American Volunteer.

BY JOHN B. BRATTON. "OUR COUNTRY—MAY IT ALWAYS BE RIGHT—BUT RIGHT OR WRONG, OUR COUNTRY." AT $2 00 PER ANNUM.

VOL. 34. CARLISLE, PA., THURSDAY, SEPTEMBER 16, 1847. NO. 14.

Shepherd's Vermifuge.

PARENTS, Physicians and Nurses, read the following certificate of cure of its kind by Shepherd's Vermifuge. We have in our possession thousands of certificates which it is needless to publish here, as this shows the virtue of the medicine and its harmlessness. Remember that Shepherd's Vermifuge never sickens children, and never fails to give them a good appetite—it combines many valuable properties independent of the worm destroying, &c. It is doing good wherever it is used.

NEW BERLIN, Union Co., Pa., July 12, 1847.

My child four years old has been subject to fits from the age of four months, and pronounced by the physicians after their utmost exertions to be incurable—and at one time dispaired of her life and said she would not live two hours, refusing to leave medicine for her saying it would be of no use. I could not induce myself to believe that worms were not the source of her disease, in consequence of which I purchased three or four bottles of Jaynes Vermifuge which I used according to direction without it producing any good effects. I next used Morrison's without any better success, besides various other kinds, but all to no purpose. Mr. E. Wilson, Agent of Shepherd's Vermifuge, induced me try Shepherd's Worm Destroyer, which I am happy to say after using three bottles entirely cured her, a large quantity of worms having been expelled. She had been so long afflicted by having fits every day, that she had not been able to walk or talk until the last six months since using Shepherd's Vermifuge. She has commenced to talk and walk and I am satisfied that Shepherd's Vermifuge has produced all these happy results, and therefore recommend it as an invaluable medicine. Price 25 cents per bottle.

DAVID MAUCK.

The following certificates are from citizens residing in Franklin county, Pa., and who are known to many of the readers of the Volunteer:

ROCKSBURG, Pa., April 29, 1847.

After having used, without success, a Vermifuge which was held in high estimation, I was induced to try Shepherd's. To my daughter, who is eight years old, I gave four doses, and which had the effect of expelling a large number of worms. I can recommend it as a good article.

JAMES SHOEMAKER.

ST. THOMAS, Pa., April 27, 1847.

I administered Shepherd's Vermifuge to a girl five years old—it operated without producing any sickness—expelled a large quantity of worms, and answered fully my expectations. I have sold it to many and have always heard a good report from it.

B. FOHL.

For sale by the following appointed Agents, G. W. Hitner, Carlisle; John Fulwiler, Shippensburg; J. Burkhart, Newville; Robert Elliott, Newburg; A. Richards & Co., Plainfield; Eaby & Kissinger, Kingstown; S. & S. A. Coyle, Hogestown; J. & J. Millison, Mechanicsburg; William Alexander, Papertown.

September 2, 1847.—6m

Shepherd's Sarsaparilla.

THE public will please examine and see that they get Shepherd's Sarsaparilla, as there are many preparations by the name of Sarsaparilla. Shepherd's never fails to cure long standing cases of Rheumatism, Scrofula, Tetter, Ringworms and Consumption. Of the numerous certificates of cure read the following:

YELLOW SPRINGS, Blair co., Pa., August 11, 1847.

I purchased two bottles of Shepherd's Sarsaparilla and administered it to my boy seventeen months old who had been affected with scrofula for six months. I am happy to find him entirely cured, the lumps on his neck having disappeared so as to leave no sign of their ever having been there. His health is as good now from all appearances as if he had never been afflicted with the disease mentioned.

ALLEN J. GREEN.

Mr. Green is well known in Blair county, is a respectable farmer and his veracity will not be doubted by any one who knows him.

YOUNG LADIES LOOK HERE!

For pimples on the face, Shepherd's Sarsaparilla is a never failing cure. It purifies the blood and thereby gives beauty to the eyes and complexion.

RHUMATISM.

This disease in its acute form is inflamation of the membranes of the joints, with a disposition to migrate or shift from one joint to another, or to certain internal organs, and especially to the membranes of the heart. In this form of Rheumatism there is occasionally fever; the joints are much swollen and excessively painful. In the chronic variety there are no marked constitutional symptoms, but in many cases, particularly in debilitated habits, when the general health of the body has been deranged by previous disease or too great exertion of body or mind, a permanent distortion of the joints and crookedness of the limbs are almost certain to follow. Many medicines have been produced, and which were represented as being certain cures for this disease, but all, or nearly so, have failed to receive the confidence of the public. At this time no medicine has better claims on the community, than Shepherd's Sarsaparilla, for the alleviation and absolute cure of this troublesome and exceedingly painful disease.

Eruptions of the Skin.—These are exhibited in various forms. Pimples and Blotches on the face, which so frequently disfigure the most admired features, these, with Cancerous Affections, Dyspepsia, Neuralgia, Jaundice, &c., produce quite a formidable array of complaints resulting from impurity of the blood. All these, with the diseased condition of the the system, caused by the excessive use of mercury, will generally yield to that admirable preparation of medicine known as Shepherd's Sarsaparilla.

Price 75 cents per bottle.

For sale by the following appointed agent. G. W. Hitner, Carlisle; John Fulwilor, Shippensburg; J. Burkhart, Newville; Robert Elliott, Newburg; A. Richards & Co., Plainfield; Eaby & Kissinger, Kingstown; S. & S. A. Coyle, Hogestown; J. & J. Millison, Mechanicsburg; William Alexander, Papertown.

September 2, 1847.—6m

Shepherd's Compound Medicated Candy.

For the cure of Colds, Coughs, Catarrh, Bronchitis, Hoarseness, Sore Throat, Croup, Asthma, Spitting of Blood, and all other complaints of the Throat and Breast, and those arising from a disordered condition of the Lungs, and for clearing the Voice, &c.

The articles composing the Compound Medicated Candy have been selected with the utmost care and attention, and entirely from the Vegetable Kingdom—therefore no fear need be apprehended of its producing even the slightest injurious effect; on the contrary, it is asserted, and without exaggeration, that it is one of the most efficient articles, in curing the above mentioned complaints, that has ever yet been offered to the public. From its being pleasant to the taste, and at the same time so certain in its effects, a reputation has been gained for it, such as but few articles of the kind can pretend to claim. Price 12½ cts. per Package.

For sale by the following appointed agents. G. W. Hitner, Carlisle; John Fulwiler, Shippensburg; J. Burkhart, Newville; Robt. Elliott, Newburg; A. Richards & Co, Plainfield; Eaby and Kissinger, Kingstown; S. & S. A. Coyle, Hogestown; J. & J. Millison, Mechanicsburg; William Alexander, Papertown.

September 2, 1847.—6m

School Books.

JUST received a general assortment of School Books, to which we invite the attention of Parents, Guardians and Teachers. For sale at

Carlisle, Aug. 26, 1847. GITTS.

THE AMERICAN VOLUNTEER,

is published every Thursday, at Carlisle, Pa., by JOHN B. BRATTON, upon the following conditions, which will be rigidly adhered to:

TERMS OF SUBSCRIPTION.

For one year, *in advance*, $2 00
For six months, *in advance*, 1 00

No subscription taken for a less term than six months, and no discontinuance permitted until all arrearages are paid.

Twenty-five per cent. additional on the price of subscription will be required of all those who do not pay in advance.

RATES OF ADVERTISING.

One square, one insertion,	$ 50
One square, two insertions,	75
One square, three insertions,	1 00
Every subsequent insertion, per square,	25

A liberal discount will be made to those who advertise by the year, or for three or six months.

OFFICE.—The office of the *American Volunteer* is in the second story of James H. Graham's new stone building, in South Hanover street, a few doors from Burkholder's hotel, and directly opposite the Post-office, where those having business will please call.

CORRESPONDENCE.

To the Hon. SAMUEL HEPBURN, *Pres't. Judge:*

The law involved in the case of the Commonwealth vs. John Clellans et. al. was so distinctly and clearly stated to the jury in your charge to them, and a right understanding of it is so interesting to the public, that we think a publication of it would greatly promote the interests of public justice. Will you do us the favor to furnish it for publication?

We are, very respectfully,
Your obd't, serv'ts,
FRED'K. WATTS,
WM. H. MILLER,
LEM'L. TODD,
J. ELLIS BONHAM.

CARLISLE, September 7, 1847.

CARLISLE, Sept. 8, 1847.

Gentlemen:—If the charge to which you refer, is at all likely to produce the result which you anticipate, I should not feel myself at liberty to withhold it. Enclosed I send it to you, for such purposes as you think proper.

Very respectfully, yours, &c.,
SAM'L. HEPBURN.

FRED'K. WATTS, Esq., WM. H. MILLER, Esq., and others.

Commonwealth of Penn'a. vs. John Clellans, *et. al.* } In the Quarter Sessions of Cumberland co'ty. Indit. Riot, &c.

CHARGE OF THE COURT.

Gentlemen of the Jury—From the very extensive range the discussion of this cause has taken, it becomes important for the jury to divest their minds of every impression, save those which legitimately belong to the case you have been sworn to try. Deep as has been the feeling manifested by counsel, and intense as is the interest of the whole community around us, in reference to this trial, I confess I was not prepared to hear the request made of you—by the gentlmen who first addressed you on behalf of these black defendants—that the ordinary rules of law governing cases of riot, should be greatly modified, if not wholy subverted, and that you should mark out for yourselves a course unknown in the jurisprudence of our country, so that you might have it in your power to acquit them.

In this trial we have no Southern feeling to appease, nor any Northern prejudice to gratify. Nor are we called upon to "*immolate* a victim upon the altar of *his country, for his country's good*," as has been so earnestly pressed upon you. The offence charged is one which the law defines, and for the trying of which the soundest rules are established, and agreeably to those rules it must be disposed of. The responsibilities devolving on us, in our respective positions, are such as should make us earnestly endeavor to discharge our respective duties with fidelity, both to the Commonwealth and to the defendants. If the peace and dignity of the one have been grossly violated, the solemn sanctions under which you are acting require that you should fearlessly say so, without regard to the wealth or poverty, to the high or low standing in society, of those whom you believe, from the testimony, to be guilty of that violation. And if, agreeably to the known and established rules of law, the evidence will justify you in acquitting any, or all, of these defendants, then it is just as imperatively your duty to do so.

The defendants are indicted for a riot, as set out in the bill of indictment, and for this alone they are upon their trial.

The *first* count charges them with a riot, simply.

The *second* count sets forth in substance that three persons held to service or labor in the State of Maryland—the property of James H. Kennedy, and Jacob Hollingsworth—had escaped into this county, been arrested by their owner and agent—were lawfully in their custody—and being thus within their control; the defendants riotously, tumultuously, and unlawfully assembled together, and rescued two of them from the custody of their owner, Mr. Kennedy, by which he lost them; and of meeting riotously and unlawfully for the additional purpose of aiding the third to escape from the agent of Mr. Hollingsworth, in whose custody he was; to the injury of those individuals, as set out in the bill which was read to you.

The *third* count charges the same defendants with a riot, and assault and battery, upon James H. Kennedy, and John Black.

To these charges, as set out in this bill, the defendants are called upon to respond. And I will here remark, that it is incumbent on the Commonwealth to satisfy you that the defendants, or some of them, now upon their trial, have been guilty of one or more of these charges; and unless that has been done, they are entitled to your verdict of acquittal. On the other hand, if either or all of the offences charged, have been proved; then your duty to the Commonwealth requires that you say so, and your verdict should be that of guilty against all whom you are satisfied were engaged in them.

That a riot, most disgraceful in its character, and but too melancholy in its results, occurred in this town, upon the day named in the indictment, is a fact not controverted during the trial by any one of the counsel concerned for the defendants, and which under the evidence you have heard, cannot be questioned by any unprejudiced mind. But, who were parties in it? And whether the acts of the several defendants named in this bill, were of such a character, as to make each of them a participant in that unfortunate affair? are questions which you must answer under the solemn obligations assumed by you as jurors, when you promised under the sanction of your oaths, that you would *well* and *truly* try, the issue joined between the Commonwealth and the persons named in the indictment (as to whom you have been sworn,) and that you would give a *true* verdict according to the evidence. On the Court devolves the duty of stating to you the principles of law by which this cause should be governed, and upon you that of applying those rules to the evidence as you have heard it.

A riot at common law, is where three or more persons actually do an unlawful act of violence, either with or without a common cause of quarrel; as if they beat a man, or do any other unlawful act with force and violence, or even do a lawful act in a violent or tumultuous manner.

Our Act of Assembly of 1705, not only includes the actual violence or injury, but makes the bare assembling of three or more together with clubs, with the design to commit violence or injury to the person or goods of another, a riot. So that in Pennsylvania, since the passage of this law, the assembling together of three or more persons, as provided in that law, with the design to commit violence or injury upon the person or property of another, though no single act be done in pursuance of that design, is a riot.

If a party numbering three or more combine to disturb another in the enjoyment of his lawful rights, and do so, we have seen that at common law, it constitutes a riot, and every man embraced in this combination, is guilty of all the acts done in execution of, or contributing or tending to the purpose, for which it was formed. And as is said by Judge Addison in this same case from which I have quoted, collecting a party for any purpose of a violent tendency, renders the authors guilty of all consequences plainly to be forseen, whether they be active in the execution of it or not. A man becomes a party to a riot, either by being active in what is going on, or by countenancing it by his presence and advice, or by standing ready to support it, if necessary, in any emergency which may arise, requiring his aid. All who have any thing to do with a riot by way of promoting it, by their presence, actions, or advice, are responsible for all consequences following their acts, and as guilty of the riot as the most active participator in it. In this grade of crimes, the law recognizes no accessaries. All are principals who have had any thing to do with promoting it.

The *second* count in this indictment, as you have seen, lays the offence as being committed under peculiar circumstances, and for a particular object, which raises questions important to the parties immediately concerned, and interesting to the community generally. From the discussion of them at the bar, and grounds there assumed, it is essential to a proper disposition of this case that the legal and constitutional rights set forth in the bill, and alleged to have been violated, should be properly understood.—In addition to which, our position as a county, in the vicinity of a State whose policy in reference to slavery is wholly different from that of Pennsylvania, requires that the rights of citizens of Maryland to their slaves escaping to Pennsylvania, and our own duties and privileges under the Constitution and laws of the General Government, as well as those of this State, should be known, and respected.

If the slave owner has rights guaranteed to him, by the very bond which confederated these States, and those rights thus secured are beyond the reach of all State legislation, we and they should know it, in order that all collision upon a subject so delicate may be prevented. Previously to directing your attention to the evidence alleged to implicate these defendants, or showing the position of either of them in regard to the rules of law as I have already stated them, it becomes important on this count in the indictment to know precisely what those rights were, which are there alleged to have been invaded. In any remarks which I may make upon this subject, I do not wish to be understood as advocating the system of slavery, as it now exists in the Southern States. In the language of another "believing that it is injurious to the State in which it prevails, and that it has proved an incubus upon their advancement in wealth and prosperity, we are no advocates of the institution, but at the same time we think that on this subject, the citizens of those States are to be left to judge for themselves of the propriety of its continuance, or its abolition." Our business in the present instance, is not with their institutions, but with the rights of their citizens, and in all such cases it is important that there should be no misapprehension of them, either on their part, or on ours. Consequently such as have followed, and may yet follow the scene of the 2d of June, so vividly portrayed to us by many of the witnesses during this trial, admohish us all, that the line of legal right cannot be too distinctly marked to prevent a recurrence.

The colonial history of this country shows, that at an early period slavery was recognized in all the provinces, and a conventional arrangement existed, by which the owner of a fugitive slave might reclaim him wherever found. Before the formation of the Constitution of the United States, however, public opinion in a portion of the country materially changed in regard to it, so that no aid was furnished to the master in many of the provinces to reclaim his fugitive, and in others he met with open resistance. And, as is said by Judge Story, in his commentaries on the constitution, page 677—"there being no provision under the confederation by which the owner might reclaim his fugitive slave who should have escaped into other States where slavery was not tolerated, the want of such a provision was felt by the slave holding States as a serious inconvenience, and led to the introduction into the Constitution of the United States, this clause:

"No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due."—*Const. of the U. S. Art. 4, Sec. 3d.*

This provision gave to the slave holding States a right which they did not before possess, and enables the owner to recover his slave in whatever part of the United States he may find him. But, it is obvious from the reading of this clause in the Constitution, that legislation on the subject was necessary, to provide for cases where the power to recapture was out of the question. And a difficulty arising betwixt the Executives of the States of Pennsylvania and Virginia on the question of delivering fugitives from justice, under the immediately preceding clause in the Constitution to that which I have read, which is Art. 4, Sect. 2d,—"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." The President of the United States brought the subject before Congress, and the result was, their passing the law of the 12th Feb. 1793. That law is as follows:

"SEC. 1.—Whenever the executive authority of any State in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such State or territory to which such person shall have fled; and shall, moreover, produce the copy of an indictment found, or an affidavit made, before a magistrate of any State or territory as aforesaid, charging the person so demanded with having committed treason, felony, or other crime, certified as authentic by the Governor or Chief Magistrate of the State or territory from whence the person so charged fled, it shall be the duty of the executive authority of the State or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or territory making such demand, shall be paid by such State or territory."

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

This law, you will observe, embraces the two classes of fugitives from justice and from labour provided for in the clauses of the Constitution to which I have referred you. And in reference to fugitives from justice, designates the Executives of the different States as the persons upon whom the demand should be made, and the mode and proofs in and upon which it should be made, and, as is said by Judge Story, in the case of Prigg against the Commonwealth, 16 Peter's, 539:

"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 intrusted 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 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 acquiescense 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-slave holding 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. Wright vs. Deacon, 5 Sergt. and Rawl. 62. Glen vs. Hodges, 9 Johnston, R. 67. Jack vs. Martin, 12 Wend. 311. 8. C. 12 Wend. 507, and Com. vs. Griffin, 2 Pick. R. 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 at 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 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. 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."

The constitutionality of this law, embracing both the classes of fugitives, being definitely settled, and so far as applicable to those from labour, by the Supreme Courts of Massachusetts, New York, Pennsylvania, and lastly and conclusively by the Supreme Court of the U. S. in the case to which I have referred, it is therefore the paramount law of the land, susceptible of no private interpolation, confined to no part of the country in its operation, but operating over our whole territory, and to be regarded until altered or modified by the same power which enacted it, as binding upon every one under our general government. To protect the rights thus acquired, every necessary provision has been incorporated in the Constitution of the United States.

In article 6, Sect. 2, of the Constitution of the United States, it is declared, that—"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding."

In Sec. 3, of the same article, it says that—"The Senators and representatives before mentioned, and the members of the several State Legislatures, and all Executive *and judicial officers*, both of the United States and *of the several States*, shall be bound by oath, or affirmation, to support this Constitution."

These provisions in the Constitution, secure to the law of Congress the position of Supreme law of this State, as well as of the whole Union, which every officer named in these sections is bound by the solemn obligation of an oath to regard, and which every citizen is bound to respect. All State laws, therefore, in conflict with this law of Congress, or of the Constitution, we are bound under the oaths which we have taken, to say to you, are void. They are of no binding operation upon you, nor upon us.

The law of Congress then, under which the first proceeding was had toward asserting a claim to those slaves, and which seems to have been the first step which led to the subsequent riot, designates "any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall have been made," as one of the persons before whom the slave shall be taken; and on hearing the proof if satisfied the fugitive owes the service claimed, directs that he "give a certificate thereof, to such claimant, his agent or attorney, which shall be sufficient warrant for removing the fugitive from labour to the State or territory from which he or she fled."

And shall a justice of the peace, who is a magistrate, and a judicial officer, not act? We have seen that the Constitution and laws of the United States which he swears to support, before he enters upon the duties of his office, require that he shall. Can it be seriously urged, that Congress have the power to direct the Executive of a State, as to how and when he shall perform a specific Constitutional duty, and have no such power in reference to a subordinate magistrate, equally within the letter and spirit of the Constitutional provision in regard to a subject, alike within their control? I cannot say so; and upon this particular subject the remarks of Judge McClean of the Supreme Court of the United States, are to my mind clear and convincing. (See 16th Peters, 664,-666.)

He says—"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 law of 1793. As a general principle this is true; but does not the case (fugitive slaves) 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 labour, 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 labour, 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 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 labour, 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 being made of a fugitive from labour "it shall be the duty of such Judge or magistrate to give a certificate that the person claimed owes service 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 labour 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 labour and from justice, they have the power to do so. In the case of Martin's Lessee vs. Hunter, 1 Wheat. R. 304, the 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 well as in other cases, Congress have a right to revise, amend, or supercede 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 farther than to say, that where the Constitution imposes a positive duty on a State or its officers to surrender fugitives, that 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 sec. 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."

The right of owners to assert their claims to fugitive slaves, and the duty of magistrates to act as required by the law of Congress being established, we approach the facts of this case for the purpose of determining the position of these respective parties as connected with the averments in the second count of this indictment. From the evidence, which is uncontradicted, three slaves, two females and one male, escaped from their owners, Mr. Kennedy and Mr. Hollingsworth, into this county. They were pursued by Mr. Kennedy, and the son of Mr. Hollingsworth—arrested in this town—carried before Mr. Justice Smith, who heard the claimants, and gave them the certificate required by the law of Congress. At the same time and at the request of the claimants, a commitment was made out against these slaves, and they were given under it into the custody of Sheriff Hoffer. Against him a writ of *Habeas Corpus* was sued out—heard before me; and the act of Congress making no provision for such commitment, they were discharged from his custody; and of course fell back into the custody of their owners under the certificate which had been granted them by Justice Smith. These slaves then, agreeably to the laws of the land, binding upon every individual composing a portion of this community, were legally in the custody of their owners in a mode designated by the only law they or we are bound to regard—I mean the law of Congress.

The right of reception in this instance was not asserted by the claimants. In reference to which Judge Story in delivering the opinion of the Supreme Court of the United States in Prigg against the Commonwealth, 16th Peters, 613, says:

"We have said, that the clause" (of the Constitution) "contains a positive and unqualified recognition of the right of the owner in the slave, unaffected by any State law or regulation 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 stopped 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 reception is universally acknowledged in all the slave holding States. Indeed this is no more than a mere affirmance of the principles of common law applicable to this very subject. Mr. Justice Blackstone (3 Bl. Comm. 4,) lays it down as unquestionable doctrine. "Reception or reprisal (says he) is another species of remedy by the mere act of the party injured.—This happens when any one 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, 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."

This right, I before told you, was not in this instance asserted, further than to take the slaves before the Justice as directed by the act of 1793.

These slaves then, before this riot commenced, agreeably to the whole evidence in cause, were in the peaceable possession of their owner, or his agent, and being there, they had a right to defend that possession, with all the force necessary to its protection.

The law gives to the owner of a slave every right, and confers upon him all the power, that is requisite to his defence, as fully and amply as it invests you with them, to protect yourself in any property of which you may be in the lawful and peaceable possession. It knows no difference: and so long as slaves are regarded as property under the Constitution and laws of the United States, we too, are so bound to regard them.

Every act of Mr. Kennedy repelling the attempts to rescue his slaves, so far as we have those acts detailed in evidence, was justified by the laws of the land. So far therefore, as the arguments which insist that you should regard him, and those who cooperated with him in protecting his property, as the rioters, and responsible for the occurrences of that day, should be dismissed from your consideration, as without foundation, either in law or in fact, and enter upon the inquiry as to whether the defendants, or either of them, are guilty of this offence, as laid in this count, or either of the other two in this indictment. For it will be for you to say whether they are guilty of all or either of them. To make them so, I have already told you it is not necessary that they should all be active in the tumult. For as is correctly said in Wharton's American Criminal Law—"In riotous and tumultous assemblies, all who are present and not actually resisting in their suppression, in the first instance, are in presumption of law participants; and the obligation is cast upon a person so circumstanced, in his defence, to prove his actual noninterference. When however the sheiff of a county, the mayor of a city, or the magistrate of a town, or any other known public conservator of the peace, has repaired, in the discharge of his duty, to the scene of tumult, and there commanded the dispersion of the unlawful riotous assembly, and demanded the assistance of those present to aid in its suppression, from that instant there can be no neutrals. The line is then drawn between those who are for and those who are against the maintenance of order, and with the forces of the one or the other, all who see fit to remain must promptly arrange themselves. Those who continue looking on while the active rioters are resisting the public authorities, and daringly moving on to the consummation of their designs of destruction, who refuse to join with the authorities, and witness their defeat, without striking one blow in aid of outraged law, are just as much rioters as the most active in the work of violence, and, in such circumstances, it will avail them nothing that they appear only passive lookers on, instead of active rioters.

"It is not necessary, as has been noticed, that any person, in order to bring himself into the perilous position of a rioter, should be a chief actor in the transaction of which the riot is maintained to consist. "The common law," as was remarked by a learned judge, in a late charge to a grand jury, "founded on the teaching of centuries, holds that if any person, seeing others actually engaged in the riot, joins himself to them, and assists therein, he is as much a rioter as if he had first assembled with them for that purpose, inasmuch as he has no pretence that he came innocently into the company, but appears to have joined himself to them with an intention of seconding them in the execution of their unlawful enterprise. And it would be endless, as well as superfluous, to examine whether every particular person engaged in a riot was in truth one of the first assembly, or had a previous knowledge of their design. Every person who encourages, or promotes and takes part in riots, whether by words, signs, or gestures, or by wearing the badges or ensign of the rioters, is himself to be considered such, for in this crime, all concerned are principals."

With the law in reference to what constitutes a riot, before us, and the position in which the parties alledged to have been injured, by it, stood, let us recur to the evidence, and see, if any, or all of these defendants were either promoting or maintaining it.

In reference to all of the blacks except Eli Butler, Mealy Butler, James Jones, and Susan Hunter, the evidence seems to be clear and uncontradicted, and I should suppose you will have but little difficulty in coming to a proper conclusion upon it. In regard to these four, there is some conflict in the evidence.—[Here the evidence was read relating to them.] From this you will say whether they are guilty or not.

In regard to Professor McClintock, you have also heard the testimony. It has since been read to you by Mr. Watts, and I need do no more than refer you to the defendant's witnesses who testified to his conduct on that day. You heard from Mr. Thorn his declared intention on entering the Court Room, subsequent to his interview with Mr. Sanderson, on the street; and from Samuel Frantz, Willis Foulk, Edward Showers, Michael Holcomb, Wm. M. Penrose, John Walt, Joseph Stuart and others, what passed between him and others of these defendants in the Court Room; what occurred before the riot down stairs, and subsequent to it. In addition, I will read you the testimony of Francis Noble, who details what he saw almost in the midst of this riot, and who alone, if believed by the jury, makes out the offence. [Here Noble's testimony was read.]

We now submit this whole case, and that of each of these defendants, to you. The responsibility of making a proper disposition of it, and of each of them rests with you, and from that responsibility we have no desire to relieve you. Give to the whole evidence in the cause, a calm, deliberate consideration; apply it to the rules of law, as we have stated them, and find such verdict as it will warrant—leaving the consequences of such a finding where the law has placed them.

Horrible Tragedy—A Woman Murdered by Her Stepdaughter and Burned to Ashes.

The Pittsburg Despatch of Monday last relates the following particulars of a shocking act committed in that county.

An aged lady, named Mary Morrison, wife of Samuel Morrison, residing in Mifflin township, in Alleghany county, about three miles from McKeesport, was murdered on Friday last, and afterwards burned to ashes by her stepdaughter. The facts, as far as we have been able to learn, are these:

On Friday morning, Mr. Morrison started to the city with produce for the market, leaving his wife and daughter at home. The daughter is a woman about thirty-five years of age, rather a simple creature, and considered by the neighbors as insane.—*Mrs. Morrison has from her childhood been subject to spasmodic spells.* On the afternoon in question, she was taken with one of these spells, and being on the floor, under the influence of the fit, her stepdaughter, Sarah Morrison, beat her on the head with a fire shovel, until it is supposed, she killed her, and then threw her into the fire, and kept piling on the fuel until she burned her almost to ashes, there not being bones enough left to fill a quart measure.

The stepdaughter, after consummating the horrible and tragic act of burning the mother, carefully scrubbed the floor to obliterate the traces of blood, and made her escape to the woods.

Mr. Whitaker, a brother of Mrs. Morrison, visited the house on Saturday morning and found it deserted, but there being a very disagreeable stench he suspected that all was not right, and immediately commenced a search of the premises. On examining the fire place, from whence the smell proceeded, he discovered a number of small bones, and the jam spoted over with blood. Several of the neighbors were called in and started in pursuit of the stepdaughter, who was arrested a few miles from the scene of the tragedy; she confessed the attrocious murder, and, assigned as her reasons for doing so that her "father, step-mother and herself could not agree, and she thought that the best thing she could do was to burn her up." She also confessed the manner in which she consummated the act.

Coroner Richardson was sent to hold an inquest on the remains, and the jury, after hearing the testimony of a number of witnesses, returned for verdict that "deceased came to her death from violence at the hands of her Stepdaughter, Sarah Morrison," and authorized the coroner to take the murderess in custody. He brought her to this city and lodged her in jail on Sunday morning.

Mrs. Morrison, the deceased, was a sister of Dr. Whitaker, of Allegheny City, and is said to have been a woman of mild and gentle disposition, when not under the influence of the spasmodic spells to which she was subject. Her untimely and tragical death is regretted and mourned by a large circle of relatives and friends.

GOOD ADVICE.

Mr. Greely in one of his excellent letters from the West, gives the following good advice. It should be read and pondered well. There are thousands in the Eastern States, and tens of thousand in the large cities, who might profit greatly by acting upon the hint thus beautifully conveyed:

"Oh ye who dwell on the gorges and on the slope of granite hills! who are often inclined to murmur at the hardships of your lot in being compelled to do a fortnight's hard labor in wrestling twenty bushels of corn from the acre of niggard and stony soil—while in fertile Illinois less labor produces a hundred bushels—you have not yet learned to thank Heaven as you ought for that hard granite soil—for the glorious woods which so readily cover it and the blessed crystal waters which gush from its flinty bosom! If you own a farm there, keep it, and by cheerful labor, guided by productive science, render it each year more fruitful than the last; but if you have no land, and a young family forbids the hope of earning any at the East, strike boldly for the West at once, get hold of eighty or one hundred and sixty acres, as well located for health or timber as you can find, and resolve, in spite of all obstacles, to make it the foundation of a competence for yourself and an outfit for your children."

ILLINOIS.—The Illinois State Convention has made it the duty of the Legislature, by a vote of 99 to 43, at its first session under the amended constitution, to pass such laws as will effectually prohibit free persons of color from immigrating to and settling in that State. They are also to pass such laws as shall effectually prevent the owners of slaves from the introduction of slaves into the State for the purpose of setting them free. The people, however, are yet to vote upon the matter.