

The Norton Case.

LETTERS OF GOVERNOR PATTISON AND CLEVELAND.

Below we give a full account of the celebrated Norton case together with the letters which have passed between Gov. Cleveland and Pattison, and the opinion of Judge Krebs of Clearfield. The case is of peculiar interest as it became an inter-State question, and one that has excited considerable comment among the legal fraternity. It will be of interest to our lawyers and readers generally we publish it in full as reported in the Harrisburg Patriot. Two of our Bellefonte Attorneys, J. L. Spangler, Esq. and Col. D. H. Hastings were Norton's Attorneys and conducted the case to a successful termination. And the opinion which entirely exhausted the question is by Judge Krebs of Clearfield county another son of old Centre. While we do not intend flattering our legal friends we congratulate them on their success. It may now be classed with the "causes celebres" of our State.

In a communication to Governor Pattison Judge Krebs of Clearfield county gives the following interesting history of the Norton case.

Patrick W. Norton became a naturalized citizen of the United States on or about the year 1864, in the state of New Jersey, and subsequent thereto, for a period of seven years, resided in and having his domicile in the city of New York, and again having his domicile in the county of Cattaraugus, in the state of New York until about the 1st of June, 1883. On or about the 1st of June 1883, he and James Walsh, a brother-in-law, came to the state of Pennsylvania and took a contract of grading a portion of the Beech Creek, Clearfield and Southwestern railroad, then in course of construction in the counties of Clinton and Centre, in said state, and subsequently took another contract for grading three miles of the same road from George Thompson & Co., who were contractors under General Magee, who had the general contract for the building of said railroad. These last three miles between the towns of Bigler and Woodland, in the county of Clearfield, Pennsylvania. On the 24th day of September, 1884, in company with Walsh, his associate in said contract, he met Henry A. Ellsworth and Henry H. Kelsey, who were members of the firm of Thompson & Co., at Bigler, and then received from Thompson & Co., the sum of \$6,361.01 in currency and a check for \$1,000 which they allege they wanted, in order to pay that amount to the firm of R. B. Winton & Co., with whom they had been dealing. On the same day Walsh and Norton left the country going in different directions, and without paying the amounts then due and owing to the laborers in their employ, which amount according to their own declaration exceeded six thousand dollars. On the day of October, 1884, information was made before a justice of the peace in and for the county of Clearfield, Pa., against said Walsh and Norton, charging them with the crimes of larceny, embezzlement and conspiracy to defraud their creditors. On the day of October, 1884, an application was made in behalf of the prosecution to Governor Pattison, of the state of Pennsylvania, for a requisition to be directed to the governor of the state of New York, for the extradition and return of Norton and Walsh as fugitives from justice to jurisdiction of the court of Clearfield county. This application was read and the requisition was refused. On the day of October, A. D. 1884, an information was made before a magistrate of the county of Cattaraugus, in the state of New York, upon which Norton was arrested, but he escaped from the officers and fled to St. Catharine, in the province of Canada, where he registered under the name of William Jones. On the day of October 1884, one Denis O'Connell telegraphed to Norton at St. Catharine in the name of Mrs. Norton that she was dangerously sick and asking him to come home at once. When he arrived at Buffalo, in the state of New York, he was arrested by O'Connell on an alleged warrant issued by a magistrate of the city of Olean, in the county of Cattaraugus, but was taken by O'Connell against his will and without his consent to the city of Erie, in the state of Pennsylvania, where he was delivered to an officer and by him taken before D. Connelly, Esq., a committing magistrate in and for the county of Clearfield, and in default of bail committed to the county jail. On the 21st day of November, 1884, a writ of habeas corpus was sued out and a hearing had before the judge of the court of common pleas of the county of Clearfield and after a hearing had in which it was overruled on the ground that a fugitive from justice cannot on his own demand be set free because he was arrested in an illegal manner and because the governor of New York did not demand his release. He

was remanded to the custody of the sheriff of the county in default of bail to answer to charge of conspiring to cheat and defraud his creditors. On the 8th day of December, 1884, the matter was laid before his excellency the governor of New York on the petition of Norton who on the ninth day of December 1884, addressed the following communication to his excellency the governor of Pennsylvania.

STATE OF NEW YORK, EXECUTIVE CHAMBER Dec. 9th, 1884.

His excellency Robert E. Pattison, governor of the state of Pennsylvania—Sir: A state of facts has been presented to me this day which is fully set out in the documents herewith submitted numbered 1 and 2, respectively. I send them to you because in a similar case reported in the 6th, Harrisburg, Pa. state report, Dow's case p 39 the court says: "Had the prisoners release been demanded by the executive of Michigan we would have been bound to set him at large and for the further reason, that the judge before whom the habeas corpus was instituted in behalf of Norton the prisoner who makes the enclosed petition to me seems to have placed his refusal to release him largely upon the ground that no demand has been made for such release by the executive of the state from which he was outrageously kidnapped, see p. 33 of document No. 2. In calling your attention to the paper herewith transmitted I desire to supplement them with the request based upon the legal opinions before referred to, that if consistent with your ideas of justice and executive power, you cause the release of the prisoner.

Yours very respectfully, GROVER CLEVELAND.

On the 22d day of December, 1884, after full argument before the governor of Pennsylvania and his legal advisers, the following communication to the president judge of the courts of Clearfield county:

EXECUTIVE DEPARTMENT, COMMONWEALTH OF PENNSYLVANIA, OFFICE OF THE GOVERNOR, HARRISBURG, D. C. 22, 1884. To the Hon. David L. Krebs, President Judge of the Forty-sixth Judicial District: Sir—A communication from his excellency Grover Cleveland, governor of the state of New York, bearing date of the 9th inst., has been received by me requesting the release of one Patrick W. Norton, a prisoner, now confined in the jail of the county of Clearfield, in this commonwealth. I submit herewith a copy of the same to you together with the papers which accompanied it disclosing the grounds upon which the request was based. There is no material dispute about the facts of the case. Patrick W. Norton, a citizen of the state of New York, temporarily sojourning in Canada, was decoyed into the state of New York by means of a false and forged telegram and there arrested on a warrant sued out in said state, which directed him to be taken before a magistrate in Cattaraugus county, in said state. He was not taken before any other magistrate upon that warrant but was carried forcibly and against his will into this commonwealth where another warrant sued out in this commonwealth was served upon him under which he is now detained in the county of Clearfield. These illegal proceedings were had with full knowledge on the part of the instigators and participants in the arrest; that they were illegal because prior thereto a requisition upon his excellency, the governor of the state of New York, for the arrest and delivery of Patrick W. Norton, had been applied for to me, and by me refused. No warrant had been granted by anybody to anybody to convey him from the state of New York into the Commonwealth of Pennsylvania, and Patrick W. Norton, who was the only person who could waive the forms of law for this purpose, not only refused to do so but protested against and vigorously resisted the attempt to convey him out of the state of New York.

His excellency, the governor of the state of New York, has justly characterized it as a case of outrageous kidnapping. There is no power vested in me as the governor of the commonwealth to order the discharge of this prisoner, and I do not apprehend that his excellency the Governor of the state of New York so thought. He has simply chosen the executive department of the commonwealth as the channel through which to communicate with the court of the district in which the prisoner is detained. In Davis case, 6th Harris, p. 39, Chief Justice Gibson said: "Had the prisoner's release been demanded by the executive of Michigan we would have been bound to set him at large," there asserting the authority of the judiciary to act in such a case as well as the fact that the demand of the executive would have been sufficient to cause the prisoner's discharge. At the hearing before you looking to the discharge of this prisoner had before the receipt by me of the communication from the governor of the state of New York, you doubtless having this case in mind, remarked: "There is no offer to show that the Governor of New York is here demanding the custody of one of his citizens, and in the absence of that we think we hold him." The governor of the state of New York now makes the request for the release of Patrick Norton. The power lies with you to right the wrong done to the state of New York in depriving one of its citizens of his liberty without due process of law. I do therefore most respectfully and earnestly request that you cause the release of the prisoner, Patrick W. Norton. Yours very respectfully, ROBERT E. PATTISON.

Upon receipt of this communication from the governor of Pennsylvania accompanied with a copy of that from the governor of New York addressed to the governor of Pennsylvania, it was ordered that a writ of habeas corpus should issue in the name of the Commonwealth ex-Relatio Norton versus R. N. Shaw, high sheriff, Clearfield county, Pa., requiring him to produce the body of the said Norton before the court on the 31st of December, 1884, in order that the two questions of fact involved in the

demand of the governor of New York for the release of Norton might be investigated, to wit: The citizenship and the illegal arrest or kidnapping, as it was denominated. At this hearing the proof established the facts upon these two questions as hereinbefore stated, and also that on the 9th day of December, 1884, the grand jury of the county had returned a bill of indictment against Norton for conspiring to cheat his creditors. Upon the return of this writ it was contended that the prisoner should be discharged, because his arrest was an indignity to the sovereignty of the state of New York, and that under the comity which ought to exist between sovereign states this wrong should be repaired by his discharge.

On the part of the prosecution it was contended that in the absence of legislation by the federal government, in which the right to demand Norton's release was given to the executive of the state of New York, the right to demand him did not exist. And that no comity between the states or independent sovereignties existed which required the release of one under indictment for a violation of the laws of the state or sovereignty by which he was held upon the demand of the chief executive of the state sovereignty from which he had been abducted. The questions involved in the determination of this case are new.

They are so important in their results as to require the best consideration that we can give them. It is with no desire to magnify the power of the courts of this district that we say that the power to release the prisoner, Patrick W. Norton, and set him at large is wholly vested therein. Under the constitution of Pennsylvania the judiciary are a co-ordinate branch of the government with the executive, and in the sphere of its duties independent of the executive.

Charged with the performance of specific duties relating to the administration of the law, and as affecting the lives, liberty and prosperity of the citizens of the commonwealth, it may not be interfered with by the executive department except by the use of the pardoning power vested in him, to relieve the person from the penalties imposed by the judgment and decrees of the courts.

And the power thus vested in the state courts, within their respective territorial limits, is independent of the judicial power of the courts of the Federal Government, except as to the determination of questions arising immediately under the laws and exercise of the authorities and officers of the United States. Robb vs. Connally 111 U. S. reports p. 639.

The question before us is not one of extradition under that part of article 4 section 2 of the constitution of the United States, which provides that "a person charged in any state with treason, felony or other crime, who shall flee from justice and be found in another state, etc.," for while it can not be doubted that the prisoner was a fugitive from justice, having fled from Pennsylvania to New York, it is not the governor of Pennsylvania that asks for his return, so that he may be tried for a violation of the law of Pennsylvania but it is the government of the asylum state that demands his release. The question is therefore one of comity between the state of New York and the state of Pennsylvania. Every sovereign state is independent of every other in the exercise of its judicial power, and one of the purposes of this judicial power is to punish all offenses against the municipal laws of the state by whomsoever committed within its territory. This independence and sovereignty of the states exists as truly as does the independence and sovereignty of the United States from that of a foreign state or sovereignty, subject only to the powers expressly conferred by the states upon the general government. It follows from this that there is no rightful authority or power on the part of the state to invade the territory of another state for any purpose whatsoever except it be given by the constitution of the United States, and the power to extradite fugitives from justice from one state to another is expressly given by the 4th article, section 2, constitution of the United States and the mode regulated by the act of congress of the 12th of February, 1793. But the facts in this case show that the prisoner was not brought within our jurisdiction in pursuance of the mode regulated by law. That the manner of his arrest and the means employed to bring him out of the state of New York and within the state of Pennsylvania constitutes the crime of kidnapping at common law will not be denied, and that it was in express violation of the statutes of New York punishing the crime of kidnapping—vide penal code R. S. of New York, section 211 will not be disputed. That it would be so held and construed by the courts of that state under the statute can not be doubted since the decision of the case of Hadden vs. The People. 25 N. Y., Reports, 373. If the

power to surrender the prisoner was vested in the executive of the state, and he refused to deliver him, no legal power exists anywhere to compel him to do so, even if he were a fugitive from justice. Commonwealth Kentucky vs. Dennison, 24 Howard (W. S. R.), 66. And the same we claim is true if we should refuse to release the prisoner upon the demand of the executive department of the state of New York. No power but that of force and war would compel his release. This, therefore brings us to the full importance of the question, Shall this prisoner, who stands indicted for a violation of the law within our jurisdiction, be set at large only from considerations of utility and mutual convenience of the state of New York and Pennsylvania—ex comitate ab reciprocum utilitem. We are not wholly without precedent, however. In Davis case, 6th Harris 39 Chief Justice Gibson, a greater judge than whom never lived, said: "Had the prisoner's release been demanded by the executive of Michigan we would have been bound to set him at large." It was not shown nor alleged in that case any law of Michigan had been violated. Indeed it may be a question whether the prisoner, Dow, was within the territorial jurisdiction of the state of Michigan when taken. But in this case the statutes of the state of New York have been violated aside from the invasion of her territory. Shall it be said then that a court sitting to administer and vindicate the law in this case shall close its eyes to the violation of the law by which the prisoner is brought within jurisdiction? That the end to be accomplished justifies the means employed cannot and ought not to become a maxim of legal jurisprudence. To deny this demand for the release of this prisoner would be to encourage the violation of that comity which does now and ought always to exist between adjoining states in this government. It would be in our judgment a precedent full of evil consequences to the citizen in his right to be secure in his liberty. When one violates the law and flees from justice, the constitution of the United States and the act of congress thereunder afford a complete remedy for his arrest and return. That occasionally the remedy may be too slow and the guilty escape cannot avail in this case and overcome what to us, upon careful consideration, seems a plain duty. And therefore it is now, this 2nd day of January, A. D. 1885, adjudged, ordered and decreed, that R. M. Shaw, high sheriff and keeper of the county jail, shall set at large and release from further detention Patrick W. Norton, now in custody.

DAVID L. KREBS, President Judge Forty sixth Judicial District.

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REGISTERS NOTICE.—The following accounts have been examined passed and remain filed of record in this office for the inspection of heirs and legatees. Creditors and all others in any wise interested and will be presented to the Orphan's Court of Centre county, on Wednesday the 25th day of January, A. D. 1885, for allowance and confirmation.

- 1st. The account of Samuel Granly, Administrator of &c. of Daniel Conner, late of Miles township, deceased.
2nd. The first and final account of John W. Smith, Administrator of &c. of James Mahaffey, late of Howard township, deceased.
3rd. The first and final account of Clement Pate, Administrator of &c. of S. C. T. of &c. of David Miller, late of Banner township, deceased.
4th. The account of Joseph W. Marshall, Executor of &c. of Ann Cathcart late of Banner township, deceased.
5th. Account of A. W. Ulrich, Executor of &c. of Samuel Grape, late of Penn township, deceased.
6th. The account of Peter Barefoot, Administrator of &c. of Susan Lee, late of Potter township, deceased.
7th. The first and final account of John F. Harris, Guardian of A. M. and Katharine Barr, minor children of S. L. Barr, late of Bellefonte Borough, deceased.
8th. The account of George Korman, Guardian of Blanche L. Korman, a minor child of Aaron Korman, deceased. As filed by D. W. Garbrick and S. M. Long, Executors of George Korman, deceased.
9th. The account of George Korman, Guardian of Julius Fraser, a minor child of Jonathan Fraser, deceased as filed by D. W. Garbrick and S. M. Long, Executors of George Korman, late of Gregg township, deceased.
10th. The account of George Korman, Guardian of Sarah E. Jamison, a minor child of Mary E. Jamison, deceased, as filed by D. W. Garbrick and S. M. Long, Executors of George Korman, deceased.
11th. The account of George Korman, Guardian of Alfred T. Korman, a minor child of Aaron Korman, late of Walker township, deceased, as filed by D. W. Garbrick and S. M. Long, Executors of George Korman, deceased.
12th. The account of M. L. Rishel, Administrator of &c. of Michael Schultz, late of Gregg township, deceased.
13th. The account of Jas. F. Weaver, Trustee, to sell the Real Estate of John Shope, late of Boggs township, deceased.
14th. The account of James A. Keller, Administrator of &c. of Andrew Keller, late of Potter township, deceased.
15th. The second and final account of Peter Hoy, and Benjamin Roush, Trustees to sell Real Estate in partition, of Jacob Hoy, late of Marion township, deceased.
16th. The second and final account of Peter Hoy and Benjamin Roush, Administrator of &c. of Jacob Hoy, late of Marion township, deceased.
17th. The account of Adam Hoy and C. Dale, Jr., Executors of &c. of John Rokey, late of Spring township, deceased.
18th. The account of Samuel M. McMurtrie, Administrator of &c. of Ann Eliza McMurtrie, late of Spring township, deceased.
19th. The account of Andrew Brockerhoff, Administrator de bonis non, &c. of Felix Muller, late of Bellefonte Borough, deceased.
20th. The third partial account of E. C. House and Adam Hoy, Administrators of the Hon. James T. Hale, late of Bellefonte Borough, deceased as filed by Adam Hoy.
21st. The second partial account of Jess P. Harris, Administrator of &c. of Samuel Harris late of Bellefonte Borough, deceased. JAMES A. McCLAIN, Register. Bellefonte Pa. Dec. 29, 1884.

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