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Dec. 1835.Jack
v.
Martin.

After advisement, the following opinions were delivered in this court :

By the CHANCELLOR. This cause has been argued in this court upon the assumption, that the decision which is now to be made, necessarily involves the question as to the constitutional right of congress to legislate upon the subject of fugitive slaves and apprentices—or, in the language of the constitution, persons held to service or labor in one state, under the laws thereof, escaping into another ; and the decision of the court below is put upon the ground that congress not only has the power to legislate upon the subject, but that their legislation must necessarily be exclusive in relation to this matter ; that the law of congress of February 1793 is valid and binding upon the states ; under which law any free citizen of this state may be seized as a slave or apprentice who has escaped from servitude, and transported to a distant part of the union, without any trial except a summary examination before a magistrate, who is not even clothed with power to compel the attendance of witnesses upon such investigation ; and upon the certificate of such magistrate that he is satisfied that such citizen owes service to the person claiming him under the laws of the state to which he is to be transported. If the decision of this cause turned upon these questions, I am not prepared to say that the congress of the United States had the power, under the constitution, to make the certificate of a state magistrate conclusive evidence of the right of the claimant, to remove a native born citizen of this state to a distant part of the union, so as to deprive him of the benefit of the writ of *habeas corpus* and the right of trial by jury in the state where he is found. In the case of *Martin*, before the circuit court of the United States for the southern district of New-York, to which we were referred on the argument, the fact appears to be assumed that there is no question as to the identity of the individual, whose services are claimed, and that he is in truth a fugitive from the state under whose laws it is alleged that he owes services or labor to the claimant. If these important facts are conceded or judicially established, with the additional fact that the fugitive

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was actually claimed, and held in servitude in the state from which he fled, whether rightfully or otherwise, previous to his flight, I admit there can be no reasonable objection in principle to the removal of the person whose services were thus claimed, back to the state from which he fled, as the most proper place for the trial and final decision of the question whether the claimant was legally entitled to his services, according to the laws of that state. But suppose, as is frequently the case, that the question to be tried relates merely to the identity of the person claimed as a fugitive slave or apprentice, he insisting that he is a free native born citizen of the state where he is found residing at the time the claim is made, and that he has never been in the state under whose laws his services are claimed—can it for a moment be supposed that the framers of the constitution intended to authorize the transportation of a person thus claimed to a distant part of the union, as a slave, upon a mere summary examination before an inferior state magistrate, who is clothed with no power to compel the attendance of witnesses to ascertain the truth of the allegations of the respective parties ? Whatever others may think upon this subject, I must still be permitted to doubt whether the patriots of the revolution who framed the constitution of the United States, and who had incorporated into the declaration of independence, as one of the justifiable causes of separation from our mother country, that the inhabitants of the colonies had been transported beyond seas for trial, could ever have intended to sanction such a principle as to one who was merely *claimed* as a fugitive from servitude in another state.

I am one of those who have been in the habit of believing, that the state legislatures had general powers to pass laws on all subjects, except those in which they were restricted by the constitution of the United States, or their own local constitutions, and that congress had no power to legislate on any subject, except so far as the power was delegated to it by the constitution of the United States. I have looked in vain among the powers delegated to congress by the constitution, for any general authority to that body to legislate on this subject. It certainly is not contained in any express grant of

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power, and it does not appear to be embraced in the general grant of incidental powers contained in the last clause of the constitution relative to the powers of congress. *Const. art. 1, § 8, sub. 17.* The law of the United States respecting fugitives from justice and fugitive slaves, is not a law to carry into effect any of the powers expressly granted to congress, "or any other power vested by the constitution in the government of the United States, or any department or officer thereof." It appears to be a law to regulate the exercise of the rights secured to the individual states, or the inhabitants thereof, by the second section of the fourth article of the constitution; which section, like the ninth section of the first article, merely imposes a restriction and a duty upon other states and individuals in relation to such rights, but vests no power in the federal government, or any department or officer thereof, except the *judicial power* of declaring and enforcing the rights secured by the constitution. The act of February, 1793, conferring ministerial powers upon the state magistrates, and regulating the exercise of the powers of the state executive, is certainly not a law to carry into effect the judicial power of the United States; which judicial power cannot be vested in state officers. If the provisions of the constitution, as to fugitive slaves and fugitives from justice, could not be carried into effect without the actual legislation of congress on the subject, perhaps a power of federal legislation might be implied from the constitution itself; but no such power can be inferred from the mere fact that it may be more convenient that congress should exercise the power, than that it should be exercised by the state legislatures. In these cases of fugitive slaves and fugitives from justice, it is not certain that any legislation whatever is necessary, or was contemplated by the framers of the constitution. The provision as to persons escaping from servitude in one state into another, appears by their journal to have been adopted by a unanimous vote of the convention. At that time the existence of involuntary servitude, or the relation of master and servant, was known to and recognized by the laws of every state in the union except Massachusetts, and the legal right of recaption by the master existed in all, as a part of the customary or common

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law of the whole confederacy. On the other hand, the common law writ of *homine replegiundo*; for the purpose of trying the right of the master to the services of the slave, was well known to the laws of the several states, and was in constant use for that purpose, except so far as it had been superseded by the more summary proceeding by *habeas corpus*, or by local legislation. The object of the framers of the constitution, therefore, was not to provide a new mode by which the master might be enabled to recover the services of his fugitive slave, but merely to restrain the exercise of a power, which the state legislatures respectively would otherwise have possessed, to deprive the master of such pre-existing right of recaption. Under this provision of the constitution, even without any legislation on the subject, the right of the master to reclaim the fugitive slave is fully secured, so as to give him a valid claim in damages against any one who interferes with the right. *Glen v. Hodges, 9 Johns. R. 67.* But even if legislation on this subject is actually necessary, in order to secure to the master the full enjoyment of the right of recaption guaranteed to him by the constitution, the state legislatures are perfectly competent to pass the necessary laws to carry this provision of the constitution into full effect. The members of the state legislatures, as well as other state officers, both executive and judicial, being bound by oath to support the constitution, it cannot be legally presumed that they will violate their duty in this respect. The constitution of the United States being the paramount law on this subject, the judicial tribunals of the respective states are bound by their oaths to protect the master's constitutional right of recaption, against any improper state legislation, and against the unauthorized acts of individuals, by which such right may be impaired; and the supreme court of the United States, as the tribunal of dernier resort on such a question, is possessed of ample powers to correct any erroneous decision which might be made in the state courts against the right of the master. Upon the fullest examination of the subject, therefore, I find it impossible to bring my mind to the conclusion that the framers of the constitution have authorized the congress of the United States to pass a law by which the certificate of a jus-

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tice of the peace of the state, shall be made conclusive evidence of the right of the claimant, to remove one who may be a free native born citizen of this state, to a distant part of the union as a slave; and thereby to deprive such person of the benefit of the writ of *habeas corpus*, as well as of his common law suit to try his right of citizenship in the state where the claim is made, and where he is residing at the time of such claim.

Independent, however, of any legislation on the subject, either by the individual states or by congress, if the person whose services are claimed is in fact a fugitive from servitude under the laws of another state, the constitutional provision is imperative, that he shall be delivered up to his master upon claim made; and any state officer or private citizen, who owes allegiance to the United States and has taken the usual oath to support the constitution thereof, cannot, without incurring the moral guilt of perjury, do any act to deprive the master of his right of recaption, where there is no real doubt that the person whose services are claimed is in fact the slave of the claimant. However much, therefore, we may deplore the existence of slavery in any part of the union, as a national as well as a local evil, yet, as the right of the master to reclaim his fugitive slave is secured to him by the federal constitution, no good citizen, whose liberty and property are protected by that constitution, will interfere to prevent this provision from being carried into full effect, according to its spirit and intent; and even where the forms of law are resorted to for the purpose of evading this constitutional provision, or to delay the remedy of the master in obtaining a return of his fugitive slave, it is undoubtedly the right and may become the duty of the court in which any proceedings for that purpose are instituted, to set them aside, if they are not commenced and carried on in good faith, and upon probable grounds for believing that the claim of the master to the services of the supposed slave is invalid.

The constitution of the United States having secured to the master the right of recaption, it is of course a good defence to the present suit, if it is admitted on the record that the plaintiff owed service or labor to the defendant in another state and

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had escaped from such servitude, without reference to the validity of the act of congress, or of any state legislature on the subject. It therefore becomes necessary to examine the pleadings in this cause, for the purpose of ascertaining whether such is the fact here. In the defendant's first avowry, she distinctly avers that Jack was her slave at New-Orleans, owing service to her under the laws of Louisiana, for and during his natural life, and that he escaped from her service there and fled into this state. This was sufficient, under the constitution, to entitle her to judgment for a return of such slave, unless he could deny the truth of these allegations, or show that he was subsequently manumitted, or legally discharged from service. The first answer which he attempts to give to this avowry is, that the defendant is a resident of the city of New-York; and his counsel contend that a citizen of this state cannot be the owner of a slave. The second plea is the same as the first, with the exception that the defendant is there alleged to be a citizen of New-York; and the third plea merely sets out the removal of the defendant from the state of Louisiana to New-York to reside, while she held and claimed the plaintiff as a slave, under the laws of Louisiana; by which, as the pleader alleges, she became a citizen of this state, and the plaintiff became a freeman. It will be seen that each of these pleas leaves uncontradicted the two material facts stated in the avowry, to wit, that the plaintiff owed service to the defendant under the laws of Louisiana for life, and that while he owed such service, he escaped from such servitude and fled into this state. Independent of the constitutional provision, the state legislature perhaps would have had the power of manumitting any slave belonging to a citizen of this state, in case such slave should flee into the state from another part of the union where slavery was allowed; but the restriction in the constitution, as to the power of the several states to discharge fugitives from servitude, is sufficiently broad to cover such a case; and if a citizen of New-York is authorized to hold slaves, under the laws of another state where they are so held in servitude, the legislature of this state cannot pass a law which will deprive even one of our

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own citizens of this right to reclaim the fugitive slave who may come to this state without the consent of his master, and to remove him back to the state from which he fled. It stands undenied therefore upon this record, under the first avowry, that the defendant was entitled to the services of the plaintiff, under the guaranty of the federal constitution, and that the judgment of the supreme court was right upon the whole record.

Under the second and third avowries, the fact of slavery was directly put in issue; but inasmuch as each avowry formed a separate and independent defence to the action, the defendant would be entitled to judgment if the first avowry was sustained, although the verdict should be against her upon the issues joined under the other avowries. It would therefore have been a useless expense to have gone down to trial upon these issues, when in no possible event could there have been a judgment in favor of the plaintiff for any thing more than the mere costs of those issues.

The conclusion at which I have arrived in this case, therefore, is, that the judgment of the supreme court should be affirmed, with costs; and that the damages which the defendant in error has sustained by the delay and vexation caused by this writ of error should be awarded to her.

By Senator BISHOP. The decision of this cause involves a principle of some moment, not only as to the rights of the slave-holding states in reclaiming their fugitive slaves, but also as to the permanency of the government under which we live. Divested of all the drapery which is thrown around it by the pleadings and technical objections which have been urged, the question is presented whether the law of the congress of the United States in reference to the apprehension of fugitive slaves, passed at the second session under the constitution, is authorized by any power conferred upon congress by the constitution, and consequently whether the law of this state authorizing a writ *de homine replegiando*, which provides for the arrest of runaway slaves in a manner somewhat different from the law of congress, can be sustained by the state authorities.

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The doctrine at this day is too well settled to admit of cavil or doubt, not only by judicial decisions but by the voice of the American people, that the several states have reserved to themselves all the rights and immunities of independent sovereignties, except such powers as are conferred upon congress by the explicit language of the constitution, or are clearly and unequivocally to be implied from it. In arriving at a conclusion upon these points it becomes necessary to inquire what powers have been conferred upon congress by the constitution; and if upon such inquiry it be found that the law of congress in reference to fugitive slaves is recognized by the express or implied powers of the constitution, whether the state law must yield to the law of congress. The fourth article and second section of the constitution of the United States declares, that "no person held to service in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." The first article, section eighth, and last clause of the constitution, authorizes congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof; not only giving to congress certain powers there enumerated, but giving authority to legislate upon an infinite variety of subjects which the framers of the constitution evidently anticipated would arise under it when the practical operation of the government was more fully and completely developed. The doctrine laid down in the *Federalist* is, that the constitution, in defining the powers of congress, evidently specified those which were matters of immediate and general interest, leaving congress to regulate other matters by law as the exigency of the case might require. Upon the authority of the foregoing clauses of the constitution, congress passed a law at its second session, substantially authorizing the owner of any fugitive slave, his agent or attorney, to seize such slave and take him before a judge of the circuit or district court of the United States within the state, or before any magistrate in the state where such