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BY JOHN B. BRATTON. "OUR COUNTRY—MAY IT ALWAYS BE RIGHT—BUT RIGHT OR WRONG, OUR COUNTRY" AT $2.00 PER ANNUM.

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Pennsylvania Legislature.

SPEECH OF MR. BONHAM,

On the Senate Bill No. 14, to repeal the 6th section of the act to prevent kidnapping, preserve the public peace, &c.

Mr. BONHAM moved to strike out all after the enacting clause, and insert the following:

That the third, fourth, fifth, sixth and seventh sections of the act entitled "An Act to prevent kidnapping, preserve the public peace, prohibit the exercise of certain powers heretofore exercised by judges, justices of the peace, aldermen and jailors, in this Commonwealth, and to repeal certain slave laws," passed the 3d day of March, Anno Domini, one thousand eight hundred and forty-seven, be and the same are hereby repealed, and the provisions of the act of the 5th day of December, Anno Domini, one thousand seven hundred and eighty-nine, "to provide for the custody of prisoners, committed under the authority of the United States," and the supplement thereto passed on the 3d day of March, Anno Domini, one thousand eight hundred and fourteen, are hereby extended to fugitives from labor.

MR. SPEAKER: Judging from the decisive vote given for the bill pending in this House, on its passage through the committee of the whole and on first reading, which bill is very similar to the amendment I now have the honor to propose, it can scarcely be necessary to occupy much time in discussion, to enable us to come to an intelligent understanding of the subject under consideration. I feel it a duty incumbent on me, however, to express the sentiments of my constituents on this subject, and also my own opinion as to the constitutionality of the 3d, 4th, and 6th sections, now proposed to be repealed, of the act of Assembly of 3d March, 1847.

The repeal of the obnoxious sections referred to, is not a topic of ordinary legislation—it has something to do with the stability of the government itself—it is a measure required at our hands, and due from us in good faith, as a grateful peace offering to our Southern brethren—it is a question of comity and good neighborship, as well as constitutional right—it is throwing away, out of our sight, the apple of discord—it is laying the axe at the root of the tree of dissension, which has grown up in these latter days with luxuriant and dark foliage, whose roots have penetrated deep into our peaceful soil, and whose branches extend far out, affording protection and shelter to a misanthropic race, that nurse in their seclusion schemes of treason and disunion.

The act of assembly of 3d March, 1847, was neither asked for by our people, nor expected from their representatives—and it struck the public with surprise, and was looked upon by the professional mind with alarm, as a bold act of defiance to the authority of the general government, and as a distinct and tangible promulgation of the odious doctrine of the right of a State government to nullify a solemn act of Congress, passed in conformity to an important constitutional provision. It is entitled an act "to prevent kidnapping, preserve the public peace, prohibit the exercise of certain powers heretofore exercised by judges, justices of the peace, aldermen and jailors in this Commonwealth, and to repeal certain slave laws."

Instead of that, it should have been styled an act to abrogate the 3d clause of the 2d section of the 4th article of the constitution of the United States, repeal and nullify and set at defiance the 3d section of the act of Congress of 12th February, 1793, and to promote riot, bloodshed and murder. Such a title would have been in character with such a law. Yet I am informed, that bad as it is, it was hurried through the legislature of that year, without much consultation, or examination of its provisions, by the members thereof, and that it is, in addition, almost a literal transcript of a Massachusetts statute, which was prompted by the spirit of abolitionism, so rife in that state, and enacted into a law ostensibly to carry into effect and confirm the decision of the Supreme Court of the United States, in the case of Prigg v. the Commonwealth of Pennsylvania, but in reality and truth to pervert its spirit and real meaning. The bitter fruits of the Massachusetts statute have been recently, in a most striking manner, exemplified, by a gross outrage upon law and order, and the trampling under foot the constitution of our common country—and that, too, in the city of Boston, which is ostentatiously claimed as the Athens of America—where the owners of fugitives from labor are prohibited the use of the jails of that commonwealth, in the reclamation of such fugitives, and the local authorities from permitting them to be used for such purposes under severe penalties—and where many other foolish things have been done in relation to this same subject, which we have been foolish enough to imitate and enact in this commonwealth.

Justice to ourselves, therefore, to the people of this commonwealth, to the commonwealth herself as a member of this great confederation of States—and above all, loyalty to our national constitution, and an anxious desire to preserve its spirit and compromises faithfully, as well as a catholic love of the Union itself, formed by the wisdom of our forefathers, should make us meet this question openly and fearlessly.

Let us examine the import and manifest tendency of the sections of the act referred to, for the repeal of which this bill is now pending.

The 3d section enacts that no judge of any of the courts of this commonwealth, nor any alderman or justice of the peace of said commonwealth shall have jurisdiction, or take cognisance of the case of any fugitive from labor under 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," and forbids such judge, alderman, or justice issuing any certificate or warrant of removal of any such fugitive from labor by virtue of said act, or any other act of Congress, under severe penalties—that of being guilty of a misdemeanor in office, and being also subjected to a fine of not less than five hundred and not exceeding one thousand dollars. And yet the gentleman from Allegheny (Mr. Bigham,) stated in debate the other day, that no *lawyer* (emphasing the term) would pretend to say, that the act of assembly of March 3d, 1847, repealed any of the provisions of the act of Congress of February 12th, 1793. Sir, I am willing to stake whatever reputation I may have as a lawyer in the same scale with that of the gentleman from Allegheny, and abide the issue, as to whether the act of assembly referred to does not avowedly, and in effect, repeal the provisions of the act of Congress of 12th February, 1793, so far as they relate to the duties of justices of the peace, under that act. I am aware that the gentleman from Allegheny is opposed to the passage of this bill, and is anxious to retain the act of March 3d, 1847, upon our statute book, of which act he stood the god-father, on this floor, at its birth. I am aware also that that gentleman carried many trophies home with him by reason of his having secured its passage, and that he was received in triumph by his constituents—and that even the free negroes and fugitive slaves of the city of Pittsburgh and the county of Allegheny presented him with a gold headed cane, as a token of regard for the eminent services he had rendered in their behalf, and as an indication of their appreciation of his exalted legal abilities. Sir, could I be as distinguished a lawyer as my lord Coke, or lord Mansfield, or even the gentleman from Allegheny himself, (for since the passage of the act of 3d March, 1847, we must consider him a greater constitutional lawyer than either of them,) could I be as conspicuous as either of these three great legal lights, two of whom have shone in great effulgence upon the eastern hemisphere, and one still shining upon this, I am very certain I could never be so fortunate as to become the recipient of such honors. We have heard much said here and elsewhere on the subject of the "Kane letter," but we now know something of the effects of the gold headed cane act of Assembly—and those effects have been traced in blood throughout the different portions of the commonwealth. In the county which I have the honor in part to represent on this floor, the passage of that act produced, and as I believe was the direct and immediate cause, of one of the most fearful and terrific riots that ever occurred within the limits of that county, and which resulted in the beating and maiming with sticks and stones, and the ultimate death of an eminent and useful citizen of the neighboring state of Maryland—and these bloody effects have been more recently traced in the streets of the political metropolis, the capital of the state itself.

The 4th section is ostensibly aimed against those who shall, under *any pretence or authority whatsoever*, (referring no doubt to the provisions of the act of Congress of 12th February, 1793,) violently and tumultuously seize upon and carry away, or attempt to do so, in a riotous, tumultuous and unreasonable manner, so as to endanger the public peace, any negro or mulatto within this commonwealth, either *with or without* the intention of taking such negro or mulatto before any district or circuit judge of the United States, the person or persons so offending shall be sentenced to pay a fine of not less than one hundred, nor more than one thousand dollars.

This section is a broad denial of the right of seizure and recapture incident to a right of property, and prohibits the owner of the slave, even with a warrant of arrest in his hand, (as it says "under any pretence of authority whatsoever," from using as much force as may be necessary for its due execution, in taking "such negro or mulatto before any district or circuit judge."

By this the person claiming the right is placed in the position of a wrong doer, if he attempt to assert that right as guaranteed by the constitution of the United States. All the slave has to do is to raise an outcry and resist the legally constituted authorities, so as to produce a breach of the peace in his arrest; and the master is subjected to the severe penalties of this section of the act of 1847. This is reversing all legal rights and all legal remedies.

The right of a citizen of one state to claim a slave in another state or country, was a right which always existed by international law before the adoption of our constitution, and which was recognised as the law of nations by Pennsylvania herself, in the act of March, 1st, 1780, for the gradual abolition of slavery, which act was drawn by Dr. Benjamin Franklin.—The 11th section of that act contains the following remarkable provision as illustrative of the sense of the country at the period, and in the midst of the American Revolution. It puts to the blush the false philanthropy of the present day, of men, who are constantly prating about the Declaration of Independence and the equality of man:

"That this or any other thing in it 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 absent 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.*" 1 Smith's Laws, 495.

This is merely declaratory of the international law on this subject, and is a broad declaration of the law as it was understood at the period of the revolution. It was not to affirm anything contained in any of the articles of confederation. The articles of confederation adopted 8th July, 1778, (article 4, section 2,) contains a provision relative to the delivering up of fugitives from justice, but make no provision for the delivery of fugitives from labor. The clause, therefore, of the 11th section of the act of assembly of 1st March, 1780, which provides the like remedy for the master in claiming his slave or servant "*as he might have had in case this act had not been made*," can only refer to his right as it existed by the law of nations.

This has always been decided to be the law. It was so ruled in England by all the judges until the great Somerset case, when lord Mansfield decided otherwise. That case has, however, never been considered sound law, and has been expressly overruled by numerous decisions since that period. It was pungently reviewed in a case which arose by appeal from an order by earl Bathurst. (Slave Grace, 2 Haggard's Admiralty reports 94, decided 9th November, 1827.) In this decision, lord Stowel (Sir William Scott) fairly scoffs at the idea of lord Mansfield, of the effect produced by the slave breathing the *free air of England*—an air perfectly loaded and impregnated with the miasma of despotism in its worst forms. Lord Stowel states in that case that the decision of lord Mansfield in the Somerset case had never been considered law, and had never been practically assented to since, and that slave sailors had been constantly in the habit of visiting the ports of Great Britain, and returning again to the West Indies, without any pretence that by having breathed the *free air of England*, they thereby became liberated. He also denies the doctrine, because he says, the owners of plantations in the West Indies had mortgaged their plantations with their slaves to residents in England, and if by sending their slaves to the mother country they were liberated, it would be in the power of the debtor to destroy the security of the creditor. The only doubt on this subject has been occasioned by not discriminating between individuals and slaves. That Lord Stowel's opinion in the case of the slave Grace is recognized as law in England, may be gathered from an act of parliament (section 3,) passed 28th August, 1833, to abolish slavery in the British dominions (with the exception of the East Indies and the islands of Ceylon and St. Helena) which contains the following proviso: "That all slaves who may at any time previous to this act, *have been brought with the consent of their possessors*, into any part of the united kingdom of Great Britain and Ireland, shall from and after the passage of this act, be absolutely and entirely free to all intents and purposes"—plainly declaring that when they were not brought with the consent of their owners, or in other words were fugitives from labor, they should not be free by this act of parliament.

The only other difficulty which could arise, in treating this as a question of international law, as to the right of the owner to reclaim his slave, is whether slaves are considered property. The doctrine, that the laws of nations recognise slaves as property, is sustained by nearly every judicial decision ever made either in England or America, by repeated decisions of the English judges and of the supreme court of the United States and the several state courts. Chief justice Shaw, of Massachusetts, the present disaffected region, in the case of the commonwealth vs. Aves, 18 Pickering, 193, in a most elaborate opinion distinctly avows this doctrine, and recognises the opinion of Lord Stowel in the case of the slave Grace, as the law of the land. If the right of property exists, that right would be powerless, unless it had as incidents to its enjoyment, the right of seizure and recapture. To bind down the owner of the slave, therefore, to the provisions of the 4th section of the act of March 3d, 1847, would be a denial of his right to reclaim his slave, by denying him his appropriate remedy, or at all events by seriously impairing it. It expressly interfered with the act of Congress of 12th Feb., 1793, which authorised the master to arrest his slave without a warrant, and of course to exercise as much force as might be necessary to enforce his right. As well might the legislature enact that the collector of customs in Philadelphia shall be subjected to severe penalties, unless he collect the customs in a particular way, and carry into effect the law of the United States, as directed by this State. Would it not be manifest, that such an act would produce conflict of authority between the state and the national governments? In the case of reclaiming a slave the master exercises a constitutional right, to say nothing of international law, and that right cannot be impaired by an inferior and subordinate authority. The 4th section of the act of March 3d, 1847, would utterly destroy the rights of seizure and recapture incident to the right of property.

The 5th section affirms the right on application made to issue a writ of *habeas corpus* to inquire into the causes and legality of the arrest or imprisonment of any human being within this commonwealth. This section I deem constitutional, although it may be an unnecessary re-affirmance of a constitutional provision, as well as of a settled principle of constitutional liberty, as transmitted to us from our mother country, and guarded by Americans with a watchful care. The writ of *habeas corpus* is a privileged writ, and is granted as a matter of right by the terms of the constitution, both of the United States and the state of Pennsylvania. The second clause of the 9th section of the 1st article of the constitution of the United Staets, and the 14th section of the 9th article of the constitution of Pennsylvania, both expressly declare in precisely the same terms, that "The privilege of a writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it." It is a writ endeared to the people by relieving them from bloody cruelties and legal murders, but half revealed to us by the confused legends of a dark age, and which were perpetrated with impunity down to the passage of the act of 31 Charles 2nd, the second *Magna Charta* of English liberty.

Even the supplement to the act of 12th February 1793, passed by Congress on the 18th Sept., 1850, commonly called "the fugitive slave bill," the 6th section of which declares that the certificate granted under said act "shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the state or territory from which he escaped, and shall prevent all molestation of such person or persons by any process issued by any court, judge or magistrate or other person whomsoever"—does not in the opinion of our ablest jurists suspend the writ of *habeas corpus*. Such was the opinion of attorney general Crittenden. This was the opinion of judges Grier and Kane in the case of Henry Garnet, heard before the circuit court for the eastern district of Pennsylvania, Oct. 18th, 1850—a copy of which opinion I have before me. Such also was the opinion of eminent jurists in the city of New York, in the more recent case of the fugitive Henry Long—and in the late case of Stephen Bennet in Philadelphia, writs of *habeas corpus* were simultaneously allowed and issued by the supreme court of this State, and by the district court of the United States. And in still more recent cases in Philadelphia, it has been the constant habit of the district court of the United States, to remove the proceedings on *habeas corpus* from before the United States Commissioner, during their pendency.

The repeal therefore of the 5th section of the act of the 3d March, 1847, is a mere question of propriety. By doing so we infringe no right, as that writ is always issuable as a matter of course, without further legislative sanction. By suffering it to remain on our statute books, we give no right but what was before its passage abundantly and permanently secured to every individual. By repealing it, we express our sense of the injustice of all that portion of the act referred to, which impedes, interrupts or hinders the master from reclaiming within this commonwealth his fugitive slave according to the provision of the constitution of the United States and the acts of Congress in conformity therewith.

Although this section of the act may not be considered unconstitutional, it is clearly vexatious in its character. It authorises the issue of the writ "*at all times*, on application made." Now suppose a case to be heard before a commissioner, or district or circuit judge, of the U. S., under the act of Congress of 18th September, 1850, and that a certificate of removal has already been granted, the owner might be arrested on the verge of crossing the state line with his property, and subjected to vexatious delay and expense, when his right had been already clearly established.—The difficulty might have occurred in case he had obtained his certificate of removal under the act of Congress of 12th Feb., 1793, from a justice of the peace or any magistrate. In either case the writ might be used for vexatious purposes.

The 6th section of the act of 3d March, 1847, prohibits the use of any jail or prison of this commonwealth for the detention of any person claimed as a fugitive from labor, and inflicts a penalty of five hundred dollars on any jailor or keeper of any prison, who shall offend against the provisions of this section, subjects him also to a removal from office, and renders him incapable of holding the office of a jailor or keeper of a prison for the period of his natural life.

The violation of this section would seem to be the unpardonable sin for the poor jailor. Its requirements are as insatiable as the grave.

The repeal of this section is all that is contained in the Senate bill, to which I have offered the amendment pending. The passage of the Senate bill would merely leave it discretionary with the sheriff, jailor or keeper of any prison to receive the fugitive or not as he might see proper, as there is no law requiring him to receive the fugitive, and the Senate bill merely removes the penalty for so doing. I therefore propose in my amendment to make it obligatory on the sheriffs, jailors and keepers of our prisons to receive fugitives from labor, the same as they are now required to receive and keep prisoners committed under the authority of the United States by the act of Assembly of 5th Dec., 1789, and its supplement passed on the 3d day of March, 1814. The repeal would then have some efficiency and force. As provided by the Senate bill, sheriffs, jailors and keepers of prisons who are abolitionists may refuse to receive fugitives from labor, and they could not be compelled to do their duty. The act of 1789 refers only to prisoners, meaning, evidently, those arrested on the charge of having committed some criminal offence, or persons arrested by some legal process issued by or under the authority of the United States. The supplement to that act, passed the 3d March, 1814, refers only to persons committed under the authority of the United States as hostages or prisoners of war, being received by sheriffs, jailors and prison keepers of this commonwealth. The case of fugitives from labor is therefore clearly unprovided for by existing laws. The sheriffs, jailors and keepers of prisons may receive fugitives from labor or they may not, as their own discretion dictates. In this respect the Senate bill is manifestly imperfect, as to the remedy it indicates by the bare repeal of the sixth section.

My amendment proposes the repeal also of the 7th section of the act of March 3d, 1847. This section repeals so much of the act of March 1st, 1780, as authorizes masters or owners of slaves to bring and retain such slaves within this commonwealth, for the period of six months, and as authorizes members of Congress, foreign ministers and consuls from bringing and keeping their slaves within our territory. This seventh section of the act of March 3d, 1847, is simply offensive, uncourteous and insulting in its character. It discards altogether the moderate views of those great men who were the fathers of the Abolition Society of Pennsylvania—the views of such men as Franklin, Pemberton, Rush, Wistar, Rawle and others—men who were cotemporaries of the men of the revolution, and who participated in that glorious achievement. These men understood and respected the position of the citizens of the southern slaveholding States, and were disposed to treat them with justice, moderation and candor. The abolitionists of that day never lost sight of their constitutional obligations, and their duty to their fellow citizens, and their opinions were deservedly respected. The great statute of 1780 embodies the principles of liberty and toleration; the statute of 1847 contains the germs of intolerance and despotism. The former was framed by wise men, men who saw the dawn of republican liberty, and whose stout hearts and strong arms reared the glorious fabric of our republican institutions. The latter was designed for purposes of faction and fanaticism, and right well has it served the design and object of its framers.

The 7th section also repeals so much of the act of the 1st March, 1780, as provides "that a slave shall not be admitted to bear witness against a freeman." Now this portion of the act of 1780 was merely declaratory of what was the common law, and is so at the present period. The repeal, therefore, of that portion of the act of 1780, merely throws us back upon the common law, and would not permit a slave now to be a witness against a freeman. The repealing statute does not enact that a slave may be a witness against a freeman, but merely repeals *so much of the act of* 1780 as prevents a slave giving testimony against any person whatsoever, which is merely repealing nothing at all, and is therefore perfectly nonsensical and farcial. The 8th section of Franklin's act, which related to the testimony of slaves, was merely declaratory of the common law, as the 11th section, relating to an owner of slaves who resided in any other State or country, claiming his slaves within this commonwealth, was declaratory of international law. Neither of these sections made the law, and their repeal therefore could not unmake it, as the mistaken wiseacres of the Pennsylvania legislature of 1847, imagined.

Mr. Speaker—The first object declared in the preamble to the constitution of the United States, as the motive for its adoption by the people is, "in order to form a more perfect union." How was this to be done, except by the different sections and interests of the country making mutual concessions? The system of domestic slavery existed at that time in most of the thirteen States; I believe in all, with the single exception of the State of Massachusetts. In Pennsylvania there had been an act passed 1st March, 1780, for its gradual abolition, but the system still existed. It was an institution for which the people of this country were not responsible, but it had been entailed upon them by the cupidity of others, and had grown with their growth and strengthened with their strength, until it had become entwined with every interest and fibre of the body politic. To abolish it at that time was utterly impracticable, and would have led to a mixture of races, or a strife between them for the mastery, which the philanthropist and patriot must ever deprecate. The question was to be met, therefore, and disposed of, or no union of the States could be formed. It was met in a spirit of conciliation, mutual forbearance and enlarged patriotism, by the great men of the revolution, in a manner worthy of our imitation.

In the third clause of the second section of the fourth article of the Constitution of the United States, it is provided 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."

Now, sir, this is a plain provision, and easily understood. It manifestly means that when a slave escapes from one State or territory into another, *he shall be delivered up by the authorities of the State or territory into which he has escaped*, on claim of the party to whom he owes service or labor.—He shall be delivered up—where? In the State or territory to which he escaped. He shall not be discharged from such service or labor in consequence of any law or regulation therein—wherein? Why, in the State or territory to which he has fled. Well, then, if he is not to be discharged by any law or regulation of the State or territory into which he has fled, by what authority is he, by the terms of the Constitution, to be delivered up?—Evidently by some law or regulation *therein*. He shall not be discharged in consequence of any law or regulation of such State or territory, *but shall be delivered up*. The two requirements, of not discharging, and delivering up, are in the same sentence, and manifestly refer to an exercise of power by the same authority—the authority having the law or regulation spoken of under its control. The provision would read just as well were it written, that he shall not be discharged from such service or labor, but shall be delivered up by some law or regulation of the State or territory to which he has escaped.

But it is pretended by some of the "higher law" gentry, that this clause of the constitution does not recognize slavery at all—that it speaks of persons held to service or labor, and that the word slave not being mentioned, we have no right to go beyond the strict letter of the instrument itself, and infer from something *dehors*, that slaves were intended by the phrase "persons held to service or labor."

The argument is this. It is contended that the word "held in the phrase "no person held to service or labor," in the constitution, is synonymous with the words "bound" or "obliged"—and that its *legal* meaning is to describe persons held by some legal contract, obligation, duty, or authority, which the law will enforce. Thus in a bond, a man acknowledges himself to be "*held* and firmly bound" to do certain things. That wherever, therefore, a person is described in the laws as being "held" to do anything—as to render "service or labor," for example—the legal meaning invariably is, that he is held by some *legal* contract or obligation, which the laws will enforce, either specifically or by compelling payment of damages for non-performance. That this is the meaning, it is contended is manifest from the additional words "under the laws thereof," referring to the States or territories from which the fugitive escapes. This being so, it is argued that a slave is not held by a legal contract or obligation which the laws will enforce. That there is no State in the Union in which the institution of slavery is established by positive law, and that the slave therefore is held only by brute force, and this being the only manner by which he is held to service or labor, it is not such a contract or legal obligation as the laws will recognize. It is stated that the *law* recognizes no obligation on the part of the slave to labor for or serve his master, and will not interfere to compel him—that it takes no more cognizance of the fact whether a slave labors or not, than it does of the fact whether an ox or horse labors. It is again insisted upon that this is especially the true construction of this clause of the constitution, for the reason that the word *slave* is not mentioned, but it is a *person* held to service or labor, and that such being the written letter of the constitution, we are not at liberty to go behind its written terms, and infer what is not contained on its face—to resort to something beyond the instrument itself, to history or tradition, to ascertain its true intent and meaning. That if such be the method of interpretation, there would be no use in having written constitutions, as there would be no safety in their guarantees, or certainty as to their intent.

I have thus given what I conceive a fair statement of the argument, which, while it professes to adhere strictly to the constitution, looks above the constitution and the laws, and takes for its guide and rule of action a "higher law" than the rules of conduct prescribed by this government, and subscribes to no law but that which enforces these narrow views of fanaticism which their supporters imagine to be the broad principles of philanthropy and universal brotherhood. I have been thus particular in order that those who entertain these views may not complain of injustice being done them, and that the force of their argument may be felt by this House.

I have no doubt myself that the safest rule of interpretation, and in fact the only just one, in reference to this clause of the constitution, is, to look to the nature and objects of the particular powers, duties and rights contained therein, as understood at its adoption, by its framers. We all know historically that the object of this clause was to secure to the citizens of the slaveholding States the complete right and title to the ownership of their slaves, as property, in every State of the Union into which they might escape from the State where they were held in servitude. 16 Peters, 610-11.

In the National Convention which framed the constitution, Mr. Butler and Mr. Pinckney, of South Carolina, moved to require "fugitive slaves and servants to be delivered up like criminals."

"Mr. Sherman, of Connecticut, saw no more propriety in the public seizing and surrendering a slave or servant, than a horse."—*Madison's papers*, 1477-8.

In consequence of this objection the language of the provision was changed to what we now find it, so as to accomplish the same thing without offending the northern delegates by the use of the term slave, which was offensive to them.

Before the constitution was adopted, and when it was being discussed in the State conventions, Mr. Pinckney said to the people of South Carolina, "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."

Judge Iredell, of North Carolina, said in the convention of that State, that the provision was intended to refer to slaves; but that "the northern delegates, owing to their particular scruples on the subject of slavery, did not choose the word slave to be mentioned."

Mr. Madison said the same thing in Virginia, and he knew as much, and perhaps more, than any other one man, of the proceedings of the convention which framed our constitution, as he was the great working man of that convention, and to whom we are indebted for faithful and accurate reports of its proceedings.

Besides it is a well known fact, that the constitution could never have been formed or adopted, had not the southern people had their rights secured, in reference to the absorbing subject of slavery; not only as to the reclamation of fugitives from labor, but their political rights also, in making the slave population a part of the basis of representation in the national councils. This double security was a *sine qua non* with them, when they consented to enter the Federal Union, as is universally understood and acknowledged. The history of the times and the vast interests at stake, which hung upon this single question at the formation of the government, utterly preclude any other interpretation being given the clause in question, than that which is universally conceded by all well wishers of our country, and its unimpaired nationality.

But even if a hard and rigid construction of the constitution, as contended for by the anti-slavery advocates, could be held to be the true one, are we of the north to be guilty of the monstrous fraud of denying our own solemn engagements as understood at its adoption? Are we to turn round and say—true, at our particular request the word *slave* was not mentioned in that instrument, but yet we will now deny the essential elements of our compact with our southern brethren? and thus defraud them of their rights under color of law, and rob them of their property? and that too by the very terms of the instrument adopted for their protection? I tell you, Mr. Speaker, there is a high court of chancery, the court of chancery in which the great seal is held by the people, that would cut right through such a fraud, and repudiate and disown its vile concoctors, and sever at once and forever this Gordian knot of duplicity and double dealing. This Peter Teasle and Lysander Spooner construction of the constitution, is contrary to all settled rules. The broad bald facts of history on this subject, stand out in bold relief and are the living expounders of the meaning of that instrument. "The fairest and most rational mode," says Blackstone, "to interpret the will of the legislator is, by exploring his intention at the time when the law was made, by signs, the most natural and proper; and these signs, are either the words, the context, the subject matter, the effects and consequences, or the spirit and reason of the law. "If the words happen to be dubious, we may establish their meaning from the context."—Some may consider the phrase "persons held to service or labor," in the clause referred to, dubious. Abolitionists and fanatics may say that it does not mean slaves, in the sense implied by the common acceptation of that term. And on this subject, Blackstone again says, "the most universal and effective way of discovering the true meaning of a law, where the words are dubious, is by considering the reason and spirit of it, *or the cause which moved the Legislature to enact it.*"

But sir, what is the act of Congress of 12th of February, 1793, passed in conformity with the clause referred to in the constitution of the United States, the provisions of which act are *repealed* by the all potent enactment of the Pennsylvania legislature of the 3d March, 1847. I read from Gordon's digest, page 801-2:

"Where any person held to labor in any of the United States, or in either of the territories on the north-west or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof, to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth under the laws of the state or territory, from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor, to the state or territory from which he or she fled."

This act expressly authorizes the person to whom the service or labor may be due or his agent or attorney to take the fugitive before any magistrate of a county, city, or town corporate, wherein said fugitive shall be arrested, and also authorizes such magistrate, and enjoins upon him as a duty, to give a certificate of removal to the owner of the slave, or to his agent or attorney, when the proof is sufficient to establish the fact of the fugitive owing such service or labor. Now this is an express power given by the highest legislative authority of the country, and is entitled to the obedience of every state in the confederacy, and to the obedience of the people and constituted authorities of every state.

But it is said that the Supreme Court of the United States, in the case of Prigg vs. the Commonwealth of Pennsylvania, decided, that all legislation by the states, auxiliary to the design of the act of Congress of 12th February, 1793, is unconstitutional and void. The case of Prigg never decided that, as will appear from a careful examination of the reasoning of the court, and that was not the point for adjudication before the court. It decided that our own act of assembly of 25th March, 1826, was unconstitutional in some of its provisions, in as much as while it professed to aid the master to recover his fugitive slave, it threw serious impediments in the way, and often prevented his so doing. The act of Congress was efficient enough, and binding upon justices of the peace or magistrates, without the stepping in of the legislature, and forbidding the justices of the peace from acting in the premises, and substituting the judges of the courts of common pleas, in their room and stead, to grant certificates of removal. The real point decided in the case of Prigg is concisely stated in the syllabus from which I read, 16 Peters, 540:

"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 withhold or controlling the incidents of a positive right."

The history of the case of Prigg is this: Edward Prigg, a citizen of the state of Maryland, was indicted for kidnapping, in the court of oyer and terminer of York county, in this state, 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 the statute of this state, passed on the 25th of March, 1826, to which I have already referred.—Margaret Morgan was a slave for life, under the laws of Maryland, of Margaret Ashmore, a citizen of that state. Edward Prigg was duly appointed and authorized as 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 arrested as a fugitive from labor, by a constable of Pennsylvania. She was brought before a justice of the peace of the county of York, who under the provisions of our Pennsylvania statute of 25th March, 1826, refused to take cognizance of the case. Prigg then carried her and her children into Maryland, and delivered them up to Margaret Ashmore. The real question, therefore, and the only one to be determined by the court, was, whether the state of Pennsylvania could violate her own solemn compact and agreement to deliver up a fugitive slave on the claim of his master, made in accordance with an act of Congress, and based upon the provision constitution of the U. S., relative to fugitives from labor, by enacting that such master should be deemed guilty of a felony, in case he took and carried away by force and violence from her territory, his fugitive slave—the first section of the act of 25th of March, 1826, making the taking and carrying away by force and violence any negro or mulatto from any parts of this Commonwealth, to any other place or places out of this Commonwealth, with the design of holding or disposing of such negro or mulatto as a slave, a felony.

Moreover, the 3d section of the act of 25th March, 1826, while it made it the duty of a judge, justice of the peace or alderman, to issue his warrant under his hand and seal, directed to the sheriff, or any constable of the proper city or county, on the application of any person or his agent or attorney under oath, claiming any fugitive slave, that warrant only empowered the sheriff or constable to take such fugitive before a judge of the proper county, who, to the exclusion of justices and aldermen was empowered to *grant the certificate of removal—which comes in* direct conflict with the 3d section of the act of Congress of 12th February, 1793, which expressly authorizes any judge of the circuit or district court of the United States, *or any magistrate of a county, city or town corporate*, upon proof to his satisfaction to give a certificate thereof to such claimant, his agent or attorney, which shall be a sufficient warrant for removing said fugitive.

And the 9th section of the act of 25th of March, 1826, enacts that no alderman or justice of the peace of this Commonwealth, shall have jurisdiction, or take cognisance of the case of any fugitive from labor from any of the United States or territories under a certain act of Congress, passed the 12th of February, 1793, 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 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 then imposes a penalty for the violation of this section, of the justice being deemed guilty of a misdemeanor, in office, and subjected to a fine of not less than five hundred dollars, and not exceeding one thousand dollars—as direct and unequivocal an act of nullification as can be found on the statute books of South Carolina herself.

Again, the 4th section of the act of 25th March, 1826, provides that no judge, justice of the peace, or alderman shall issue a warrant on the application of any agent or attorney as provided in the 3d 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 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 said claimants title to the service of such fugitive, and also the name, age and description of the person of such fugitive—while the act of Congress of 12th February, 1793, empowers the claimant or his agent or attorney to take such fugitive before any judge of the circuit or district court of the United States in the state, or before any magistrate of a county, city, or town corporate, without warrant, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, that *such fugitive does* owe service or labor, the certificate is thereupon granted; giving the same authority to the agent or attorney as to the claimant himself, and not requiring the agent or attorney to make out almost his entire case even before a warrant is issued at all, as was provided by the act of assembly of 25th March, 1826.

That act, in the sense decided by the supreme court of the United States in the case of Prigg, is of that class of state laws or regulations, which interrupt, limit, delay, or postpone the rights of the owner to the immediate command of the service or labor of his slave, and therefore operates to that extent, as a discharge of the slave therefrom.

Thus the act of assembly of 25th March, 1826, comes in conflict in several important particulars with the act of Congress of 12th February, 1793.—The act of Congress authorises the claimant to arrest the fugitive without a warrant. The act of assembly referred to, required one in express terms. The act of congress admits the oath of the owner or his agent in proof of his claim. The Pennsylvania law excluded both, and required the testimony of indifferent persons. The act of congress protects the claimant from unnecessary delay and expense. The Pennsylvania law authorized delay upon the suggestion of the fugitive, and burthened the claimant with additional costs. The act of congress imposes a penalty for obstructing or hindering the claimant in the prosecution and enforcement of his rights Our act gave him no redress.

The only point, therefore, decided by the supreme court in the case of Prigg, as is seen from this statement of the facts, was the unconstitutionality of the act of the Pennsylvania *legislature of 25th March*, 1826; and the balance of the *opinion of Judge Story*, as to whether *State magistrates* were bound to carry into effect the act of Congress of 12th February, 1793, or whether they may be prohibited from so doing by

(Concluded on Fourth page.)