same judge:

"It is not necessary in this case to fix any limits upon the legislation of Congress and of the States on this subject or to say how far Congress may, under the power to regulate commerce, control state legislation in this respect. It is enough to say that, whatever the power of Congress may be, it has not been exercised so as in any manner to conflict with the state law, and if the mere grant of the power to Congress does not necessarily imply a prohibition of the States to exercise the power, until Congress assumes the power to exercise it, no objection on that ground can arise to this law. "

Here, then, are recognitions, repeated and explicit, of the propriety, utility and regularity of state action, in reference to powers confessedly vested in the General Government, so long as the latter remains passive or shall embrace within its own action only a portion of its powers, and that portion not comprised in the proceedings of the state government, and so long as the States shall neither conflict with the measures of the Federal Government, nor contravene its policy. From these recognitions, it must follow by necessary consequence that powers vested in the Federal Government which are compatible with the modes of execution just adverted to cannot be essentially and originally, nor practically, exclusive powers, for whatever is exclusive utterly forbids, as has been previously observed, all partition or association. I hold, then that the States can establish proceedings which are in their nature calculated to secure the rights of the slaveholder guarantied to him by the Constitution; as I shall attempt to show that those rights can never be so perfectly secured as when the States shall, in good faith, exert their authority to assist in effectuating the guarantee given by the Constitution. Fugitives from service, in attempting to flee either to the non-slaveholding States or into the Canadas, must, in many instances, pass the intermediate States before they can attain to the point they aim at.

If there is a power in the States to authorize and order their arrest and detention for delivery to their owners, not only will the probabilities of recovery be increased by the performance of duties enjoined by law upon the citizens of those States, as well private persons as those who are officers of the law, but the incitements of interest, under the hope of reward, will, in a certain class of persons, powerfully cooperate to the same ends. But let it be declared that the rights of arrest and detention, with a view of restoration to the owner, belong solely to the Federal Government, exclusive of the individual right of the owner to seize his property, and what are to be the consequences? In the first place, whenever the master, attempting to enforce his right of seizure under the Constitution, shall meet with resistance, the inconsiderable number of federal officers in a State and their frequent remoteness from the theatre of action must in numerous instances at

once defeat his right of property and deprive him

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also of personal protection and security. By the removal of every incentive of interest in state officers or individuals, and by the inculcation of a belief that any cooperation with the master becomes a violation of law, the most active and efficient auxiliary which he could possibly call to his aid is entirely neutralized. Again, suppose that a fugitive from service should have fled to a State where slavery does not exist, and in which the prevalent feeling is hostile to that institution; there might nevertheless in such a community be a disposition to yield something to an acknowledged constitutional right -- something to national comity, too, in the preservation of that right; but let it once be proclaimed from this tribunal that any concession by the States towards the maintenance of such a right is a positive offense, the violation of a solemn duty, and I ask what pretext more plausible could be offered to those who are disposed to protect the fugitive, or to defeat the rights of the master? The Constitution and the act of Congress would thus be converted into instruments for the destruction of that which they were designed especially to protect.

But it is said that, if the States can legislate at all upon the subject of fugitives from service, they may, under the guise of regulations for securing the master's right, enact laws which, in reality, impair or destroy them. This, like every other argument drawn from the possible abuse of power, is deemed neither fair nor logical. It is equally applicable to the exercise of power by the federal as by the state governments, and might be used in opposition to all power and all government, as it is undeniable that there is no power and no government which is not susceptible of great abuses. But those who argue from such possible or probable abuses against all regulations by the States touching this matter should dismiss their apprehensions under the recollection that, should those abuses be attempted, the corrective may be found, as it is now about to be applied to some extent, in the controlling constitutional authority of this Court.

It has been said that the States, in the exercise of their police powers, may arrest and imprison vagrants or fugitives who may endanger the peace and good order of society; and by that means contribute to the recovery by the master of his fugitive slave. It should be recollected, however that the police power of a State has no natural affinity with her exterior relations, nor with those

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which she sustains to her sister States, but is confined to matters strictly belonging to her internal order and quiet. The arrest or confinement or restoration of a fugitive, merely because he is such, falls not regularly within the objects of police regulations, for such a person may be obnoxious to no charge of violence or disorder; he may be merely passing through the State peaceably and quietly, or he may be under the care and countenance of some person affecting ownership over him with the very view of facilitating his escape. Under such circumstances, he would not be a proper subject for the exertion of the police power, and, if not to be challenged under a different power in the State, his escape would be inevitable, however strong might be the evidences of his being a fugitive. But let it be supposed that, either on account of some offense actually committed or threatened or from some internal regulation forbidding the presence of such persons within a State, they may be deemed subjects for the exertion of the police power proper, to what end would the exercise of that power naturally lead? Fugitives might be arrested for punishment, or they might be expelled or deported from the State. Nothing beyond these could be legally accomplished, and thus the invocation of this police power, so far from securing the rights of the master, would be made an engine to insure the deprivation of his property. Such are a portion of the consequences which, in my opinion, must flow from the doctrines affirmed by the majority of the court -- doctrines, in my view, not warranted by the Constitution nor by the interpretation heretofore given of that instrument, and the assertion whereof seemed not to have been necessarily involved in the adjudication of this cause. With the convictions predominating in my mind as to the nature and tendencies of these doctrines, whilst I cherish the profoundest respect for the wisdom and purity of those who maintain them, it would be a dereliction of duty in

me to yield to them a direct or a tacit acquiescence; I therefore declare my dissent from them.

MR. JUSTICE Mc LEAN.

As this case involves questions deeply interesting, if not vital, to the permanency of the Union of these States, and as I differ on one point from the opinion of the court, I deem it proper to state my own views on the subject.

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The plaintiff, Edward Prigg, was indicted under the first section of an act of Pennsylvania, entitled

"An act to give effect to the provisions of the Constitution of the United States relative to fugitives from labor, for the protection of free people of color, and to prevent kidnapping."

It provides,

"If any person or persons shall, from and after the passing of this act, by force and violence, take and carry away, or cause to be taken or carried away, and shall, by fraud or false pretence seduce, or cause to be seduced, or shall attempt to take, carry away or seduce, any negro or mulatto, from any part or parts of this Commonwealth, to any other place or places whatsoever, out of this Commonwealth, with a design and intention of selling and disposing of, or of 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 or persons, his or their aiders or abettors, shall, on conviction thereof, be deemed guilty of felony, and shall be fined in a sum not less than five hundred nor more than one thousand dollars, and shall be sentenced to imprisonment and hard labor not less than seven nor more than twenty-one years."

The plaintiff, being a citizen of Maryland, with others, took Margaret Morgan, a colored woman and a slave, by force and violence, without the certificate required by the act of Congress, from the State of Pennsylvania, and brought her to the State of Maryland. By an amicable arrangement between the two States, judgment was entered against the defendant in the court where the indictment was found, and, on the cause's being removed to the Supreme Court of the State, that judgment, *pro forma,* was affirmed. And the case is now here for our examination and decision.

The last clause of the second section of the Fourth Article of the Constitution of the United States declares that

"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."

This clause of the Constitution is now for the first time brought before this Court for consideration.

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That the Constitution was adopted in a spirit of compromise is matter of history. And all experience shows that, to attain the great objects of this fundamental law, it must be construed and enforced in a spirit of enlightened forbearance and justice. Without adverting to other conflicting views and interests of the States represented in the general convention, the subject of slavery was then, as it is now, a most delicate and absorbing consideration. In some of the States, it was considered an evil, and a strong opposition to it, in all its forms, was felt and expressed. In others, it was viewed as a cherished right, incorporated into the social compact and sacredly guarded by law.

Opinions so conflicting, and which so deeply pervaded the elements of society, could be brought to a reconciled action only by an exercise of exalted patriotism.

Fortunately for the country, this patriotism was not wanting in the convention and in the States. The danger of discord and ruin was seen and felt and acknowledged, and this led to the formation of the Confederacy. The Constitution, as it is, cannot be said to have embodied in all its parts the peculiar views of any great section of the Union, but it was adopted by a wise and far-reaching conviction that it was the best which, under the circumstances, could be devised, and that its imperfections would be lost sight of, if not forgotten, in the national prosperity and glory which it would secure.

A law is better understood by a knowledge of the evils which led to its adoption, and this applies most strongly to a fundamental law. At an early period of our history, slavery existed in all the colonies, and fugitives from labor were claimed and delivered up under a spirit of comity or conventional law among the colonies. The articles of confederation contained no provision on the subject, and there can be no doubt that the provision introduced into the Constitution was the result of experience and manifest necessity. A matter so delicate, important, and exciting was very properly introduced into the organic law.

Does the provision in regard to the reclamation of fugitive slaves vest the power exclusively in the Federal Government?

This must be determined from the language of the Constitution and the nature of the power.

The language of the provision is general; it covers the whole

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ground, not in detail, but in principle. The States are inhibited from passing "any law or regulation which shall discharge a fugitive slave from the service of his master," and a positive duty is enjoined on them to deliver him up, "on claim of the party to whom his service may be due."

The nature of the power shows that it must be exclusive.

It was designed to protect the rights of the master, and against whom? Not against the State, nor the people of the State in which he resides, but against the people and the legislative action of other States where the fugitive from labor might be found. Under the Confederation, the master had no legal means of enforcing his rights in a State opposed to slavery. A disregard of rights thus asserted was deeply felt in the South; it produced great excitement, and would have led to results destructive of the Union. To avoid this, the constitutional guarantee was essential.

The necessity for this provision was found in the views and feelings of the people of the States opposed to slavery, and who, under such an influence, could not be expected favorably to regard the rights of the master. Now, by whom is this paramount law to be executed?

It is contended that the power to execute it rests with the States. The law was designed to protect the rights of the slaveholder against the States opposed to those rights, and yet, by this argument, the effective power is in the hands of those on whom it is to operate.

This would produce a strange anomaly in the history of legislation; it would show an inexperience and folly in the venerable framers of the Constitution from which, of all public bodies that ever assembled, they were perhaps most exempt.

The clause of the Constitution under consideration declares that no fugitive from labor shall be discharged from such labor by any law or regulation of the State into which he may have fled. Is the State to judge of this? Is it left for the State to determine what effect shall be given to this and other parts of the provision?

This power is not susceptible of division; it is a part of the fundamental law, and pervades the Union; the rule of action which it prescribes was intended to be the same in all the States. This is essential to the attainment of the objects of the

law; if the effect of it depended in any degree upon the construction of a State, by legislation or otherwise, its spirit, if not its letter, would be disregarded. This would not proceed from any settled determination in any State to violate the fundamental rule, but from habits and modes of reasoning on the subject; such is the diversity of human judgment that opposite conclusions, equally honest, are often drawn from the same premises. It is, therefore, essential to the uniform efficacy of his constitutional provision that it should be considered exclusively a federal power. It is, in its nature, as much so as the power to regulate commerce, or that of foreign intercourse.

To give full effect to this provision, was legislation necessary? Congress, by the passage of the Act of 1793, legislated on the subject, and this shows how this provision was construed shortly after its adoption, and the reasons which were deliberately considered, and which led to the passage of the act, show clearly that it was necessary. These reasons will be more particularly referred to under another head of the argument. But looking only at the Constitution, the propriety, if not the necessity, of legislation is seen.

The Constitution provides that the fugitive from labor shall be delivered up, on claim being made by the person entitled to such labor, but it is silent as to how and on whom this claim shall be made; the act of Congress provides for this defect and uncertainty by establishing the mode of procedure.

It is contended that the power to legislate on this subject is concurrently in the States and Federal Government; that the act of the latter are paramount, but the acts of the former must be regarded as of authority until abrogated by the federal power. How a power exercised by one sovereignty can be called concurrent which may be abrogated by another, I cannot comprehend; a concurrent power, from its nature, I had supposed must be equal. If the Federal Government, by legislating on the subject, annuls all state legislation on the same subject, it must follow that the power is in the Federal Government, and not in the State.

Taxation is a power common to a State and the General Government, and it is exercised by each, independently of the other; and this must be the character of all

concurrent powers.

It is said that a power may be vested in the Federal Government



which remains dormant, and that, in such case, a State may legislate on the subject. In the case supposed, whence does the legislature derive its power? Is it derived from the Constitution of the State, or the Constitution of the United States?

If the power is given by the state Constitution, it must follow that it may be exercised independently of the federal power, for it is presumed no one will sanction the doctrine that Congress, by legislation, may abridge the constitutional power of a State.

How can the power of the State be derived from the federal Constitution? Is it assumed on the ground that Congress, having the power, have failed to exercise it? Where is such an assumption to end? May it not be applied with equal force and propriety to the whole ground of federal legislation, excepting only the powers inhibited to the States? Congress have not legislated upon a certain subject, but this does not show that they may not have duly considered it; or they may have acted without exhausting the power. Now, in my judgment, it is illogical and unconstitutional to hold that, in either of these cases, a State may legislate.

Is this a vagrant power of the State, like a floating land warrant to be located on the first vacant spot that shall be found? May a State occupy a fragment of federal power which has not been exercised, and like a tenant at will, continue to occupy it until it shall have notice to quit?

No such power is derived by implication from the federal Constitution. It defines the powers of the General Government, and imposes certain restrictions and duties on the States; but, beyond this, it in no degree affects the powers of the States. The powers which belong to a State are exercised independently; in its sphere of sovereignty, it stands on an equality with the Federal Government, and is not subject to its control. It would be as dangerous as humiliating to the rights of

a State to hold that its legislative powers were exercised, to any extent and under any circumstances, subject to the paramount action of Congress; such a doctrine would lead to serious and dangerous conflicts of power.

The Act of 1793 seems to cover the whole constitutional ground. The third section provides,

"that when a person held to labor in any State or territory of the United States, under the laws

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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 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, &c.; 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 said fugitive to the State from which he or she fled."

The fourth section imposes a penalty on any person who shall obstruct or hinder such claimant, his agent or attorney, &c.;, or shall rescue such fugitive, when so arrested, &c.;

It seems to be taken as a conceded point in the argument that Congress had no power to impose duties on state officers as provided in the above act. As a general principle, this is true, but does not the case under consideration form an exception? Congress can no more regulate the jurisdiction of the state tribunals than a State can define the judicial power of the Union. The officers of each government are responsible only to the respective authorities under which they are

commissioned. But do not the clauses in the Constitution in regard to fugitives from labor and from justice give Congress a power over state officers, on these subjects? The power in both the cases is admitted or proved to be exclusively in the Federal Government.

The clause in the Constitution preceding the one in relation to fugitives from labor declares that,

"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."

In the first section of the Act of 1793, Congress have provided that, on demand being made as above, "it shall be the duty of

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the executive authority to cause the person demanded to be arrested," &c.;

The constitutionality of this law, it is believed, has never been questioned. It has been obeyed by the governors of States, who have uniformly acknowledged its obligation. To some demands, surrenders have not been made, but the refusals have in no instance been on the ground that the Constitution and act of Congress were of no binding force. Other reasons have been assigned.

Now if Congress may, by legislation, require this duty to be performed by the highest state officer, may they not, on the same principle, require appropriate duties in regard to the surrender of fugitives from labor, by other state officers? Over these subjects, the constitutional power is the same.

In both cases, the Act of 1793 defines on what evidence the delivery shall be made; this was necessary as the Constitution is silent on the subject. The act provides that, on claim's being made of a fugitive from labor, "it shall be the duty of such judge or magistrate to give a certificate that the person claimed owes services to the claimant."

The Constitution requires "that such person shall be delivered up, on claim of the party to whom the service is due." Here is a positive duty imposed; and Congress have said in what mode this duty shall be performed. Had they not power to do so? If the Constitution was designed in this respect to require not a negative, but a positive, duty on the State and the people of the State where the fugitive from labor may be found (of which, it would seem, there can be no doubt), it must be equally clear that Congress may prescribe in what manner the claim and surrender shall be made. I am therefore brought to the conclusion that, although, as a general principle, Congress cannot impose duties on state officers, yet, in the cases of fugitives from labor and from justice, they have the power to do so.

In the case of *Martin v. Hunter's Lessee,* 1 Wheat. 304, this Court say,

"The language of the Constitution is imperative on the States as to the performance of many duties. It is imperative on the state legislatures to make laws prescribing the time, place and manner of holding elections for senators and representatives, and for electors of President and Vice-President. And in these as

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well as in other cases, Congress have a right to revise, amend or supersede the laws which may be passed by the state legislatures."

Now I do not insist on the exercise of the federal power to the extent as here laid down. I go no further than to say that, where the Constitution imposes a positive duty on a State or its officers to surrender fugitives, Congress may prescribe the mode of proof and the duty of the state officers.

This power may be resisted by a State, and there is no means of coercing it. In this view, the power may be considered an important one. So, the supreme court of a State may refuse to certify its record on a writ of error to the Supreme Court of the Union under the 25th section of the Judiciary Act. But resistance to a constitutional authority by any of the state functionaries should not be anticipated, and if made, the Federal Government may rely upon its own agency in giving effect to the laws.

I come now to a most delicate and important inquiry in this case, and that is whether the claimant of a fugitive from labor may seize and remove him by force out of the State in which he may be found, in defiance of its laws. I refer not to laws which are in conflict with the Constitution, or the Act of 1793. Such state laws, I have already said, are void. But I have reference to those laws which regulate the police of the State, maintain the peace of its citizens, and preserve its territory and jurisdiction from acts of violence.

About the time of the adoption of the Constitution, a colored man was seized by several persons in the State of Pennsylvania, and forcibly removed out of it with the intent, as charged, to enslave him. This act was then, as it is now, a criminal offense by the law of Pennsylvania. Certain persons were indicted for this offense, and, in the year 1791, the Governor of Pennsylvania demanded of the Governor of Virginia the persons indicted, as fugitives from justice.

The Governor of Virginia submitted the case to the Attorney General of that State, who decided that the offense charged in the indictment was not such a crime as, under the Constitution, required a surrender. He also held "that control over the persons charged ought not to be acquired by any force not specified and delegated by positive law." The Governor of Virginia refused

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to arrest the defendants and deliver them to the authorities of Pennsylvania. The correspondence between the Governors, and the opinion of the Attorney General of Virginia, with other papers relating to the case, were transmitted to the President of the United States, who laid them before Congress. And there can be no doubt that this correspondence, and the forcible removal of the colored person which gave rise to it, led to the passage of the Act of 1793.

It is not unworthy of remark that a controversy on this subject should first have arisen, after the adoption of the Constitution, in Pennsylvania, and that, after a lapse of more than half a century, a controversy involving a similar act of violence should be brought before this Court, for the first time, from the same State.

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 fugitive is seized by the claimant, and taken before a judge or magistrate within the State, and on proof, parol or written that he owes labor to the claimant, it is made the duty of the judge or magistrate to give the certificate which authorizes the removal of the fugitive to the State from whence he absconded.

The counsel inquire of whom the claim shall be made. And they represent that the fugitive, being at large in the State, is in the custody of no one, nor under the protection of the State, so that the claim cannot be made, and consequently that the claimant may seize the fugitive and remove him out of the State.

A perusal of the act of Congress obviates this difficulty and the consequence which is represented as growing out of it.

The act is framed to meet the supposed case. The fugitive is presumed to be at large, for the claimant is authorized to seize him; after seizure, he is in custody; before it, he was not; and the claimant is required to take him before a judicial officer of the State; and it is before such officer his claim is to be made.

To suppose that the claim is not to be made, and indeed, cannot be, unless the fugitive be in the custody or possession of some public officer or individual is to disregard the letter and spirit of the Act of 1793. There is no act in the statute book more precise



in its language and, as it would seem, less liable to misconstruction. In my judgment, there is not the least foundation in the act for the right asserted in the argument, to take the fugitive by force and remove him out of the State.

Such a proceeding can receive no sanction under the act, for it is in express violation of it. The claimant, having seized the fugitive, is required by the act to

take him before a federal judge within the State, or a state magistrate within the county, city or town corporate, within which the seizure was made. Nor can there be any pretence that, after the seizure under the statute, the claimant may disregard the other express provision of it by taking the fugitive, without claim, out of the State. But it is said, the master may seize his slave wherever he finds him, if by doing so he does not violate the public peace; that the relation of master and slave is not affected by the laws of the State to which the slave may have fled and where he is found.

If the master has a right to seize and remove the slave without claim, he can commit no breach of the peace by using all the force necessary to accomplish his object.

It is admitted that the rights of the master, so far at regards the services of the slave, are not impaired by this change, but the mode of asserting them, in my opinion, is essentially modified. In the State where the service is due, the master needs no other law than the law of force to control the action of the slave. But can this law be applied by the master in a State which makes the act unlawful?

Can the master seize his slave and remove him out of the State, in disregard of its laws, as he might take his horse which is running at large? This ground is taken in the argument. Is there no difference in principle in these cases?

The slave, as a sensible and human being, is subject to the local authority into whatsoever jurisdiction he may go; he is answerable under the laws for his acts, and he may claim their protection; the State may protect him against all the world except the claim of his master. Should anyone commit lawless violence on the slave, the offender may unquestionably be punished; and should the slave commit murder, he may be detained and punished for it by the State in disregard of the claim of the



master. Being within the jurisdiction of a State, a slave bears a very different relation to it from that of mere property.

In a State where slavery is allowed, every colored person is presumed to be a slave, and, on the same principle, in a non-slaveholding State, every person is presumed to be free, without regard to color. On this principle, the States, both slaveholding and non-slaveholding, legislate. The latter may prohibit, as Pennsylvania has done, under a certain penalty, the forcible removal of a colored person out of the State. Is such law in conflict with the Act of 1793?

The Act of 1793 authorizes a forcible seizure of the slave by the master not to take him out of the State, but to take him before some judicial officer within it. The law of Pennsylvania punishes a forcible removal of a colored person out of the State. Now here is no conflict between the law of the State and the law of Congress; the execution of neither law can, by any just interpretation, in my opinion, interfere with the execution of the other; the laws in this respect stand in harmony with each other.

It is very clear that no power to seize and forcibly remove the slave, without claim, is given by the act of Congress. Can it be exercised under the Constitution? Congress have legislated on the constitutional power, and have directed the mode in which it shall be executed. The act, it is admitted, covers the whole ground, and that it is constitutional there seems to be no reason to doubt. Now, under such circumstances, can the provisions of the act be disregarded, and an assumed power set up under the Constitution? This is believed to be wholly inadmissible by any known rule of construction.

The terms of the Constitution are general, and, like many other powers in that instrument, require legislation. In the language of this Court in *Martin v. Hunter's Lessee,* 1 Wheat. 304,

"the powers of the Constitution are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of its powers as its own wisdom and the public interests should require."

This Congress have done by the Act of 1793. It gives a summary and effectual mode of redress to the master, and is he not

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bound to pursue it? It is the legislative construction of the Constitution, and is it not a most authoritative construction? I was not prepared to hear the counsel contend that, notwithstanding this exposition of the Constitution, and ample remedy provided in the act, the master might disregard the act and set up his right under the Constitution. And, having taken this step, it was easy to take another and say that this right may be asserted by a forcible seizure and removal of the fugitive.

This would be a most singular constitutional provision. It would extend the remedy by recaption into another sovereignty, which is sanctioned neither by the common law nor the law of nations. If the master may lawfully seize and remove the fugitive out of the State where he may be found, without an exhibition of his claim, he may lawfully resist any force, physical or legal, which the State, or the citizens of the State, may interpose.

To hold that he must exhibit his claim in case of resistance is to abandon the ground assumed. He is engaged, it is said, in the lawful prosecution of a constitutional right; all resistance, then, by whomsoever made or in whatsoever form, must be illegal. Under such circumstances, the master needs no proof of his claim, though he might stand in need of additional physical power; having appealed to his power, he has only to collect a sufficient force to put down all resistance and attain his object; having done this, he not only stands acquitted and justified, but he has recourse for any injury he may have received in overcoming the resistance.

If this be a constitutional remedy, it may not always be a peaceful one. But if it be a rightful remedy that it may be carried to this extent no one can deny. And if it may be exercised without claim of right, why may it not be resorted to after the unfavorable decision of the judge or magistrate? This would limit the necessity of the exhibition of proof by the master to the single case where the slave was in the

actual custody of some public officer. How can this be the true construction of the Constitution? That such a procedure is not sanctioned by the Act of 1793 has been shown. That act was passed expressly to guard against acts of force and violence.

I cannot perceive how anyone can doubt that the remedy

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given in the Constitution, if, indeed, it give any remedy, without legislation, was designed to be a peaceful one; a remedy sanctioned by judicial authority; a remedy guarded by the forms of law. But the inquiry is reiterated, is not the master entitled to his property? I answer that he is. His right is guarantied by the Constitution, and the most summary means for its enforcement is found in the act of Congress, and neither the State nor its citizens can obstruct the prosecution of this right.

The slave is found in a State where every man, black or white, is presumed to be free, and this State, to preserve the peace of its citizens, and its soil and jurisdiction from acts of violence, has prohibited the forcible abduction of persons of color. Does this law conflict with the Constitution? It clearly does not, in its terms.

The conflict is supposed to arise out of the prohibition against the forcible removal of persons of color generally, which may include fugitive slaves. *Prima facie* it does not include slaves, as every man within the State is presumed to be free, and there is no provision in the act which embraces slaves. Its language clearly shows that it was designed to protect free persons of color within the State. But it is admitted there is no exception as to the forcible removal of slaves, and here the important and most delicate question arises between the power of the State and the assumed but not sanctioned power of the Federal Government.

No conflict can arise between the act of Congress and this State law; the conflict can only arise between the forcible acts of the master and the law of the State. The master exhibits no proof of right to the services of the slave, but seizes him

and is about to remove him by force. I speak only of the force exerted on the slave. The law of the State presumes him to be free and prohibits his removal. Now, which shall give way, the master or the State? The law of the State does in no case discharge, in the language of the Constitution, the slave from the service of his master.

It is a most important police regulation. And if the master violate it, is he not amenable? The offense consists in the abduction of a person of color, and this is attempted to be justified upon the simple ground that the slave is property. That a

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slave is property must be admitted. The state law is not violated by the seizure of the slave by the master, for this is authorized by the act of Congress, but by removing him out of the State by force and without proof of right, which the act does not authorize. Now, is not this an act which a State may prohibit? The presumption, in a non-slaveholding State, is against the right of the master, and in favor of the freedom of the person he claims. This presumption may be rebutted, but until it is rebutted by the proof required in the Act of 1793, and also, in my judgment, by the Constitution, must not the law of the State be respected and obeyed?

The seizure which the master has a right to make under the act of Congress, is for the purpose of taking the slave before an officer. His possession the subject for which it was made.

The certificate of right to the service the subject for which it was made. The certificate of right to the service of the slave is undoubtedly for the protection of the master, but it authorizes the removal of the slave out of the State where he was found to the State from whence he fled, and, under the Constitution, this authority is valid in all the States.

The important point is shall the presumption of right set up by the master, unsustained by any proof or the presumption which arises from the laws and institutions of the State, prevail; this is the true issue. The sovereignty of the State

is on one side, and the asserted interest of the master on the other; that interest is protected by the paramount law, and a special, a summary, and an effectual, mode of redress is given. But this mode is not pursued, and the remedy is taken into his own hands by the master.

The presumption of the State that the colored person is free may be erroneous in fact, and, if so, there can be no difficulty in proving it. But may not the assertion of the master be erroneous also, and, if so, how is his act of force to be remedied? The colored person is taken and forcibly conveyed beyond the jurisdiction of the State. This force, not being authorized by the act of Congress nor by the Constitution, may be prohibited by the State. As the act covers the whole power in the Constitution and carries out, by special enactments, its provisions, we are, in my judgment,

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bound by the act. We can no more, under such circumstances, administer a remedy under the Constitution in disregard of the act than we can exercise a commercial or other power in disregard of an act of Congress on the same subject.

This view respects the rights of the master and the rights of the State; it neither jeopards nor retards the reclamation of the slave; it removes all state action prejudicial to the rights of the master; and recognizes in the State a power to guard and protect its own jurisdiction and the peace of its citizen.

It appears in the case under consideration that the state magistrate before whom the fugitive was brought refused to act. In my judgment, he was bound to perform the duty required of him by a law paramount to any act, on the same subject, in his own State. But this refusal does not justify the subsequent action of the claimant; he should have taken the fugitive before a judge of the United States, two of whom resided within the State.

It may be doubted, whether the first section of the act of Pennsylvania under which the defendant was indicted, by a fair construction, applies to the case under

consideration. The decision of the Supreme Court of that State was *pro forma,* and, of course, without examination. Indeed, I suppose, the case has been made up merely to bring the question before this Court. My opinion, therefore, does not rest so much upon the particular law of Pennsylvania as upon the inherent and sovereign power of a State to protect its jurisdiction and the peace of its citizens in any and every mode which its discretion shall dictate, which shall not conflict with a defined power of the Federal Government.

This cause came on to be heard on the transcript of the record from the Supreme Court of Pennsylvania, and was argued by counsel, on consideration whereof it is the opinion of this Court that the act of the Commonwealth of Pennsylvania upon which the indictment in this case is founded is repugnant to the Constitution and laws of the United States, and therefore, void, and that the judgment of the Supreme Court of Pennsylvania upon the special verdict found in the case ought to have been that the said Edward Prigg was not guilty. It is, therefore, ordered and adjudged by this Court that the judgment of the said Supreme Court of Pennsylvania be, and the same is hereby, reversed.

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And this Court proceeding to render such judgment in the premises as the said Supreme Court of Pennsylvania ought to have rendered, do hereby order and adjudge that judgment upon the special verdict aforesaid be here entered that the said Edward Prigg is not guilty in manner and form as is charged against him in the said indictment, and that he go thereof quit, without day; and that this cause be remanded to the Supreme Court of Pennsylvania with directions accordingly, so that such other proceeding may be had therein as to law and justice shall appertain.

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