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

EDWARD PRIGG, PLAINTIFF IN ERROR,
v.
THE COMMONWEALTH OF PENNSYLVANIA, DEFENDANT IN ERROR.

Supreme Court of United States.

558*558 The case was argued, for the plaintiff in error, by Mr. Meredith and Mr. Nelson, under authority to appear in the case for the state of Maryland; and by Mr. Johnson, the attorney-general of Pennsylvania, and Mr. Hambly, for the Commonwealth of Pennsylvania.

608*608 Mr. Justice STORY delivered the opinion of the Court.

This is a writ of error to the Supreme Court of Pennsylvania, brought under the 25th section of the judiciary act of 1789, ch. 20, for the purpose of revising the judgment of that Court, in a case involving the construction of the Constitution and laws of the **UnitedStates**.

The facts are briefly these: The plaintiff in error was indicted in the Court of Oyer and Terminer for York county, for having, with force and violence, taken and carried away from that county to the state of Maryland, a certain negro woman, named Margaret Morgan, with a design and intention of selling and disposing of, and keeping her as a slave or servant for life, contrary to a statute of Pennsylvania, passed on the 26th of March, 1826. That statute in the first section, in substance, provides, that if any person or persons shall from and after the passing of the act, by force and violence take and carry away, or cause to be taken and carried away, and shall by fraud or false pretence, seduce, or cause to be seduced, or shall attempt to take, carry away, or seduce any negro or mulatto from any part of that commonwealth, with a design and intention of selling and disposing of, or causing to be sold, or of keeping and detaining, or of causing to be kept and detained, such negro or mulatto as a slave or servant for life, or for any term whatsoever; every such person or persons, his or their aiders or abettors, shall, on conviction thereof, be deemed guilty of a felony, and shall forfeit and pay a sum not less than five hundred, nor more than one thousand dollars; and moreover, shall be sentenced to undergo a servitude for any term or terms of years, not less than seven years nor exceeding twenty-one years; and shall be confined and kept to hard labour, &c. There are many other provisions in the statute which is recited at large in the record, but to which it is in our view unnecessary to advert upon the present occasion.

The plaintiff in error pleaded not guilty to the indictment; and at the trial the jury found a special verdict, which, in substance, **states**, that the negro woman, Margaret Morgan, was a slave for life, and held to labour and service under and according to the 609*609 laws of Maryland, to a certain Margaret Ashmore a citizen of Maryland; that the slave escaped and fled from Maryland into Pennsylvania in 1832; that the plaintiff in error, being legally constituted the agent and attorney of the said Margaret Ashmore, in 1837, caused the said negro woman to be taken and apprehended as a fugitive from labour by a state constable, under a warrant from a Pennsylvania magistrate; that the said negro woman was thereupon brought before the said magistrate, who refused to take further cognisance of the case; and thereupon the plaintiff in error did remove, take, and carry away the said negro woman and her children out of Pennsylvania into Maryland, and did deliver the said negro woman and her children into the custody and possession of the said Margaret Ashmore. The special verdict further finds, that one of the children was born in Pennsylvania, more than a year after the said negro woman had fled and escaped from Maryland.

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

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

1. The question arising in the case, as to the constitutionality of the statute of Pennsylvania, has been most elaborately argued at 610*610 the bar. The counsel for the plaintiff in error have contended that the statute of Pennsylvania is unconstitutional; first, because Congress has the exclusive power of legislation upon the subject-matter under the Constitution of the **United States**, and under the act of the 12th of February, 1793, ch. 51, (7), which was passed in pursuance thereof; secondly, that if this power is not exclusive in Congress, still the concurrent power of the state legislatures is suspended by the actual exercise of the power by Congress; and thirdly, that if not suspended, still the statute of Pennsylvania, in all its provisions applicable to this case, is in direct collision with the act of Congress, and therefore is unconstitutional and void. The counsel for Pennsylvania maintain the negative of all these points.

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

Before, however, we proceed to the points more immediately before us, it may be well — in order to clear the case of difficulty — to say, that in the exposition of this part of the Constitution, we shall limit ourselves to those considerations which appropriately and exclusively belong to it, without laying down any rules of interpretation of a more general nature. It will, indeed, probably, be found, when we look to the character of the Constitution itself, the objects which it seeks to attain, the powers which it confers, the duties which it enjoins, and the rights which it secures, as well as the known historical fact that many of its provisions were matters of compromise of opposing interests and opinions; that no uniform rule of interpretation can be applied to it which may not allow, even if it does not positively demand, many modifications in its actual application to particular clauses. And, perhaps, the safest rule of interpretation after all will be found to be to look to the nature and objects of the particular powers, duties, and rights, with all the lights and aids of contemporary history; and to give to the words of each just such operation 611*611 and force, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed.

There are two clauses in the Constitution upon the subject of fugitives, which stand in juxtaposition with each other, and have been thought mutually to illustrate each other. They are both contained in the second section of the fourth article, and are in the following words: "A person charged in any

state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

"No person held to service or labour 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 labour; but shall be delivered up, on claim of the party to whom such service or labour may be due."

The last clause is that, the true interpretation whereof is directly in judgment before us. Historically, it is well known, that the object of this clause was to secure to the citizens of the slaveholding **states** the complete right and title of ownership in their slaves, as property, in every state in the Union into which they might escape from the state where they were held in servitude. The full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding **states**; and, indeed, was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted that it constituted a fundamental article, without the adoption of which the Union could not have been formed. Its true design was to guard against the doctrines and principles prevalent in the non-slaveholding **states**, by preventing them from intermeddling with, or obstructing, or abolishing the rights of the owners of slaves.

By the general law of nations, no nation is bound to recognise the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favour of the subjects of other nations where slavery is recognised. If it does it, it is as a matter of comity, and not as a matter of international right. The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territoriallaws. This was fully recognised in Somerset's612*612 Case, Lofft's Rep. 1; S.C., 11 State Trials by Harg. 340; S.C., 20 Howell's State Trials, 79; which was decided before the American revolution. It is manifest from this consideration, that if the Constitution had not contained this clause, every non-slaveholding state in the Union would have been at liberty to have declared free all runaway slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters; a course which would have created the most bitter animosities, and engendered perpetual strife between the different **states**. The clause was, therefore, of the last importance to the safety and security of the southern **states**; and could not have been surrendered by them without endangering their whole property in slaves. The clause was accordingly adopted into the Constitution by the unanimous consent of the framers of it; a proof at once of its intrinsic and practical necessity.

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

The clause manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law or regulation can in any way qualify, regulate, control, or restrain. The slave is not to be discharged from service or labour, in consequence of any state law or regulation. Now, certainly, without indulging in any nicety of criticism upon words, it may fairly and reasonably be said, that any state law or state regulation, which interrupts, limits, delays, or postpones the right of the owner to the immediate possession of the slave, and the immediate

command of his service and labour, operates, pro tanto, a discharge of the slave therefrom. The question can never be, how much the slave is discharged from; but whether he is 613*613 discharged from any, by the natural or necessary operation of state laws or state regulations. The question is not one of quantity or degree, but of withholding, or controlling the incidents of a positive and absolute right.

We have said that the clause contains a positive and unqualified recognition of the right of the owner in the slave, unaffected by any state law or 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 estopped from so doing, when the clause puts the right to the service or labour 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 labour. 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 slaveholding **states**. Indeed, this is no more than a mere affirmance of the principles of the common law applicable to this very subject. Mr. Justice Blackstone (3 Bl. Comm. 4) lays it down as unquestionable doctrine. "Recaption or reprisal (says he) is another species of remedy by the mere act of the party injured. This happens when 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, and the husband, parent, or master may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace." Upon this ground we have not the slightest hesitation in holding, that, under and in virtue of the Constitution, the owner of a slave is clothed with entire authority, in every state in the Union, to seize and recapture his slave, whenever he can do it without any breach of the peace, or any illegal violence. In this sense, and to this extent this clause of the Constitution may properly be said to execute itself; and to require no aid from legislation, state or national.

But the clause of the Constitution does not stop here; nor indeed, consistently with its professed objects, could it do so. Many 614*614 cases must arise in which, if the remedy of the owner were confined to the mere right of seizure and recaption, he would be utterly without any adequate redress. He may not be able to lay his hands upon the slave. He may not be able to enforce his rights against persons who either secrete or conceal, or withhold the slave. He may be restricted by local legislation as to the mode of proofs of his ownership; as to the Courts in which he shall sue, and as to the actions which he may bring; or the process he may use to compel the delivery of the slave. Nay, the local legislation may be utterly inadequate to furnish the appropriate redress, by authorizing no process in rem, or no specific mode of repossessing the slave, leaving the owner, at best, not that right which the Constitution designed to secure — a specific delivery and repossession of the slave, but a mere remedy in damages; and that perhaps against persons utterly insolvent or worthless. The state legislation may be entirely silent on the whole subject, and its ordinary remedial process framed with different views and objects; and this may be innocently as well as designedly done, since every state is perfectly competent, and has the exclusive right to prescribe the remedies in its own judicial tribunals, to limit the time as well as the mode of redress, and to deny jurisdiction over cases, which its own policy and its own institutions either prohibit or discountenance.

If, therefore, the clause of the Constitution had stopped at the mere recognition of the right, without providing or contemplating any means by which it might be established and enforced in cases where it did not execute itself, it is plain that it would have, in a great variety of cases, a delusive and empty annunciation. If it did not contemplate any action either through state or national legislation, as auxiliaries to its more perfect enforcement in the form of remedy, or of protection, then, as there would be no duty on either to aid the right, it would be left to the mere comity of the **states** to act as

they should please; and would depend for its security upon the changing course of public opinion, the mutations of public policy, and the general adaptations of remedies for purposes strictly according to the lex fori.

And this leads us to the consideration of the other part of the clause, which implies at once a guaranty and duty. It says, "But he (the slave) shall be delivered up on claim of the party to 615*615 whom such service or labour may be due." Now, we think it exceedingly difficult, if not impracticable, to read this language and not to feel that it contemplated some farther remedial redress than that which might be administered at the hands of the owner himself. A claim is to be made. What is a claim? It is, in a just juridical sense, a demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. A more limited, but at the same time an equally expressive definition was given by Lord Dyer as cited in Stowell v. Zouch, Plowden, 359; and it is equally applicable to the present case: that "a claim is a challenge by a man of the propriety or ownership of a thing, which he has not in possession, but which is wrongfully detained from him." The slave is to be delivered up on the claim. By whom to be delivered up? In what mode to be delivered up? How, if a refusal takes place, is the right of delivery to be enforced? Upon what proofs? What shall be the evidence of a rightful recaption or delivery? When and under what circumstances shall the possession of the owner, after it is obtained, be conclusive of his right, so as to preclude any further inquiry or examination into it by local tribunals or otherwise, while the slave, in possession of the owner, is in transitu to the state from which he fled?

These, and many other questions, will readily occur upon the slightest attention to the clause; and it is obvious that they can receive but one satisfactory answer. They require the aid of legislation to protect the right, to enforce the delivery, and to secure the subsequent possession of the slave. If, indeed, the Constitution guarantees the right, and if it requires the delivery upon the claim of the owner, (as cannot well be doubted,) the natural inference certainly is, that the national government is clothed with the appropriate authority and functions to enforce it. The fundamental principle applicable to all cases of this sort, would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. The clause is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. The **states** cannot, therefore, be compelled to enforce them; and 616*616 it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the **states** are bound to provide means to carry into effect the duties of the national government, nowhere delegated or instrusted to them by the Constitution. On the contrary, the natural, if not the necessary conclusion is, that the national government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, judicial, or executive, as the case may require, to carry into effect all the rights and duties imposed upon it by the Constitution. The remark of Mr. Madison, in the Federalist, (No. 43,) would seem in such cases to apply with peculiar force. "A right (says he) implies a remedy; and where else would the remedy be deposited, than where it is deposited by the Constitution?" meaning, as the context shows, in the government of the **United States**.

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

and extent in which it shall be applied, and how, and under what circumstances the proceedings shall afford a complete protection and guaranty to the right.

Congress has taken this very view of the power and duty of the national government. As early as the year 1791, the attention of Congress was drawn to it, (as we shall hereafter more fully see,) in consequence of some practical difficulties arising under the other clause, respecting fugitives from justice escaping into other **states**. The result of their deliberations, was the passage of the act of the 12th of February, 1793, ch. 51, (7,) which, after having, in the first and second sections, provided for the case of fugitives from justice by a demand to be made of the delivery through the executive authority of the state where they are found. 617*617 proceeds, in the third section, to provide, that when a person held to labour or service in any of the **United States**, shall escape into any other of the **states** or territories, 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 take him or her before any judge of the Circuit or District Courts of the **UnitedStates**, residing or being within the state, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made; and upon proof to the satisfaction of such judge or magistrate, either by oral evidence or affidavit, &c., that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or 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. The fourth section provides a penalty against any person who shall knowingly and willingly obstruct or hinder such claimant, his agent, or attorney, in so seizing or arresting such fugitive from labour, or rescue such fugitive from the claimant, or his agent, or attorney when so arrested, or who shall harbour or conceal such fugitive after notice that he is such; and it also saves to the person claiming such labour or service, his right of action for or on account of such injuries.

In a general sense, this act may be truly said to cover the whole ground of the Constitution, both as to fugitives from justice, and fugitive slaves; that is, it covers both the subjects, in its enactments; not because it exhausts the remedies which may be applied by Congress to enforce the rights, if the provisions of the act shall in practice be found not to attain the object of the Constitution; but because it points out fully all the modes of attaining those objects, which Congress, in their discretion, have as yet deemed expedient or proper to meet the exigencies of the Constitution. If this be so, then it would seem, upon just principles of construction, that the legislation of Congress, if constitutional, must supersede all state legislation upon the same subject; and by necessary implication prohibit it. For if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot 618*618 be that the state legislatures have a right to interfere; and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any farther legislation to act upon the subject-matter. Its silence as to what it does not do, is as expressive of what its intention is as the direct provisions made by it. This doctrine was fully recognised by this Court, in the case of Houston v. Moore, 5 Wheat. Rep. 1, 21, 22; where it was expressly held, that where Congress have exercised a power over a particular subject given them by the Constitution, it is not competent for state legislation to add to the provisions of Congress upon that subject; for that the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed.

But it has been argued, that the act of Congress is unconstitutional, because it does not fall within the scope of any of the enumerated powers of legislation confided to that body; and therefore it is

void. Stripped of its artificial and technical structure, the argument comes to this, that although rights are exclusively secured by, or duties are exclusively imposed upon the national government, yet, unless the power to enforce these rights, or to execute these duties can be found among the express powers of legislation enumerated in the Constitution, they remain without any means of giving them effect by any act of Congress; and they must operate solely proprio vigore, however defective may be their operation; nay, even although, in a practical sense, they may become a nullity from the want of a proper remedy to enforce them, or to provide against their violation. If this be the true interpretation of the Constitution, it must, in a great measure, fail to attain many of its avowed and positive objects as a security of rights, and a recognition of duties. Such a limited construction of the Constitution has never yet been adopted as correct, either in theory or practice. No one has ever supposed that Congress could, constitutionally, by its legislation, exercise powers, or enact laws beyond the powers delegated to it by the Constitution; but it has, on various occasions, exercised powers which were necessary and proper as means to carry into effect rights expressly 619*619 given, and duties expressly enjoined thereby. The end being required, it has been deemed a just and necessary implication, that the means to accomplish it are given also; or, in other words, that the power flows as a necessary means to accomplish the end.

Thus, for example, although the Constitution has declared that representatives shall be apportioned among the **states** according to their respective federal numbers; and, for this purpose, it has expressly authorized Congress, by law, to provide for an enumeration of the population every ten years; yet the power to apportion representatives after this enumeration is made, is nowhere found among the express powers given to Congress, but it has always been acted upon as irresistibly flowing from the duty positively enjoined by the Constitution. Treaties made between the **UnitedStates** and foreign powers, often contain special provisions, which do not execute themselves, but require the interposition of Congress to carry them into effect, and Congress has constantly, in such cases, legislated on the subject; yet, although the power is given to the executive, with the consent of the senate, to make treaties, the power is nowhere in positive terms conferred upon Congress to make laws to carry the stipulations of treaties into effect. It has been supposed to result from the duty of the national government to fulfil all the obligations of treaties. The senators and representatives in Congress are, in all cases, except treason, felony, and breach of the peace, exempted from arrest during their attendance at the sessions thereof, and in going to and returning from the same. May not Congress enforce this right by authorizing a writ of habeas corpus, to free them from an illegal arrest in violation of this clause of the Constitution? If it may not, then the specific remedy to enforce it must exclusively depend upon the local legislation of the **states**; and may be granted or refused according to their own varying policy, or pleasure. The Constitution also declares that the privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require it. No express power is given to Congress to secure this invaluable right in the non-enumerated cases, or to suspend the writ in cases of rebellion or invasion. And yet it would be difficult to say, since this great writ of liberty is usually provided for by the ordinary functions of legislation, and can be effectually 620*620 provided for only in this way, that it ought not to be deemed by necessary implication within the scope of the legislative power of Congress.

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

The very act of 1793, now under consideration, affords the most conclusive proof that Congress has acted upon a very different rule of interpretation, and has supposed that the right as well as the duty of legislation on the subject of fugitives from justice, and fugitive slaves was within the scope of the

constitutional authority conferred on the national legislature. In respect to fugitives from justice, the Constitution, although it expressly provides that the demand shall be made by the executive authority of the state from which the fugitive has fled, is silent as to the party upon whom the demand is to be made, and as to the mode in which it shall be made. This very silence occasioned embarrasments in enforcing the right and duty at an early period after the adoption of the Constitution; and produced a hesitation on the part of the executive authority of Virginia to deliver up a fugitive from justice, upon the demand of the executive of Pennsylvania, in the year 1791; and as we historically know from the message of President Washington and the public documents of that period, it was the immediate cause of the passing of the act of 1793, which designated the person (the state executive) upon whom the demand should be made, and the mode and proofs upon and in which it should be made. From that time down to the present hour, not a doubt has been breathed upon the constitutionality of this part of the act; and every executive in the Union has constantly acted upon and admitted its validity. Yet the right and the duty are dependent, as to their mode of execution, solely on the act of Congress; and but for that, they would remain a nominal right and passive duty; the execution of which being 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 621*621 act is founded in a just construction of the Constitution; independent of the vast influence which it ought to have as a contemporaneous exposition of the provisions, by those who were its immediate framers, or intimately connected with its adoption.

The same uniformity of acquiescence in the validity of the act of 1793, upon the other part of the subject-matter, that of fugitive slaves, has prevailed throughout the whole Union until a comparatively recent period. Nay; being from its nature and character more readily susceptible of being brought into controversy, in Courts of justice, than the former, and of enlisting in opposition to it the feelings, and it may be the prejudices of some portions of the non-slaveholding **states**; it has naturally been brought under adjudication in several **states** in the Union, and particularly in Massachusetts, New York, and Pennsylvania, and on all these occasions its validity has been affirmed. The cases cited at the bar, of Wright v. Deacon, 5 Serg. and Rawle, 62; Glen v. Hodges, 9 Johns. Rep. 67; Jack v. Martin, 12 Wend. Rep. 311; S.C., 12 Wend. Rep. 507; and Com. v. Griffin, 2 Pick. Rep. 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 recognised as a binding and valid law; and as imposing a constitutional duty. Under such circumstances, if the question were one of doubtful construction, such long acquiescence in it, such contemporaneous expositions of it, and such extensive and uniform recognition of its validity, would in our judgment entitle the question to be considered at rest; unless indeed the interpretation of the Constitution is to be delivered over to interminable doubt throughout the whole progress of legislation, and of national operations. Congress, the executive, and the judiciary have, upon various occasions, acted upon this as a sound and reasonable doctrine. Especially did this Court in the cases of Stuart v. Laird, 1 Cranch Rep. 299; and Martin v. Hunter, 1 Wheat. Rep. 304; and in Cohen v. The Commonwealth of Virginia, 6 Wheat. Rep. 264; rely upon contemporaneous expositions of the Constitution, and long acquiescence in it, with great confidence, in the discussion of questions of a highly interesting and important nature.

But we do not wish to rest our present opinion upon the ground 622*622 either of contemporaneous exposition, or long acquiescence, or even practical action; neither do we mean to admit the question to be of a doubtful nature, and therefore as properly calling for the aid of such considerations. On the contrary, our judgment would be the same if the question were entirely new, and the act of Congress were of recent enactment. We hold the act to be clearly constitutional in all its leading provisions, and, indeed, with the exception of that part which confers authority upon state magistrates, to be free from reasonable doubt and difficulty upon the grounds already stated. As to the authority so

conferred upon state magistrates, while a difference of opinion has existed, and may exist still on the point, in different **states**, whether state magistrates are bound to act under it; none is entertained by this Court that state magistrates may, if they choose, exercise that authority, unless prohibited by state legislation.

The remaining question is, whether the power of legislation upon this subject is exclusive in the national government, or concurrent in the **states**, until it is exercised by Congress. In our opinion it is exclusive; and we shall now proceed briefly to state our reasons for that opinion. The doctrine stated by this Court, in Sturgis v. Crowninshield, 4 Wheat. Rep. 122, 193, contains the true, although not the sole rule or consideration, which is applicable to this particular subject. "Wherever," said Mr. Chief Justice Marshall, in delivering the opinion of the Court, "the terms in which a power is granted to Congress, or the nature of the power require that it should be exercised exclusively by Congress, the subject is as completely taken from the state legislatures, as if they had been forbidden to act." The nature of the power, and the true objects to be attained by it, are then as important to be weighed, in considering the question of its exclusiveness, as the words in which it is granted.

In the first place, it is material to state, (what has been already incidentally hinted at,) that the right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever state of the Union they may be found, and of course the corresponding power in Congress to use the appropriate means to enforce the right and duty, derive their whole validity and obligation exclusively from the Constitution of the **United States**; and are there, for the first time, recognised and established in that peculiar character. 623*623Before the adoption of the Constitution, no state had any power whatsoever over the subject, except within its own territorial limits, and could not bind the sovereignty or the legislation of other **states**. Whenever the right was acknowledged or the duty enforced in any state, it was as a matter of comity and favour, and not as a matter of strict moral, political, or international obligation or duty. Under the Constitution it is recognised as an absolute, positive, right and duty, pervading the whole Union with an equal and supreme force, uncontrolled and uncontrollable by state sovereignty or state legislation. It is, therefore, in a just sense a new and positive right, independent of comity, confined to no territorial limits, and bounded by no state institutions or policy. The natural inference deducible from this consideration certainly is, in the absence of any positive delegation of power to the state legislatures, that it belongs to the legislative department of the national government, to which it owes its origin and establishment. It would be a strange anomaly, and forced construction, to suppose that the national government meant to rely for the due fulfilment of its own proper duties and the rights which it intended to secure, upon state legislation; and not upon that of the Union. A fortiori, it would be more objectionable to suppose that a power, which was to be the same throughout the Union, should be confided to state sovereignty, which could not rightfully act beyond its own territorial limits.

In the next place, the nature of the provision and the objects to be attained by it, require that it should be controlled by one and the same will, and act uniformly by the same system of regulations throughout the Union. If, then, the **states** have a right, in the absence of legislation by Congress, to act upon the subject, each state is at liberty to prescribe just such regulations as suit its own policy, local convenience, and local feelings. The legislation of one state may not only be different from, but utterly repugnant to and incompatible with that of another. The time, and mode, and limitation of the remedy; the proofs of the title, and all other incidents applicable thereto, may be prescribed in one state, which are rejected or disclaimed in another. One state may require the owner to sue in one mode, another in a different mode. One state may make a statute of limitations as to the remedy, in its own tribunals, short and summary; another624*624 may prolong the period, and yet restrict the proofs; nay, some **states** may utterly refuse to act upon the subject at all; and others may refuse to open its Courts to any remedies in rem, because they would interfere with their own domestic policy, institutions, or habits. The right, therefore, would never, in a practical sense be the same in all

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

It is scarcely conceivable that the slaveholding **states** would have been satisfied with leaving to the legislation of the non-slaveholding **states**, a power of regulation, in the absence of that of Congress, which would or might practically amount to a power to destroy the rights of the owner. If the argument, therefore, of a concurrent power in the**states** to act upon the subject-matter in the absence of legislation by Congress, be well founded; then, if Congress had never acted at all; or if the act of Congress should be repealed without providing a substitute, there would be a resulting authority in each of the **states** to regulate the whole subject at its pleasure; and to dole out its own remedial justice, or withhold it at its pleasure and according to its own views of policy and expediency Surety such a state of things never could have been intended, under such a solemn guarantee of right and duty. On the other hand, construe the right of legislation as exclusive in Congress, and every evil, and every danger vanishes. The right and the duty are then co-extensive and uniform in remedy and operation throughout the whole Union. The owner has the same security, and the same remedial justice, and the same exemption from state regulation and control, through however many **states** he may pass with his fugitive slave in his possession, in transitu, to his own domicile. But, upon the other supposition, the moment he passes the state line, he becomes amenable to the laws of another sovereignty, whose regulations may greatly embarrass or delay the exercise of his rights; and even be repugnant to those of the state where he first arrested the fugitive. Consequences like these show that 625*625 the nature and objects of the provision imperiously require, that, to make it effectual, it should be construed to be exclusive of state authority. We adopt the language of this Court in Sturgis v. Crowninshield, 4 Wheat. Rep. 193, and say, that "it has never been supposed that the concurrent power of legislation extended to every possible case in which its exercise by the **states** has not been expressly prohibited. The confusion of such a practice would be endless." And we know no case in which the confusion and public inconvenience and mischiefs thereof, could be more completely exemplified than the present.

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

Upon these grounds, we are of opinion that the act of Pennsylvania upon which this indictment is founded, is unconstitutional 626*626 and void. It purports to punish as a public offence against that state, the very act of seizing and removing a slave by his master, which the Constitution of the **United States** was designed to justify and uphold. The special verdict finds this fact, and the State Courts have rendered judgment against the plaintiff in error upon that verdict. That judgment must, therefore, be reversed, and the cause remanded to the Supreme Court of Pennsylvania; with directions to carry into effect the judgment of this Court rendered upon the special verdict in favour of the plaintiff in error.

Mr. Chief Justice TANEY.

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

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

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

627*627 The act of February 12th, 1793, is a constitutional exercise of this power; and every state law which requires the master, against his consent, to go before any state tribunal or officer, before he can take possession of his property; or which authorizes a state officer to interfere with him, when he is peaceably removing it from the state, is unconstitutional and void.

But, as I understand the opinion of the Court, it goes further, and decides that the power to provide a remedy for this right is vested exclusively in Congress; and that all laws upon the subject passed by a state, since the adoption of the Constitution of the **UnitedStates**, are null and void; even although they were intended, in good faith, to protect the owner in the exercise of his rights of property, and do not conflict in any degree with the act of Congress.

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

The opinion of the Court maintains that the power over this subject is so exclusively vested in Congress, that no state, since the adoption of the Constitution, can pass any law in relation to it. In other words, according to the opinion just delivered, the state authorities are prohibited from interfering for the purpose of protecting the right of the master and aiding him in the recovery of his property. I think the **states** are not prohibited; and that, on the contrary, it is enjoined upon them as a duty to protect and support the owner when he is endeavouring to obtain possession of his property found within their respective territories.

The language used in the Constitution does not, in my judgment, justify the construction given to it by the Court. It contains no words prohibiting the several **states** from passing laws to enforce this right. They are in express terms forbidden to make any regulation that shall impair it. But there the prohibition stops. And according to the settled rules of construction for all written instruments, the prohibition being confined to laws injurious628*628 to the right, the power to pass laws to support and enforce it, is necessarily implied. And the words of the article which direct that the fugitive "shall be delivered up," seem evidently designed to impose it as a duty upon the people of the several **states** to pass laws to carry into execution, in good faith, the compact into which they thus solemnly entered with each other. The Constitution of the **United States**, and every article and clause in it, is a part of the law of every state in the Union; and is the paramount law. The right of the master, therefore, to seize his fugitive slave, is the law of each state; and no state has the power to abrogate or alter it. And why may not a state protect a right of property, acknowledged by its own paramount law? Besides, the laws of the different**states**, in all other cases, constantly protect the citizens of other **states** in their rights of property, when it is found within their respective territories; and no one doubts their power to do so. And in the absence of any express prohibition, I perceive no reason for establishing, by implication, a different rule in this instance; where, by the national compact, this right of property is recognised as an existing right in every state of the Union.

I do not speak of slaves whom their masters voluntarily take into a non-slaveholding state. That case is not before us. I speak of the case provided for in the Constitution; that is to say, the case of a fugitive who has escaped from the service of his owner, and who has taken refuge and is found in another state.

Moreover, the clause of the Constitution of which we are speaking, does not purport to be a distribution of the rights of sovereignty by which certain enumerated powers of government and legislation are exclusively confided to the **United States**. It does not deal with that subject. It provides merely for the rights of individual citizens of different**states**, and places them under the protection of the general government; in order more effectually to guard them from invasion by the **states**. There are other clauses in the Constitution in which other individual rights are provided for and secured in like manner; and it never has been suggested that the **states** could not uphold and maintain them, because they were guarantied by the Constitution of the **United States**. On the contrary, it has always been held to be the duty 629*629 of the **states** to enforce them; and the action of the general government has never been deemed necessary except to resist and prevent their violation.

Thus, for example, the Constitution provides that no state shall pass any law impairing the obligation of contracts. This, like the right in question, is an individual right, placed under the protection of the general government. And in order to secure it, Congress have passed a law authorizing a writ of error to the Supreme Court, whenever the right thus secured to the individual is drawn in question, and denied to him in a State Court. And all state laws impairing this right are admitted to be void. Yet no one has ever doubted that a state may pass laws to enforce the obligation of a contract, and may

give to the individual the full benefit of the right so guarantied to him by the Constitution, without waiting for legislation on the part of Congress.

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

Again. The Constitution of the **United States** declares that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several **states**. And although these privileges and immunities, for greater safety, are placed under the guardianship of the general government; still the **states** may by their laws and in their tribunals protect and enforce them. They have not only the power, but it is a duty enjoined upon them by this provision in the Constitution.

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

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

The course pursued by the general government after the adoption of the Constitution, confirms my opinion as to its true construction.

No law was passed by Congress to give a remedy for this right, 630*630 until nearly four years after the Constitution went into operation. Yet, during that period of time, the master was undoubtedly entitled to take possession of his property wherever he might find it; and the protection of this right was left altogether to the state authorities. In attempting to exercise it, he was continually liable to be resisted by superior force; or the fugitive might be harboured in the house of some one who would refuse to deliver him. And if a state could not authorize its officers, upon the master's application, to come to his aid, the guaranty contained in the Constitution was of very little practical value. It is true he might have sued for damages. But as he would, most commonly, be a stranger in the place where the fugitive was found, he might not be able to learn even the names of the wrongdoers; and if he succeeded in discovering them, they might prove to be unable to pay damages. At all events, he would be compelled to encounter the costs and expenses of a suit, prosecuted at a distance from his own home; and to sacrifice perhaps the value of his property in endeavouring to obtain compensation.

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

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

procure from the judge his certificate of ownership, in order to obtain the protection in removing his property which this act of Congress professes to give.

Now, in many of the **states** there is but one district judge, and 631*631 there are only nine**states** which have judges of the Supreme Court residing within them. The fugitive will frequently be found by his owner in a place very distant from the residence of either of these judges; and would certainly be removed beyond his reach, before a warrant could be procured from the judge to arrest him, even if the act of Congress authorized such a warrant. But it does not authorize the judge to issue a warrant to arrest the fugitive; but evidently relied on the state authorities to protect the owner in making the seizure. And it is only when the fugitive is arrested and brought before the judge that he is directed to take the proof, and give the certificate of ownership. It is only necessary to state the provisions of this law in order to show how ineffectual and delusive is the remedy provided by Congress, if state authority is forbidden to come to its aid.

But it is manifest from the face of the law, that an effectual remedy was intended to be given by the act of 1793. It never designed to compel the master to encounter the hazard and expense of taking the fugitive in all cases, to the distant residence of one of the judges of the Courts of the **United States**; for it authorized him, also, to go before any magistrate of the county, city, or town corporate wherein the seizure should be made. And Congress evidently supposed that it had provided a tribunal at the place of the arrest, capable of furnishing the master with the evidence of ownership to protect him more effectually from unlawful interruption. So far from regarding the state authorities as prohibited from interfering in cases of this description, the Congress of that day must have counted upon their cordial co-operation. They legislated with express reference to state support. And it will be remembered, that when this law was passed, the government of the **United States** was administered by the men who had but recently taken a leading part in the formation of the Constitution. And the reliance obviously placed upon state authority for the purpose of executing this law, proves that the construction now given to the Constitution by the Court had not entered into their minds. Certainly, it is not the construction which it received in the **states** most interested in its faithful execution. Maryland, for example, which is substantially one of the parties to this case, has continually passed laws, ever since the adoption of the Constitution of the**United States**, for the arrest 632*632 of fugitive slaves from other **states** as well as her own. Her officers are by law required to arrest them when found within her territory; and her magistrates are required to commit them to the public prison, in order to keep them safely until the master has an opportunity of reclaiming them. And if the owner is not known, measures are directed to be taken by advertisement to apprize him of the arrest; and if known, personal notice to be given. And as fugitives from the more southern**states**, when endeavouring to escape into Canada, very frequently pass through her territory, these laws have been almost daily in the course of execution in some part of the state. But if the **states** are forbidden to legislate on this subject, and the power is exclusively in Congress, then these state laws are unconstitutional and void; and the fugitive can only be arrested, according to the provisions of the act of Congress. By that law the power to seize is given to no one but the owner, his agent, or attorney. And if the officers of the state are not justified in citing under the state laws, and cannot arrest the fugitive, and detain him in prison without having first received an authority from the owner; the territory of the state must soon become an open pathway for the fugitives escaping from other **states**. For they are often in the act of passing through it by the time that the owner first discovers that they have absconded; and in almost every instance, they would be beyond its borders (if they were allowed to pass through without interruption) before the master would be able to learn the road they had taken.

I am aware that my brethren of the majority do not contemplate these consequences; and do not suppose that the opinion they have given will lead to them. And it seems to be supposed that laws nearly similar to those I have mentioned, might be passed by the state in the exercise of her powers

over her internal police, and by virtue of her right to remove from her territory disorderly and evil-disposed persons, or those who, from the nature of her institutions, are dangerous to her peace and tranquillity. But it would be difficult perhaps to bring all the laws I have mentioned within the legitimate scope of the internal powers of police. The fugitive is not always arrested in order to prevent a dangerous or evil-disposed person from remaining in her territory. He is himself most commonly anxious to escape 633*633 from it; and it often happens that he is seized near the borders of the state when he is endeavouring to leave it, and is brought back and detained until he can be delivered to his owner. He may sometimes be found travelling peaceably along the public highway on his road to another state, in company with and under the protection of a white man who is abetting his escape. And it could hardly be maintained that the arrest and confinement of the fugitive in the public prison, under such circumstances, until he could be delivered to his owner, was necessary for the internal peace of the state; and therefore a justifiable exercise of its powers of police.

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

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

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

Mr. Justice THOMPSON.

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

634*634 The provision in the Constitution upon which the present question arises is as follows: "No person held to service or labour 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 labour, but shall be delivered up on claim of the party to whom such service or labour may be due." Art. 4. sec. 2. We know, historically, that this provision was the result of a compromise between the slaveholding and non-slaveholding **states**; and it is the indispensable duty of all to carry it faithfully into execution according to its real object and intention.

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

The right is secured by the Constitution, and requires no law to fortify or strengthen it. It affirms, in the most unequivocal manner, the right of the master to the service of his slave, according to the

laws of the state under which he is so held. And it prohibits the**states** from discharging the slave from such service by any law or regulation therein.

The second branch of the provision, in my judgment, requires legislative regulations pointing out the mode and manner in which the right is to be asserted. It contemplates the delivery of the person of the slave to the owner; and does not leave the owner to his ordinary remedy at law, to recover damages on a refusal to deliver up the property of the owner. Legislative provision, in this respect, is essential for the purpose of preserving peace and good order in the community. Such cases, in some parts of our country, are calculated to excite feelings which, if not restrained by law, might lead to riots and breaches of the peace. This legislation, I think, belongs more appropriately to Congress than to the **states**, for the purpose of having the regulation uniform throughout the**United States**, as the transportation of the slave may be through several **states**; but there is nothing in the subject-matter that renders state legislation unfit. It is no objection to the right of the **states** to pass laws on the subject, that there is no power anywhere given to compel them to do it. Neither is there to compel Congress to pass any law 635*635on the subject. The legislation must be voluntary in both; and governed by a sense of duty. But I cannot concur in that part of the opinion of the Court, which asserts that the power of legislation by Congress is exclusive; and that no state can pass any law to carry into effect the constitutional provision on this subject; although Congress had passed no law in relation to it. Congress, by the act of 1793, has legislated on the subject; and any state law in conflict with that, would be void, according to the provisions of the Constitution, which declares, that the laws of the **United States**, which shall be made in pursuance of the Constitution, shall be the supreme law of the land, any thing in the laws of any state to the contrary notwithstanding. This provision meets the case of a conflict between congressional and state legislation; and implies that such cases may exist, growing out of the concurrent powers of the two governments. The provision in the Constitution under consideration, is one under which such conflicting legislation may arise; and harmony is produced by making the state law yield to that of the **UnitedStates**. But to assert that the **states** cannot legislate on the subject at all, in the absence of all legislation by Congress, is, in my judgment, not warranted by any fair and reasonable construction of the provision. There is certainly nothing in the terms used in this article, or in the nature of the power to surrender the slave, that makes legislation by Congress exclusive. And if, as seems to be admitted, legislation is necessary to carry into effect the object of the Constitution, what becomes of the right where there is no law on the subject? Should Congress repeal the law of 1793, and pass no other law on the subject, I can entertain no doubt that state legislation, for the purpose of restoring the slave to his master, and faithfully to carry into execution the provision of the Constitution, would be valid. I can see nothing in the provision itself, or discover any principle of sound public policy, upon which such a law would be declared unconstitutional and void. The Constitution protects the master in the right to the possession and service of his slave, and of course makes void all state legislation impairing that right; but does not make void state legislation in affirmance of the right. I forbear enlarging upon this question, but have barely stated the general grounds upon which my opinion rests; and principally to guard against the conclusion, that, 636*636 by my silence, I assent to the doctrine that all legislation on this subject is vested exclusively in Congress; and that all state legislation, in the absence of any law of Congress, is unconstitutional and void.

Mr. Justice BALDWIN,

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

Mr. Justice WAYNE.

I concur altogether in the opinion of the Court, as it has been given by my brother Story.

In that opinion it is decided:

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

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

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

637*637 4. That the power of legislation by Congress upon the provision is exclusive; and that no state can pass any law as a remedy upon the subject, whether Congress had or had not legislated upon it.

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

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

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

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

There is no difference, then, among the judges as to the reversal of the judgment; none in respect to the origin and object of the provision, or the obligation to exercise it. But differences do exist as to the mode of execution. Three of the judges have expressed the opinion, that the **states** may legislate upon the provision, in aid of the object it was intended to secure; and that 638*638 such legislation is constitutional, when it does not conflict with the remedy which Congress may enact.

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

The provision is, that "No person held to service or labour 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 labour, but shall be delivered up on claim of the party to whom such service or labour is due."

The clause contains four substantive declarations; or two conditions, a prohibition, and a direction.

First, the fugitive must owe service or labour under the law of the state from which he has escaped; second, he must have fled from it. The prohibition is, that he cannot be discharged from service, in consequence of any law or regulation of the state in which he may be; and the direction is affirmative of an obligation upon the **states**, and declarative of a right in the party to whom the service or labour of a fugitive is due.

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

Let it be remembered, that the conventioners who formed the Constitution, were the representatives of equal sovereignties. That they were assembled to form a more perfect union than then existed between the **states** under the confederacy. That they co-operated to the same end; but that they were divided into two parties, having antagonist interests in respect to slavery.

One of these parties, consisting of several **states**, required as a condition, upon which any constitution should be presented to the **states** for ratification, a full and perfect security for their slaves as property, when they fled into any of the **states** of the Union. The fact is not more plainly stated by me than it was put in the convention. The representatives from the non-slaveholding **states** assented to the condition. The provision under review was proposed and adopted by the unanimous vote of the convention. It, with an allowance of a certain portion of slaves with 639*639 the whites, for representative population in Congress, and the importation of slaves from abroad, for a number of years; were the great obstacles in the way of forming a constitution. Each of them was equally insisted upon by the representatives from the slaveholding **states**; and without all of them being provided for, it was well understood, that the convention would have been dissolved, without a constitution being formed. I mention the facts as they were. They cannot be denied. I have nothing to do, judicially, with what a part of the world may think of the attitude of the different parties upon this interesting topic. I am satisfied with what was done; and revere the men and their motives for insisting, politically, upon what was done. When the three points relating to slaves had been accomplished, every impediment in the way of forming a constitution was removed. The agreement concerning them was called, in the convention, a compromise. The provision in respect to fugitives from service or labour, was called a guarantee of a right of property in fugitive slaves, wherever they might be found in the Union. The Constitution was presented to the **states** for adoption, with the understanding that the provisions in it relating to slaves were a compromise and

guarantee; and with such an understanding in every state, it was adopted by all of them. Not a guarantee merely in the professional acceptation of the word, but a great national engagement, in which the **states**surrendered a sovereign right, making it a part of that instrument, which was intended to make them one nation, within the sphere of its action. The provision, then, must be interpreted by those rules of construction assented to by all civilized nations, as obligatory in ascertaining the rights growing out of these agreements. We shall see, directly, how these rules bear upon the question of the power of legislation upon this subject being exclusively in Congress; and why the **states** are excluded from legislating upon it.

The prohibition upon the **states** to discharge fugitive slaves is absolute.

The provision, however, does not contain, in detail, the manner of asserting the right it was meant to secure. Nor is there in it any expressed power of legislation; nor any expressed prohibition of state legislation. But it does provide, that delivery of a fugitive shall be made on the claim of the owner — that the fugitive 640*640 slave owing service and labour in the state from which he fled, and escaping therefrom, shall be decisive of the owner's right to a delivery. It does not, however, provide the mode of proving that service and labour is due in a contested case, nor for any such evidence of the right, when it has been established, as will insure to an owner the unmolested transportation of the fugitive, through other **states**, to the state from which he fled. But the right to convey is the necessary consequence of a right to delivery. The latter would be good for nothing without the former. Proof of ownership gives both, if it gives either or any thing; and yet the right might be in the larger number of instances unavailing, if it were not certified by some official document, that the right had been established. A certificate from an officer authorized to inquire into the facts, is the easiest way to secure the right to its contemplated intent. It was foreseen that claims would be made, which would be contested. Some tribunal was necessary to decide them, and to authenticate the fact that a claim had been established. Without such authentication, the contest might be renewed in other tribunals of the state in which the fact had been established; and in those of the other **states** through which the fugitive might be carried on his way to the state from which he fled. Such a certificate too, being required, protects persons who are not fugitives from being seized and transported. It has the effect of securing the benefit of a lawful claim; and of preventing the accomplishment of one that is false. Such a certificate, to give a right to transport a fugitive slave through another state, a state cannot give. Its operation would be confined to its own boundaries; and would be useless to assert the right in another sovereignty. This analysis of the provision is given to show that legislation was contemplated to carry it fully into effect, in many of the cases that might occur; and to prevent its abuse when attempts might be made to apply it to those who were not fugitives. And it brings me to the point I have asserted, that Congress has the exclusive right to legislate upon the provision.

Those who contend that the **states** may legislate in aid of the object of the provision, admit that Congress can legislate to the full extent to carry it into execution. There is, then, no necessity for the **states** to legislate. This is a good reason why they should not641*641 legislate; and that it was intended that they should not do so. For legislation by Congress makes the mode of asserting the right uniform throughout the Union; and legislation by the **states** would be as various as the separate legislative will and policy of the different **states** might choose to make it. Certainly such an interest as the Constitution was intended to secure, we may well think the framers of the Constitution intended to provide for by a uniform law. I admit, however, that such considerations do not necessarily exclude the right of the **states** to legislate. The argument in favour of the right, is, that the **states** are not in express terms prohibited from legislating, and that the exclusion is not necessarily implied. I further admit, if it be not necessarily implied, that the right exists. Such is the rule, in respect to the right of legislation by the **states**, in all cases under the Constitution when the question of a right to legislate is merely such.

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

It is admitted, that the provision raises what is properly termed a perfect obligation upon all of the **states** to abstain from doing any thing which may interfere with the rights secured. Will this be so, if any part of what may be necessary to discharge the obligation is reserved by each state, to be done as each may think proper? The obligation is common to all of them, to the same extent. Its object is to secure the property of some of the **states**, and the individual rights of their citizens in that property. Shall, then, each state be permitted to legislate in its own way, according to its own judgment, and their separate notions, in what manner the obligation shall be discharged to those **states** to which it is due? To permit some of the **states** to say to the others, how the property included in the provision was to be secured by legislation, without the assent of the latter, would certainly be, to destroy the equality and force of the guarantee, and the equality of the **states** by which it was made. That was 642*642 not anticipated by the representatives of the slaveholding **states** in the convention, nor could it have been intended by the framers of the Constitution.

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

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

Are there no rules of interpretation, founded upon reason and nature, to settle this question, and to secure the rights given by the provision, better than the discretion of the parties to the obligation? Has not experience shown that those rules must be applied to conventions between nations, in order that justice may be done? All civilized nations have consented to be bound by them; and they are a part of the laws of nations. Is not one of those rules, the maxim that neither one or the other of the interested or contracting powers has a right to interpret his act or treaty at his pleasure? Such is the rule in respect to the treaties and conventions of nations foreign to each other. It applies with equal necessity and force to **states united** in one general government. Especially to **states** making a provision in respect to property peculiar to some of them, which has become so interwoven with their institutions and their representation in the general government of all of them, that the right to such property must be maintained and guarded, in order to preserve their separate existence, and to keep up their constitutional representation in Congress. Such cannot be the case, unless there is uniformity in the law for asserting the right to fugitive slaves; and if the **states** can legislate, as each of them may think it should be done, a remedy, by which the right of property in fugitive slaves is to be ascertained and finally concluded. Nor does it matter, that the 643*643 rule to which I have adverted as being exclusive of the right of the **states** to legislate upon the provision, does not appear in it. It is exactly to such cases that the rule applies, and it must be so applied, unless the contrary has been expressly provided. The mode of its application is as authoritative as the rule. The rule, too, applies to the provision without any conflict with the other rule that the **states** may legislate

in all cases, when they are not expressly or impliedly prohibited by the Constitution. The latter rule is in no way trenched upon by excluding the **states** from legislating in this case. This provision is the only one in the Constitution in which a security for a particular kind of property is provided; provided, too, expressly against the interference by the **states** in their sovereign character. The surrender of a sovereign right carries with it all its incidents. It differs from yielding a participation to another government, in a sovereign right. In the latter, both may have jurisdiction. The state yielding the right, retaining jurisdiction to the extent of doing nothing repugnant to the exercise of the right by the government to which it has been yielded.

But it is said, all that is contended for, is, that the **states** may legislate to aid the object, and that such legislation will be constitutional if it does not conflict with the remedies which Congress may enact. This is a cautious way of asserting the right in the **states**, and it seems to impose a limitation which makes it unobjectionable. But the reply to it is, that the right to legislate a remedy, implies so much indefinite power over the subject, and such protracted continuance, as to the mode of finally determining whether a fugitive owes service and labour, that the requirements of the remedy, without being actually in conflict with the provision or the enactments of Congress might be oppressive to those most interested in the provision, by interposing delays and expenses more costly than the value of the fugitive sought to be reclaimed. Ordinarily, and when rightly understood, it is true that the abuse of a thing is no argument against its correctness or its use; but that suggestion can only be correctly made in cases in support of a right or power abstractly and positively right, and which has been abused under the pretence of using it; or where the proper use has been mistaken. In matters of government, however, a power liable to be abused is always a good reason 644*644 for withholding it. It is the reason why the powers of the **United States**, under the Constitution, are so cautiously given — why the express prohibitions upon the **states** not to legislate in certain cases were expressed — why the limitation upon the former, that the powers not granted are reserved to the **states**, as it is expressed in the amendments to the Constitution. But in truth, any additional legislation in this case by a state, acting as a remedy, in aid of the remedy given by the Constitution and by Congress, would be, in practice, in conflict with the latter, if it be a process differing from it; though it might make the mode of recovering a fugitive easier than the former, and much more so, when it made it more difficult. The right to legislate a remedy implies the ability to do either; and it is because it does so, and may be the latter, that I deny all right in the **states** to legislate upon this subject; unless it be to aid, by mere ministerial acts, the protection of an owner's right to a fugitive slave — the prevention of all interference with it by the officers of a state, or its citizens, or an authority to its magistrates to execute the law of Congress — and such legislation over fugitives as may be strictly of a police character.

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

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

645*645 The subject has usually been argued as if the rights of individuals only were intended to be secured, and as if the legislation by the **states** would only act upon such rights.

The framers of the Constitution did not act upon such narrow grounds. They were engaged in forming a government for all of the **states**; by concessions of sovereign rights from all, without impairing the actual sovereignty of any one, except within the sphere of what was conceded. One great object was, that all kinds of property, as well that which was common in all of the **states**, as that which was peculiar to any of them, should be protected in all of the **states**, as well from any interference with it by the**United States**, as by the **states**. Experience had shown that under the confederacy, the reclamation of fugitive slaves was embarrassed and uncertain, and that they were yielded to by the **states** only from comity. It was intended that it should be no longer so. The policy of the different **states** some of them contiguous, had already become marked and decided upon the subject of slavery. There was no doubt it would become more so. It was foreseen, unless the delivery of fugitive slaves was made a part of the Constitution, and that the right of the **states** to discharge them from service was taken away, that some of the **states** would become the refuge of runaways; and, of course, that in proportion to the facility and certainty of any state being a refuge, so would the right of individuals, and the institutions of the slaveholding **states**, be impaired. The latter were bound, when forming a general government with the other **states**, under which there was to be a community of rights and privileges for all citizens in the several **states**, to protect that property of their citizens which was essential to the preservation of their state constitutions. If this had not been done, all of the property of the citizens would have been protected in every state, except that which was the most valuable in a number of them. In such a case, the **states** would have become members of the Union upon unequal terms. Besides, the property of an individual is not the less his, because it is in another state than that in which he lives. It continues to be his, and forms a part of the wealth of his state. The provision, then, in respect to fugitive slaves, only comprehended within the general rule a species of property not within it before. By doing so, the right of individuals, and that of the 646*646 **states** in which slavery was continued, were preserved. It remained in the **states** as a part of that wealth, from which contributions were to be raised by taxes laid with the consent of the owners to meet the wants of the state as a body politic. If this be so, upon what principle shall the **states** act by their legislation upon property, which is national as well as individual; and direct the mode when it is within their jurisdiction, without the consent of the owners, and without the fault of the **states** where the owners reside, how the right of property should be ascertained and determined. The case of a fugitive slave is not like that of a contest for other property, to be determined between two claimants by the remedy given by the tribunals of the state where the property may be. It is not a controversy between two persons claiming the right to a thing, but the assertion by one person of a right of property in another, to be determined upon principles peculiar to such relation. If the provision had not been introduced into the Constitution, the **states** might have adjudged the right in the way it pleased; but having surrendered the right to discharge, they are not now to be allowed to assume a right to legislate, to try the obligation of a fugitive to servitude, in any other way than in conformity to the principles peculiar to the relation of master and slave. Their legislation, then, in the way of remedy, would bear upon state as well as individual rights; and I am sure, when the Constitution was formed, the **states**never intended to give any such right to each other. If it has such an effect, I think I may rightly conclude that legislation in the case before us is forbidden to the **states**.

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

The provision contemplates, besides the right of seizure by the owner, that a claim may be made, when a seizure has not been effected, or afterwards, if his right shall be contested. That the claim

shall be good, upon the showing by the claimant that the person charged as a fugitive owes service or labour, under the laws of the state from which he fled.

The prohibition in the provision, is, that he shall not be "discharged, in consequence of any law or regulation of a state" where he may be. If then, in a controverted case, a person 647*647 charged as a fugitive, shall be discharged under a remedy legislated by a state to try the fact of his owing service or labour, is he not discharged under a law or regulation of a state? It is no answer to this question, to say, that the discharge was not made in virtue of any law discharging the fugitive from servitude; and that the discharge occurred only from the mode of trial to ascertain if he owed service and labour. For that is to assume, that the provision only prevented discharges from being made by the**states**, by enactment or law, declaring that fugitive slaves might be discharged. The provision will not admit of such an interpretation. Nor is it any answer to say, that state regulations to ascertain whether a fugitive owes service or labour, are distinguishable from such as directly or by construction would lead to his discharge; for if a discharge be made under one or the other — whether the discharge be right or wrong, it is a discharge under the regulation of a state.

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

If this be not so, the **states** may regulate the mode of an owner's seizing a fugitive slave, prohibiting it from being done except by warrant, and by an officer; thus denying to an owner the right to use a casual opportunity to repossess himself of this kind of property, which there is a right to do, in respect to all other kinds of property, where not in the possession of some one else. It may regulate the quantity and quality of the proof to establish the right of an owner to a fugitive, and give compensatory and punitory damages against a claimant, if his right be not established according to such proof. It might limit the trial to particular times and Courts; give appeals from one to other Courts; and protract the ultimate decision, until the value in controversy 648*648 was exceeded by the cost of establishing it. Such rights of legislation in the **states** to try a right of property in a fugitive slave, are surely inconsistent with that security which Judge Iredell told the people of North Carolina, in the convention, that the Constitution gave to them for their slaves when they fled into other **states**. Speaking of this clause of the Constitution, he says, "In some of the northern **states**, they have emancipated all of their slaves. If any one of our slaves go there, and remain there a certain time, they would, by the present laws, be entitled to their freedom, so that their masters could not get them again. This would be extremely prejudicial to the inhabitants of the southern **states**; and, to prevent it, this clause is inserted in the Constitution." To the same purpose, and with more positiveness, Charles Cotesworth Pinckney said to the people of South Carolina, in the convention of that state, "We have obtained a right to recover our slaves in whatever part of America they may take refuge; which is a right we had not before."

But further, does not the language of this provision in the precise terms used, "shall not be discharged from such service or labour," show, that the **states** surrendering the right to discharge, meant to exclude themselves from legislating a mode of trial, which, from the time it would take, would be a qualified or temporary discharge to the injury of the owner? Would not a postponement of the trial of a fugitive owing service or labour, for one month, be a loss to the owner of his service, equivalent to a discharge for that time. And if a state can postpone by legislation the trial for one

month, may it not do so for a longer time? And whether it be for a longer or a shorter time, is it not a discharge from service, for whatever time it may be? It is no answer to this argument, to say, that time is necessarily involved in the prosecution of all rights. The question here is not as to a time being more or less necessary — but as to the right of a state by regulations to try the obligation of a fugitive to service or labour, to fix in its discretion the time it may take.

The subject might be further discussed and illustrated by arguments equally cogent with those already given. But I forbear. For the foregoing reasons, in addition to those given in the opinion of the Court, I am constrained to come to the conclusion, that the right of legislating upon that clause in the Constitution, 649*649 preventing the **states** from discharging fugitive slaves, is exclusively in the Congress of the **United States**. I am as little inclined as any one can be, to deny, in a doubtful case, a right of legislation in the**states**; but I cannot concede that it exists under the Constitution in a case relating to the property of some of the **states** in which the others have no interest; and whose legislators, from the nature of the subject, and the human mind in relation to it, cannot be supposed to be best fitted to secure the right guarantied by the Constitution.

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

I consider the point I have been maintaining, more important than any other in the opinion of the Court. It removes those causes which have contributed more than any other to disturb that harmony which is essential to the continuance of the Union. The framers of the Constitution knew it to be so, and inserted the provision in it. Hereafter they cannot occur, if the judgment of this Court in this cause shall meet with the same patriotic acquiescence which the tribunals of the **states** and the people of the **states**have heretofore accorded to its decisions. The recovery of fugitive slaves will hereafter be exclusively regulated by the Constitution of the **United States**, and the acts of Congress.

650*650 Apart from the position that the **states** may legislate in all cases, where they are not expressly prohibited, or by necessary implication; the claim for the **states** to legislate is mainly advocated upon the ground that they are bound to protect free blacks and persons of colour residing in them from being carried into slavery by any summary process. The answer to this is, that legislation may be confined to that end, and be made effectual, without making such a remedy applicable to fugitive slaves. There is no propriety in making a remedy to protect those who are free the probable means of freeing those who are not so. It is also said, the **states** may aid by remedies the acts of Congress, when they are not in conflict with them. I reply, Congress has full power to enact all that such aid could give; and if experience shows any deficiency in its enactments, Congress will no doubt supply it. If there are not now agencies enough to make the assertion of the right to fugitives convenient to their owners, Congress can multiply them. But if it should not be done, better is it that the inconvenience should be borne, than that the **states** should be brought into

collision upon this subject as they have been; and that they should attempt to supply deficiencies, upon their separate views of what the remedies should be to recover fugitive slaves within their jurisdictions.

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

Mr. Justice DANIEL.

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

651*651 In judicial proceedings generally, that has been deemed a safe and prudent rule of action, which involves no rights, nor questions not necessary to be considered; but leaves these for adjudication where, and when, only, they shall be presented directly and unavoidably, and when surrounded with every circumstance which can best illustrate their character. If, in ordinary questions of private interest, this rule is recommended by considerations of prudence, and accuracy, and justice; it is surely much more to be observed, when the subject to which it is applicable is the great fundamental law of the confederacy: every clause and article of which affects the polity and the acts of **states**.

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

That portion of the Constitution which provides for the recovery of fugitive slaves, is the third clause of the second section of the fourth article; and is in these words: "No person held to service or labour 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 labour; but shall be delivered up on claim of the party to whom such service or labour may be due." The paramount authority of this clause in the Constitution to guaranty to the owner the right of property in his slave, and the absolute nullity of any state power directly or indirectly, openly or covertly, aimed to impair that right, or to obstruct its enjoyment; I admit, nay, insist upon to the fullest extent. I contend, moreover, that the act of 1793, made in aid of this clause of the Constitution and for its enforcement, so far as it conforms to the Constitution is the supreme law to the **states**; and cannot 652*652 be contravened by them without a violation of the Constitution. But the majority of my brethren proceeding beyond these positions, assume the ground that the clause of the Constitution above quoted, as an affirmative power granted by the Constitution, is essentially an exclusive power in the federal government; and

consequently that any and every exercise of authority by the **states** at any time, though undeniably in aid of the guarantee thereby given, is absolutely null and void.

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

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

653*653 The interpretation for which I contend cannot be deemed a novelty in this Court; but rests upon more than one of its decisions upon the constitutional action of state authorities. In the case of Sturgis v. Crowninshield, which brought in question the right of the **states** to pass insolvent or bankrupt laws, Chief Justice Marshall holds the following doctrine, 4 Wheat. 192, 193: "The counsel for the plaintiff contend that the grant of this power to Congress without limitation, takes it entirely from the **states**. In support of this proposition, they argue, that every power given to Congress is necessarily supreme; and if from its nature, or from the words of the grant, it is apparently intended to be exclusive, it is as much so as if they were expressly forbidden to exercise it. These propositions have been enforced and illustrated by many arguments drawn from different parts of the Constitution. That the power is both unlimited and supreme, is not questioned. That it is exclusive, is denied by the counsel for the defendant. In considering this question, it must be recollected that previous to the formation of the new Constitution, we were divided into independent **states**, **united** for some purposes, but in most respects sovereign. These **states** could exercise almost every legislative power; and amongst others, that of passing bankrupt laws. When the American people created a national legislature with certain enumerated powers, it was neither necessary nor proper to define the powers retained by the **states**. These powers remain as they were before the adoption of the Constitution, except so far as they may be abridged by that instrument. In some instances, as in making treaties, we find an express prohibition; and this shows the sense of the convention to have been that the mere grant of a power to Congress did not imply a prohibition on the **states** to the exercise of the same power." Again, p. 198, "It does not appear to be a violent construction of the Constitution, and is certainly a convenient one, to consider the powers of the **states** as existing over such cases as the laws of the Union do not reach. Be this as it may, the power of Congress may be exercised or declined, as the wisdom of that body shall decide. It is not the mere existence of the power, but its exercise, which is incompatible with the exercise of the same power by the **states**. It has been said that Congress has exercised this power; and by doing

so, has extinguished the power of the **states**, which cannot 654*654 be revived by repealing the law of Congress. We do not think so. If the right of the **states** is not taken away by the mere grant of that power to Congress, it cannot be extinguished; it can only be suspended by enacting a general bankrupt law. The repeal of that, cannot, it is true, confer the power on the **states**; but it removes a disability to its exercise, which was created by the act of Congress."

In the case of Houston v. Moore, 6 Wheat. 48, the following doctrine, was held by Mr. Justice Story, and in accordance with the opinion of the Court, in that case. "The Constitution containing a grant of powers, in many instances similar to those already existing in the state governments, and some of these being of vital importance also to state authority, and state legislation, it is not to be admitted that a mere grant of powers, in affirmative terms, to Congress, does, per se, transfer an exclusive sovereignty in such subjects to the latter; on the contrary, a reasonable interpretation of that instrument necessarily leads to the conclusion that the powers so granted are never exclusive of similar powers existing in the **states**; except where the Constitution has, in express terms, given an exclusive power to Congress, or the exercise of a like power is prohibited to the **states**. The example of the first class is to be found in the exclusive legislation delegated to Congress over places purchased by the consent of the legislature of the state in which the same shall be, for forts, arsenals, dock-yards, &c.: — of the second class, the prohibition of state to coin money or emit bills of credit: — of the third class, as this Court have already held, is the power to establish an uniform rule of naturalization; and the delegation of admiralty and maritime jurisdiction. In all other cases not falling within the classes already mentioned, it seems unquestionable that the**states** retain concurrent authority with Congress, not only under the eleventh amendment of the Constitution, but upon the soundest principles of general reasoning. There is this reserve, however, that in cases of concurrent authority, where the laws of the **states** and of the Union are in direct and manifest collision on the same subject, those of the Union being the supreme law of the land, are of paramount authority; and the state laws, so far, and so far only, as such incompatibility exists, must necessarily yield. Such are the general principles by which my judgment is guided, in 655*655 every investigation of constitutional points. They commend themselves by their intrinsic equity; and have been amply justified by the great men under whose guidance the Constitution was framed, as well as by the practice of the government of the Union. To desert them, would be to deliver ourselves over to endless doubts and difficulties; and probably to hazard the existence of the Constitution itself."

In the case of the City of New York v. Miln, 11 Peters, 102, Mr. Justice Barbour, in delivering the opinion of the Court, lays down the following position, (p. 137,) as directly deducible from the decisions in Gibbons and Ogden, 7 Wheat. 204, and Brown and the State of Maryland, 12 Wheat. 419: "Whilst a state is acting within the legitimate scope of its power, as to the end to be attained, it may use whatever means being appropriate to that end, it may think fit; although they be the same, or so nearly the same as scarcely to be distinguished from those adopted by Congress acting under a different power; subject only to this limitation, that in the event of collision, the law of the state must yield to the law of Congress. The court must be understood, of course, as meaning that the law of Congress is passed upon a subject within the sphere of its power." In the same case, the following language is held by Mr. Justice Thompson, p. 145: "In the leading cases upon this question, where the state law has been held to be constitutional, there has been an actual conflict between the legislation of Congress and that of the **states**, upon the right drawn in question. And in all such cases, the law of Congress is supreme. But in the case now before the Court, no such conflict arises; Congress has not legislated on this subject in any manner to affect the question." And again, p. 146, it is said by the same judge; "It is not necessary in this case to fix any limits upon the legislation of Congress and of the **states** on this subject; or to say how far Congress may, under the power to regulate commerce, control state legislation in this respect. It is enough to say, that whatever the power of Congress may be, it has not been exercised so as in any manner to conflict

with the state law; and if the mere grant of the power to Congress does not necessarily imply a prohibition of the **states** to exercise the power until Congress assumes the power to exercise it, no objection on that ground can arise to this law."

656*656 Here then are recognitions, repeated and explicit, of the propriety, utility, and regularity of state action, in reference to powers confessedly vested in the general government, so long as the latter remains passive, or shall embrace within its own action only a portion of its powers, and that portion not comprised in the proceedings of a state government; and so long as the **states** shall neither conflict with the measures of the federal government, nor contravene its policy. From these recognitions, it must follow by necessary consequence, that powers vested in the federal government which are compatible with the modes of execution just adverted to, cannot be essentially and originally, nor practically, exclusive powers; for whatever is exclusive, utterly forbids, as has been previously observed, all partition or association. I hold then that the **states** can establish proceedings which are in their nature calculated to secure the rights of the slaveholder guaranteed to him by the Constitution; as I shall attempt to show, that those rights can never be so perfectly secured, as when the **states** shall, in good faith, exert their authority to assist in effectuating the guarantee given by the Constitution. Fugitives from service, in attempting to flee either to the non-slaveholding **states**, or into the Canadas, must, in many instances, pass the intermediate **states**, before they can attain to the point they aim at.

If there is a power in the **states** to authorize and order their arrest and detention for delivery to their owners, not only will the probabilities of recovery be increased by the performance of duties enjoined by law upon the citizens of those **states**, as well private persons as those who are officers of the law; but the incitements of interest, under the hope of reward, will in a certain class of persons powerfully co-operate to the same ends. But let it be declared that the rights of arrest and detention, with a view of restoration to the owner, belong solely to the federal government, exclusive of the individual right of the owner to seizure his property, and what are to be the consequences? In the first place, whenever the master, attempting to enforce his right of seizure under the Constitution, shall meet with resistance, the inconsiderable number of federal officers in a state, and their frequent remoteness from the theatre of action, must, in numerous instances, at once defeat his right of property, and deprive him 657*657 also of personal protection and security. By the removal of every incentive of interest in state officers, or individuals, and by the inoculation of a belief that any co-operation with the master becomes a violation of law, the most active and efficient auxiliary which he could possibly call to his aid is entirely neutralized. Again, suppose that a fugitive from service should have fled to a state where slavery does not exist, and in which the prevalent feeling is hostile to that institution; there might, nevertheless, in such a community, be a disposition to yield something to an acknowledged constitutional right — something to national comity too, in the preservation of that right; but let it once be proclaimed from this tribunal, that any concession by the **states** towards the maintenance of such a right, is a positive offence, the violation of a solemn duty, and I ask what pretext more plausible could be offered to those who are disposed to protect the fugitive, or to defeat the rights of the master? The Constitution and the act of Congress would thus be converted into instruments for the destruction of that which they were designed especially to protect. But it is said that if the **states** can legislate at all upon the subject of fugitives from service, they may, under the guise of regulations for securing the master right, enact laws which, in reality, impair or destroy them. This, like every other argument drawn from the possible abuse of power, is deemed neither fair nor logical. It is equally applicable to the exercise of power by the federal as by the state governments; and might be used in opposition to all power and all government, as it is undeniable, that there is no power and no government which is not susceptible of great abuses. But those who argue from such possible or probable abuses against all regulations by the **states** touching this matter, should dismiss their apprehensions, under the recollection that

should those abuses be attempted, the corrective may be found, as it is now about to be applied to some extent, in the controlling constitutional authority of this Court.

It has been said that the **states** in the exercise of their police powers may arrest and imprison vagrants or fugitives who may endanger the peace and good order of society; and by that means contribute to the recovery by the master of his fugitive slave. It should be recollected, however, that the police power of a state has no natural affinity with her exterior relations, nor with those 658*658 which she sustains to her sister **states**; but is confined to matters strictly belonging to her internal order and quiet. The arrest or confinement, or restoration of a fugitive, merely because he is such, falls not regularly within the objects of police regulations; for such a person may be obnoxious to no charge of violence or disorder; he may be merely passing through the state peaceably and quietly; or he may be under the care and countenance of some person affecting ownership over him, with the very view of facilitating his escape. Under such circumstances he would not be a proper subject for the exertion of the police power; and if not to be challenged under a different power in the state, his escape would be inevitable, however strong might be the evidences of his being a fugitive. But let it be supposed that either on account of some offence actually committed, or threatened; or from some internal regulation forbidding the presence of such persons within a state, they may be deemed subjects for the exertion of the police power proper, to what end would the exercise of that power naturally lead? Fugitives might be arrested for punishment, or they might be expelled or deported from the state. Nothing beyond these could be legally accomplished; and thus the invocation of this police power, so far from securing the rights of the master, would be made an engine to insure the deprivation of his property. Such are a portion of the consequences which, in my opinion, must flow from the doctrines affirmed by the majority of the Court: doctrines in my view not warranted by the Constitution, nor by the interpretation heretofore given of that instrument; and the assertion whereof seemed not to have been necessarily involved in the adjudication of this cause. With the convictions predominatory in my mind as to the nature and tendencies of these doctrines; whilst I cherish the profoundest respect for the wisdom and purity of those who maintain them; it would be a dereliction of duty in me to yield to them a direct or a tacit acquiescence; I therefore declare my dissent from them.

Mr. Justice M`LEAN.

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

659*659 The plaintiff, Edward Prigg, was indicted under the first section of an act of Pennsylvania, entitled "An act to give effect to the provisions of the Constitution of the**United States**, relative to fugitives from labour, for the protection of free people of colour, and to prevent kidnapping."

It provides, "If any person or persons shall, from and after the passing of this act, by force and violence, take and carry away, or cause to be taken or carried away, and shall by fraud or false pretence, seduce, or cause to be seduced, or shall attempt to take, carry away, or seduce any negro or mulatto from any part or parts of this commonwealth, to any other place or places whatsoever, out of this commonwealth, with a design and intention of selling and disposing of, or of causing to be sold, or of keeping and detaining, or of causing to be kept and detained, such negro or mulatto as a slave or servant for life, or for any term whatsoever; every such person or persons, his or their aiders or abettors shall, on conviction thereof, be deemed guilty of felony, and shall be fined in a sum not less than five hundred nor more than one thousand dollars, and shall be sentenced to imprisonment and hard labour not less than seven nor more than twenty-one years."

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

The last clause of the second section of the fourth article of the Constitution of the**United States**, declares that, "No person held to service or labour 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 labour; but shall be delivered up on claim of the party to whom such service or labour may be due."

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

660*660 That the Constitution was adopted in a spirit of compromise, is matter of history. And all experience shows that to attain the great objects of this fundamental law, it must be construed and enforced in a spirit of enlightened forbearance and justice. Without adverting to other conflicting views and interests of the **states** represented in the general convention, the subject of slavery was then, as it is now, a most delicate and absorbing consideration. In some of the **states**, it was considered an evil, and a strong opposition to it, in all its forms, was felt and expressed. In others it was viewed as a cherished right, incorporated into the social compact, and sacredly guarded by law.

Opinions so conflicting, and which so deeply pervaded the elements of society, could be brought to a reconciled action only by an exercise of exalted patriotism. Fortunately for the country, this patriotism was not wanting in the convention and in the **states**. The danger of discord and ruin was seen, and felt, and acknowledged; and this led to the formation of the confederacy. The Constitution, as it is, cannot be said to have imbodied in all its parts, the peculiar views of any great section of the Union; but it was adopted by a wise and far-reaching conviction, that it was the best which, under the circumstances, could be devised; and that its imperfections would be lost sight of, if not forgotten, in the national prosperity and glory which it would secure.

A law is better understood by a knowledge of the evils which led to its adoption. And this applies most strongly to a fundamental law.

At an early period of our history, slavery existed in all the colonies; and fugitives from labour were claimed and delivered up under a spirit of comity or conventional law among the colonies. The articles of confederation contained no provision on the subject, and there can be no doubt that the provision introduced into the Constitution was the result of experience and manifest necessity. A matter so delicate, important, and exciting, was very properly introduced into the organic law.

Does the provision, in regard to the reclamation of fugitive slaves, vest the power exclusively in the federal government?

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

The language of the provision is general. It covers the whole 661*661 ground, not in detail, but in principle. The **states** are inhibited from passing "any law or regulation which shall discharge a fugitive slave from the service of his master;" and a positive duty is enjoined on them to deliver him up, "on claim of the party to whom his service may be due."

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

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

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

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

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

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

This power is not susceptible of division. It is a part of the fundamental law, and pervades the Union. The rule of action which it prescribes was intended to be the same in all the **states**. This is essential to the attainment of the objects of the 662*662 law. If the effect of it depended, in any degree, upon the construction of a state by legislation or otherwise, its spirit, if not its letter, would be disregarded. This would not proceed from any settled determination in any state to violate the fundamental rule, but from habits and modes of reasoning on the subject. Such is the diversity of human judgment, that opposite conclusions equally honest, are often drawn from the same premises. It is, therefore, essential to the uniform efficacy of this constitutional provision that it should be considered, exclusively, a federal power. It is in its nature as much so as the power to regulate commerce, or that of foreign intercourse.

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

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

It is contended, that the power to legislate on this subject is concurrently in the **states**and federal government. That the acts of the latter are paramount, but that the acts of the former must be

regarded as of authority, until abrogated by the federal power. How a power exercised by one sovereignty can be called concurrent, which may be abrogated by another, I cannot comprehend. A concurrent power, from its nature, I had supposed must be equal. If the federal government by legislating on the subject annuls all state legislation on the same subject, it must follow that the power is in the federal government and not in the state.

Taxation is a power common to a state and the general government, and it is exercised by each independently of the other And this must be the character of all concurrent powers.

It is said that a power may be vested in the federal government 663*663 which remains dormant, and that in such case a state may legislate on the subject. In the case supposed, whence does the legislature derive its power? Is it derived from the constitution of the state, or the Constitution of the **United States**?

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

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

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

No such power is derived by implication from the federal Constitution. It defines the powers of the general government, and imposes certain restrictions and duties on the**states**. But beyond this it in no degree affects the powers of the **states**. The powers which belong to a state are exercised independently. In its sphere of sovereignty it stands on an equality with the federal government, and is not subject to its control. It would be as dangerous as humiliating to the rights of a state, to hold that it legislative powers were exercised to any extent and under any circumstances, subject to the paramount action of Congress. Such a doctrine would lead to serious and dangerous conflicts of power.

The act of 1793 seems to cover the whole constitutional ground. The third section provides, "That when a person held to labour in any state or territory of the **UnitedStates**, under the laws 664*664 thereof, shall escape into any other of the said **states** or territories, the person to whom such labour or service may be due, his agent or attorney, is 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, &c., that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or 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 said fugitive to the state from which he or she fled"

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

It seems to be taken as a conceded point in the argument, that Congress had no power to impose duties on state officers, as provided in the above act. As a general principle this is true; but does not the case under consideration form an exception? Congress can no more regulate the jurisdiction of the state tribunals, than a state can define the judicial power of the Union. The officers of each government are responsible only to the respective authorities under which they are commissioned. But do not the clauses in the Constitution in regard to fugitives from 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 665*665 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 fugitive from labour, "it shall be the duty of such judge or magistrate to give a certificate that the person claimed owes services to the claimant."

The Constitution requires "that such person shall be delivered up, on claim of the party to whom the service is due." Here is a positive duty imposed; and Congress have said in what mode this duty shall be performed. Had they not power to do so? If the Constitution was designed, in this respect, to require, not a negative but a positive duty on the state and the people of the state where the fugitive from 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 v. Hunter, 1 Wheat. Rep. 304, this Court say, "The language of the Constitution is imperative on the **states** as to the performance of many duties. It is imperative on the

state legislatures to make laws prescribing the time, place, and manner of holding elections for senators and representatives, and for electors of President and Vice President. And in these as 666*666 well as in other cases, Congress have a right to revise, amend, or supersede the laws which may be passed by the state legislatures."

Now, I do not insist on the exercise of the federal power to the extent as here laid down. I go no 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 twenty-fifth section of the judiciary act. But resistance to a constitutional authority by any of the state functionaries, should not be anticipated; and if made, the federal government may rely upon its own agency in giving effect to the laws.

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

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

The Governor of Virginia submitted the case to the attorney-general of that state, who decided, that the offence charged in the indictment was not such a crime as under the Constitution required a surrender. He also held, "that control over the persons charged ought not to be acquired by any force not specified and delegated by positive law." The Governor of Virginia refused 667*667 to arrest the defendants, and deliver them to the authorities of Pennsylvania. The correspondence between the governors and the opinion of the attorney-general of Virginia, with other papers relating to the case, were transmitted to the President of the **United States**, who laid them before Congress. And there can be no doubt that this correspondence, and the forcible removal of the coloured person, which gave rise to it, led to the passage of the act of 1793.

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

Both the Constitution and the act of 1793, require the fugitive from labour to be delivered up on claim being made, by the party or his agent, to whom the service is due. Not that a suit should be regularly instituted. The proceeding authorized by the law is summary and informal. The fugitive is seized by the claimant, and taken before a judge or magistrate within the state, and on proof, parol or written,

that he owes labour to the claimant, it is made the duty of the judge or magistrate to give the certificate, which authorizes the removal of the fugitive to the state from whence he absconded.

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

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

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

To suppose that the claim is not to be made, and indeed cannot be unless the fugitive be in the custody or possession of some public officer or individual, is to disregard the letter and spirit of the act of 1793. There is no act in the statute book more precise 668*668 in its language; and, as it would seem, less liable to misconstruction. In my judgment, there is not the least foundation in the act for the right asserted in the argument, to take the fugitive by force and remove him out of the state.

Such a proceeding can receive no sanction under the act, for it is in express violation of it. The claimant having seized the fugitive, is required by the act to take him before a federal judge within the state, or a state magistrate within the county, city, or town corporate, within which the seizure was made. Now, can there be any pretence that after the seizure under the statute, the claimant may disregard the other express provision of it, by taking the fugitive without claim out of the state. But it is said, the master may seize his slave wherever he finds him, if by doing so he does not violate the public peace; that the relation of master and slave is not affected by the laws of the state, to which the slave may have fled, and where he is found.

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

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

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

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

the claim of the 669*669 master. Being within the jurisdiction of a state, a slave bears a very different relation to it from that of mere property.

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

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

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

The terms of the Constitution are general, and like many other powers in that instrument require legislation. In the language of this Court in Martin v. Hunter, 1 Wheat. Rep. 304,"the powers of the Constitution are expressed in general terms, leaving to the legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model the exercise of its powers, as its own wisdom and the public interests should require."

This, Congress have done by the act of 1793. It gives a summary and effectual mode of red ess to the master, and is he not 670*670 bound to pursue it? It is the legislative construction of the Constitution; and is it not a most authoritative construction? I was not prepared to hear the counsel contend that, notwithstanding this exposition of the Constitution, and ample remedy provided in the act, the master might disregard the act and set up his right under the Constitution. And having taken this step, it was easy to take another, and say, that this right may be asserted by a forcible seizure and removal of the fugitive.

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

To hold that he must exhibit his claim in case of resistance, is to abandon the ground assumed. He is engaged, it is said, in the lawful prosecution of a constitutional right. All resistance then, by whomsoever made, or in whatsoever form, must be illegal. Under such circumstances the master needs no proof of his claim, though he might stand in need of additional physical power. Having appealed to this power, he has only to collect a sufficient force to put down all resistance and attain

his object. Having done this, he not only stands acquitted and justified; but he has recourse for any injury he may have received in overcoming the resistance.

If this be a constitutional remedy, it may not always be a peaceful one. But if it be a rightful remedy, that it may be carried to this extent, no one can deny. And if it may be exercised without claim of right, why may it not be resorted to after the unfavourable decision of the judge or magistrate? This would limit the necessity of the exhibition of proof by the master to the single case where the slave was in the actual custody of some public officer. How can this be the true construction of the Constitution? That such a procedure is not sanctioned by the act of 1793 has been shown. That act was passed expressly to guard against acts of force and violence.

I cannot perceive how any one can doubt that the remedy 671*671 given in the Constitution, if indeed it give any remedy without legislation, was designed to be a peaceful one; a remedy sanctioned by judicial authority; a remedy guarded by the forms of law. But the inquiry is reiterated, is not the master entitled to his property? I answer that he is. His right is guarantied by the Constitution, and the most summary means for its enforcement is found in the act of Congress. And neither the state nor its citizens can obstruct the prosecution of this right.

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

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

No conflict can arise between the act of Congress and this state law. The conflict can only arise between the forcible acts of the master and the law of the state. The master exhibits no proof of right to the services of the slave, but seizes him and is about to remove him force. I speak only of the force exerted on the slave. The law of the state presumes him to be free, and prohibits his removal. Now, which shall give way, the master or the state? The law of the state does, in no case, discharge, in the language of the Constitution, the slave from the service of his master.

It is a most important police regulation. And if the master violate it, is he not amendable? The offence consists in the abduction of a person of colour. And this is attempted to be justified upon the simple ground that the slave is property. That a 672*672 slave is property must be admitted. The state law is not violated by the seizure of the slave by the master, for this is authorized by the act of Congress; but by removing him out of the state by force, and without proof of right, which the act does not authorize. Now, is not this an act which a state may prohibit? The presumption in a non-slaveholding state is against the right of the master, and in favour of the freedom of the person he claims. This presumption may be rebutted, but until it is rebutted by the proof required in the act of 1793, and also, in my judgment, by the Constitution, must not the law of the state be respected and obeyed?

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

The certificate of right to the service of the slave is undoubtedly for the protection of the master; but it authorizes the removal of the slave out of the state where he was found, to the state from whence he fled. And under the Constitution this authority is valid in all the **states**.

The important point is, shall the presumption of right set up by the master, unsustained by any proof, or the presumption which arises from the laws and institutions of the state, prevail. This is the true issue. The sovereignty of the state is on one side, and the asserted interest of the master on the other. That interest is protected by the paramount law, and a special, a summary, and an effectual mode of redress is given. But this mode is not pursued, and the remedy is taken into his own hands by the master.

The presumption of the state that the coloured person is free may be erroneous in fact; and if so, there can be no difficulty in proving it. But may not the assertion of the master be erroneous also; and if so, how is his act of force to be remedied? The coloured person is taken, and forcibly conveyed beyond the jurisdiction of the state. This force, not being authorized by the act of Congress nor by the Constitution, may be prohibited by the state. As the act covers the whole power in the Constitution, and carries out, by special enactments, its provisions, we are, in my judgment, 673*673 bound by the act. We can no more, under such circumstances, administer a remedy under the Constitution, in disregard of the act, than we can exercise a commercial or other power in disregard of an act of Congress on the same subject.

This view respects the rights of the master and the rights of the state. It neither jeopards nor retards the reclamation of the slave. It removes all state action prejudicial to the rights of the master; and recognises in the state a power to guard and protect its own jurisdiction, and the peace of its citizens.

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

It may be doubted whether the first section of the act of Pennsylvania under which the defendant was indicted, by a fair construction applies to the case under consideration. The decision of the Supreme Court of that state was pro forma, and, of course, without examination. Indeed, I suppose, the case has been made up merely to bring the question before this Court. My opinion, therefore, does not rest so much upon the particular law of Pennsylvania, as upon the inherent and sovereign power of a state, to protect its jurisdiction and the peace of its citizens, in any and every mode which is discretion shall dictate, which shall not conflict with a defined power of the federal government.

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

by this Court, that the judgment of the said Supreme Court of Pennsylvania be, and the same is, hereby, reversed. 674*674 And this Court, proceeding to render such judgment in the premises as the said Supreme Court of Pennsylvania ought to have rendered, do hereby order and adjudge that judgment upon the special verdict aforesaid be here entered, that the said Edward Prigg is not guilty in manner and form as is charged against him in the said indictment, and that he go thereof quit without day; and that this cause be remanded to the Supreme Court of Pennsylvania with directions accordingly, so that such other proceeding may be had therein as to law and justice shall appertain.