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REPORT

OF

THE SELECT COMMITTEE

Appointed under a Resolution of the House to enquire into the existing Legislation of Congress upon the subject of FUGITIVE SLAVES, *and to suggest such additional Legislation as may be proper.*

Mr. FAULKNER, from the select committee appointed for the purpose, submitted the following

REPORT:

The committee appointed to enquire how far the existing legislation of congress, under the third clause of the second section of the fourth article of the constitution, fulfils the intent and object of that instrument, in affording an adequate remedy for the recapture of slaves absconding from this state into the nonslaveholding states of this confederacy; and if found inadequate in its provisions, to suggest such relief as the urgency of the case requires, and also the mode in which the rights of the citizens of this state, and of the other slaveholding states of the Union, shall be brought to the attention of the congress of the United States, have bestowed on the subject the attention which its importance demands, and now report to the house the result of their enquiries.

The clause of the constitution referred to in the resolution of the house, is to the following effect:

"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."

A knowledge of the history of this constitutional provision is essential to a right understanding of the subject referred to the committee.

Long before the revolutionary war, the institution of slavery had diffused itself throughout the thirteen colonies, which by the result of

that war subsequently became the United States of America. The prevalence of this institution through all the colonies had created, at an early period, a customary law, under which the owners of fugitive slaves were allowed to recapture them in whatever colony found, and convey them to that from which they had escaped. This usage, the offspring of mutual interest and of international comity, was still in force to a great extent, when the articles of confederation were formed by the states. And this may account for the omission, in those articles, of a clause like that under consideration, legalizing the reclamation of fugitive slaves, in whichever of the states they might be found.

But this customary law had no other sanction, in the middle and eastern states, than a public opinion, mainly growing out of a sense of interest, and when the discovery was made, that slave labour, in those states was comparatively worthless, a growing distaste to the whole institution of slavery withdrew from this customary law its only sanction, and made its enforcement every year more difficult. As early as 1st of March 1780, Pennsylvania passed an act for the gradual abolition of slavery; and in the same year Massachusetts made provision for the prospective emancipation of her slaves. In a few years afterwards these examples were followed by all or nearly all of the New England states. So that under the confederation the want of some legal provision on this subject was felt as a grievous inconvenience by the slaveholding states; as we learn from the elder Judge Tucker, in many states no aid whatsoever was allowed to the owners, and sometimes, indeed, they met with open resistance.

Some idea of the vital importance which the slaveholding states at that period attached to the right of recapturing their escaping slaves, may be derived from the fact, that as early as the adoption of the celebrated ordinance of 1787, (before the present constitution was in being,) the proposition to exclude slavery or involuntary servitude from the Northwestern territory, was obstinately opposed and successfully resisted by the south, until the provision for the delivery up of fugitive slaves was incorporated into that ordinance. And the fact is suggested by the distinguished senator from South Carolina, Mr. Calhoun, in a recent speech in the senate of the United States, with a strong probability of its truth, although there is no direct and positive information on the subject, that this very clause, interdicting involuntary servitude in that territory, was in itself the result of compromise; and that it was yielded by Virginia and the south, upon condition that the guarantee which accompanies it should be, as it was given, for the recovery of fugitive slaves.

It was with this experience before us of the insecurity of our slave population, resulting from the changed policy and public sentiment of the northern states, that the proposition for a more perfect union originated with some of the leading statesmen of Virginia. It is true the primary and avowed object of the call of the convention was to provide more effectually for a uniform system of commercial regulations amongst the states, yet time had already sufficiently shewn the utter inadequacy of the confederation to guard against those constantly recurring incidents which threatened to disturb the harmony of the

states, and an almost universal sentiment had taken possession of the public mind, of the necessity of a government, whose energies would pervade the entire Union, and guard and protect every interest which was likely to be endangered, by those sectional diversities of opinion prevailing in the several states, and which were every day becoming more broadly and distinctly marked with the progress of time.

At this period the institution of slavery was, as before remarked, rapidly disappearing from the northern and eastern states. It was found adapted neither to their habits, their climate, nor their pursuits. Its numbers were within the control of a wise, prospective, legislative policy. It had never sought those bleak and barren regions as its natural home; but to the extent that it did exist there, the fact must be ascribed to a redundant supply from the foreign slave trade, in the pursuit of which traffic, the New England states almost whitened the ocean with their canvass. Such was not the limited and precarious state of that institution in the southern portion of this confederacy. Its valuable agricultural staples had given full vigour to its growth and extension here. It already embraced one full third of the population of the southern states, and in Virginia it exceeded thirty-nine per cent. of her population. It had interwoven itself into all habits and feelings of our people; it had become an essential part of their social condition; it formed their productive labour, and had acquired the stability of a fixed and permanent system of policy amongst us. In the language of an acute and enlightened foreigner, "slavery at the north was a question of commerce and manufactures—in the south it was a question of life and death."

It could scarcely be supposed, that, in framing a government like that of the constitution of the United States, which was designed to endure for ages, and which was expected to diffuse the blessings of fraternity and peace over numerous republics marked by such diversities of climate, pursuit, opinion, interests and domestic policy, an institution so peculiar and permanent, so wide spread and important in all its consequences as slavery, should not receive its due share of consideration in that body. We accordingly learn from the authentic records of that period, that it formed a leading and exciting topic in the discussions of the federal convention. Its existence and its influence upon the future destiny of such portions of the confederacy as were likely to retain it as a permanent portion of their policy, were discussed with the fullest and most mature deliberation. The opposing interests of north and south were brought out in full array, and after weeks of consideration and debate by the wise and illustrious men who composed that assembly, after great and mutual concessions made on all sides for the public good, their labours on this subject resulted:

1st. In the distinct recognition of its validity in all the states where the people of those states choose to retain it.

2d. In a solemn guaranty in the constitution to enforce the rights of the owner of slaves in all the states of the Union into which they might make their escape.

And 3dly. In according to the slave population a representative weight in the federal councils. It thus became a fundamental element

in the structure of the new government. Political power was claimed and accorded to our then existing and forever increasing slave population. Under the operation of this feature in the constitution, we have at this time twenty members of the house of representatives, and on a recent occasion enjoyed the advantage of twenty votes in the college for the election of a president and vice-president of the United States. Entering into the constitution of the legislative and executive departments of the government, it is an agent in every law and in every act of the government. In the language of an eminent judge of the federal court of the state of Pennsylvania: Slavery is the corner stone of the constitution—"the foundations of the government are laid and rest on the rights of property in slaves, and the whole structure must fall by disturbing the corner stone." (Opinion of Judge Baldwin in the case of *Johnson* v. *Tompkins*, 1 Bald. p. 597.)

It is, however, only to that guaranty, so solemnly provided in the constitution for the delivery of fugitive slaves, that the attention of this committee has been specially invited.

This provision was so obvious and indispensable—so essential to preserve the relations of harmony amongst the states, and to give confidence and security to the slaveholders of the south—that it seems, after the general basis of the constitution was fixed, to have excited no opposition in the convention, but to have been adopted with absolute unanimity, from a general acquiescence in its necessity.

When the people of the south were called upon, in their respective state conventions, to act upon the momentous question of adopting or rejecting the plan of government, submitted to them by the general convention, this provision of the constitution attracted its full share of attention, and was used with irresistible power by the advocates of the Union, to relieve the apprehensions of the hesitating, and to manifest the good faith with which the nonslaveholding states had entered into this permanent fraternal alliance. The history of that period abounds in proofs that the south, in giving its assent to the Union, did so in a full reliance upon the faithful execution of this provision as affording an ample and effectual security for their slave property.

In the Virginia convention, to satisfy the minds of the people that this property was abundantly protected, Edmund Randolph held this language: "Were it right to mention what passed in convention on the occasion, I might tell you that the southern states—even South Carolina herself—conceived this property to be secured by these words."

In the North Carolina convention, Judge Iredell, referring to this clause of the constitution, says, "In some of the northern states they have emancipated all of their slaves. If any 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, but with more emphasis, 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."

That the importance of this provision has not been overrated by southern statesmen, the following extract from the opinion of the supreme court of the United States, delivered in January 1842, in the case of *Prigg* v. *The State of Pennsylvania*, (16 Peters, p. 539,) will conclusively shew:

In delivering the opinion of the court, Mr. Justice Story, on page 611, uses the following language:

"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 nonslaveholding states, by preventing them from intermeddling with or obstructing or abolishing the rights of the owners of slaves."

To the same effect is the opinion of the supreme court of the state of Pennsylvania, as delivered by Chief Justice Tilghman, in the case of *Wright* v. *Deacon*, 5 S. & R. 63:

"Whatever may be our opinions on the subject of slavery, it is well known that our southern brethren would not have consented to have become parties to a constitution, under which the United States have enjoyed so much prosperity, unless their property in slaves had been secured. This constitution has been adopted by the free consent of the citizens of Pennsylvania, and it is the duty of every man, whatever may be his office or station, to give it a fair and candid construction."

William Rawle, another distinguished jurist of the state of Pennsylvania, in his admirable essay on the constitution of the United States, speaking of fugitives from justice and fugitives from service or labour, says:

"To the two latter descriptions of persons *no asylum* can by the constitution of the United States be afforded. The states are considered as a common family, whose harmony would be endangered if they were to protect and detain such fugitives when demanded in one case by the executive authority of the state, or pursued in the other by the person claiming an interest in their service."

This solemn compact between the slaveholding and nonslaveholding states was adopted by the unanimous votes of the states then present in the convention. The dissent of a single state might have marred the whole scheme of compromises so elaborately prepared as a basis of the new constitution, and remitted the states of the confederacy to a condition little short of anarchy.

That the constitution of 1788, was in truth founded on a deliberately formed scheme of compromises and equivalents, is an historical

fact denied by none in terms, but virtually and practically, by many who believe themselves to be statesmen, but who are nevertheless, politicians merely. But the vital importance of this historical fact justifies, if it does not demand, an exhibition of the evidence in part, at least, by which it is sustained. Amidst the affluence of material, selection is the only difficulty. None could be more conclusive than the following statement made by ALEXANDER HAMILTON to the New York convention, assembled at Poughkeepsie in June 1788, to pass on the new constitution submitted to the states by the general convention assembled at Philadelphia. It is extracted from Elliot's Debates, p. 212:

"In order that the committee may understand clearly the principles on which the general convention acted, I think it necessary to explain some preliminary circumstances.

"Sir, the natural situation of this country seems to divide its interests into different classes. There are navigating and non-navigating states—the *northern* are properly the navigating states: the *southern* appear to possess neither the means nor the spirit of navigation. This difference of situation naturally produces a dissimilarity of interests and views respecting foreign commerce. It was the interest of the *northern states* that there should be no restraints on their navigation, and that they should have full power, by a *majority* in congress, to make commercial regulations in favour of their own and in restraint of the navigation of foreigners. The *southern states* wished to impose a restraint on the northern, by requiring that *two thirds* in congress should be requisite to pass an act in regulation of commerce: they were apprehensive that the restraints of a navigation law would discourage foreigners, and by obliging them to employ the shipping of the northern states, would probably enhance their freight. This being the case, they insisted strenuously on having this provision engrafted in the constitution; and the northern states were as anxious in opposing it."

Again: "Much has been said of the impropriety of representing men who have no will of their own: whether this be reasoning or declamation I will not presume to say. It is the unfortunate situation of the southern states to have a great part of their population as well as property in blacks. The regulation complained of was one result of the spirit of accommodation which governed the convention; and without this indulgence no union could possibly have been formed. And, sir, considering some *peculiar advantages* which we derive, it is entirely just that they should be gratified. The southern states possess certain staples, tobacco, rice, indigo, &c., [and now, above all, cotton,] which must now be capital objects in treaties of commerce with foreign nations; and the advantages which they necessarily procure in these treaties, will be felt throughout all the states."

"It became necessary, therefore, to compromise, or the convention would have dissolved without effecting any thing. Would it have been wise and prudent in that body, in this critical situation, to have deserted their country? No. Every man who hears me—every wise man in the United States would have condemned them. The convention were obliged to appoint a committee for accommodation. In this committee the arrangement was formed as it now stands, and their report was accepted. It was a delicate point, and it was necessary that all parties should be indulged."

So much for the testimony of a distinguished northern statesman, to the fact that the constitution was a deliberately concocted system of compromises—the work of "*a committee for accommodation*," specially appointed for the purpose, and in which committee the rights of the slaveholder were distinctly recognized and guaranteed. And stronger still is his evidence, as the representative of a great navigating and commercial state, as to the value and importance of the equivalents given by the south for all the concessions made in convention, by the north, connected with the subject of slavery.

Equally conclusive is the evidence of the eloquent and patriotic FISHER AMES, whose fate it was, like Hamilton, to be cut off in the full bloom of his intellectual powers. Urging the acceptance of the new constitution in the convention of Massachusetts, he exclaims with the honest fervour of strong conviction:

"Shall we put every thing that we hold precious to the hazard, by rejecting this constitution? *We* have *great advantages* by it in respect of *navigation*, and it is the general interest of the states that we should have them. But if we reject it, what security have we that we shall obtain them a second time, against the local interests and prejudices of the other states?"

The fears of the eloquent Ames were groundless, and the new constitution, with all its compromises and equivalents, was adopted by all the states. Under the protection of that constitution, and of the great name and power of the Union, the navigating and commercial states (now become great manufacturing communities, also, by the help of a free market in the south) have prospered in a manner, with a rapidity, and to an extent, unparalleled in the history of the human race. The New England states especially, notwithstanding the admitted, nay boasted sterility of their soil, and the ungenial character of their climate, have, in view of the extent of their population, become the most prosperous and wealthy communities in the world. Whilst we of the south, as was foreseen by the sagacity of the far-reaching men of that period, have witnessed our commerce and navigation transferred from our own harbours to enrich the commercial emporiums of the north—the disbursements of the national government yearly poured out in partial and reckless profusion, to add to the advantages which they already possess in their overflowing capital and numerous and capacious harbours—and the profits of our agricultural toil and slave labour daily passing from ourselves to stimulate and reward the enterprise and industry of that section of the Union. Yet we have never for one moment repined at their prosperity, nor sought by any illegal or improper means to check their rapid and onward advancement. But is it not cause of just complaint on our part to find that the very power which they now enjoy—that power which results from those concessions made by us as an equivalent for full protection to our slave property—is now habitually perverted to the injury and destruction of that interest which they then so solemnly covenanted to guaranty.

It was not in human nature that our northern brethren of that generation, when the objects of this compromise were fresh before their eyes, should be forgetful of the abyss from which they had been rescued by the great national compact of 1788, and should begin to cavil at the price they had agreed to give for the inappreciable benefits of the Union. Least of all was it to be expected that they would impede the execution of the clause, by which they had recognized the right of the slaveholder to seize his fugitive slave within their borders, and bound themselves to surrender him to the owner, when the violation of such solemn compact on their part, would inflict on themselves a perpetual and incurable evil. For it was to be expected that the enlightened and sagacious people of the north would see at a glance, that the violation of that compact would create, and continually recruit on their soil, a class of paupers like the Parias of Hindostan—of outcasts from society—of men who are neither slaves nor citizens—a wen on the body politic—an anomaly on their institutions, and a pestilent curse to them and their posterity.

It cannot be doubted that prudential considerations like these, combined with others of a higher and nobler class, protected the people of the south, for nearly thirty years, in the enjoyment of the constitutional rights guaranteed to them and their posterity by the clause under consideration. For it is historically known that the act of congress, passed on the 12th of February 1793, so far as it related to the recapture and removal of fugitive slaves was not called for by any complaint from the south. It grew incidentally out of a call which was made for remedial legislation on the kindred subject of the surrender of fugitives from justice.

Senator Butler of South Carolina has furnished us with an historical review of public sentiment at the period referred to, which is valuable not merely for its facts but for the high source from which they emanate:

"For many years the clause immediately under consideration had a self-sufficing efficacy, having all the incidents and advantages conceded to it of an extradition treaty. The common practice of the times was an honest and imposing commentary on the intention and object of the provision. A slave escaping into a nonslaveholding state could be pursued, and in general could be as easily apprehended there as in the state from which he had made his escape. It was not uncommon for judges to remand to a slave state, to be tried, a person of colour, upon an issue involving his freedom; and state courts and judicial and ministerial officers of nonslaveholding states were in the constant habit of using, as a matter of recognized obligation, their power and agency in bringing about the delivery of a fugitive slave to his pursuing master. The right of the owner to apprehend, where the slave could be identified as a fugitive, was not disputed, much less impeded by state laws or the violence of irresponsible mobs. The paramount authority of the constitution and its active energy were acknowledged by common consent. It executed its provisions by the active co-operation of state authority, in the fulfilment of what they then recognized as a constitutional duty. The duty to deliver up,

seemed to be regarded as equal to the right of the owner to demand his escaping servant. The term "*deliver up*" had a meaning so pregnant and obvious, that it carried with it all the obligations by common consent, growing out of its use; as it imparted a conceded right, so it was regarded as containing a perfect obligation. The dictate of good faith found in the nonslaveholding states no disposition to evade or deny its obligations. The framers of the constitution were then the living and honest expounders of its meaning and active operation. The jealousy of political interest was not then strong enough for hostile and unconstitutional legislation."

It thus appears, that for many years after the adoption of the constitution, the guaranty of the right to recapture fugitive slaves was held sacred by the people of the north. And it is now painful to recur to the period, when under the influence of sectional jealousy and political fanaticism, those plighted engagements of public faith were ruthlessly cast aside, and those dormant elements of mischief roused into action which now arrest the fears of every patriot heart, and even at that time caused our illustrious Jefferson to express the hope that he might not live to weep over their results. The period here alluded to is that when the territory of Missouri asked for admission as an equal and sovereign member of this confederacy. The evil and pernicious passions to which that controversy gave rise; the elements of sectional strife and of unholy discord which it developed, have cast, and still continue to cast their deepening shadows over the fate of this Union. The results of that stormy and exciting session of congress are familiar to us all. Missouri was admitted as a state, free from any condition that impaired her equality and sovereignty as a member of this confederacy. To that extent the constitution was saved from violence and the Union preserved from the perils that threatened to engulf it. Yet from that day to the present, the feeling engendered in that sectional war of ambition against the south, has never slumbered. It may be traced in the laws passed by their state legislatures—it may be seen in the judicial decisions of their courts, and it may be observed in all the results of their individual, social and political action. Then it was that the nonslaveholding states commenced a war of legislation against the owners of fugitive slaves, seeking to recapture them beyond the frontiers of the slaveholding states. A morbid, and in some cases it may be feared a feigned philanthrophy carried out and kept in advance of the hostile enactments of the state legislatures. Fugitive slaves were harboured and protected; vexatious suits and prosecutions were instituted against the owner or his agent, resulting sometimes in imprisonment for want of bail: irresponsible mobs, composed of fanatics, ruffians and fugitive slaves, who had already found an asylum abroad, were permitted by the local authorities to rescue recaptured slaves in the lawful custody of their masters, and to imprison, beat, wound and even put to death citizens of the United States, seeking to enforce by lawful proceedings, the rights guarantied to them by the constitution.

But these irregular outbreaks of brutal violence and ferocity were a part only of the machinery employed by the nonslaveholders of the north against their brethren of the south. Abolition societies were

formed for the avowed purpose amongst others, of protecting fugitive slaves against recapture by their owners. Nor was the activity of these societies confined by geographical limits. The fact is notorious and undeniable that their emissaries have penetrated into the very hearts of the slaveholding states, and aided the escape of slaves whom they had seduced from the service of their owners.

It may well be believed, for it could not be otherwise, that the tenure of slave property is every day becoming more and more precarious by reason of these forays, and the impunity with which they are accomplished. Their frequency and success have in effect, imposed a heavy tax on the frontier counties of the commonwealth, which is just so much more oppressive than an ordinary tax, as a ruinous inequality can make it.

It is not to be expected that the people of the frontier counties will long submit to this state of things. Unless some legal remedy be found for this evil, an illegal one will inevitably be resorted to. The territory of the nonslaveholding states will be invaded in sudden and rapid incursions by those who have been robbed of their property by the nefarious acts of the abolitionists, with the view to its recapture by the strong hand of power. And thus we shall see reacted in the nineteenth century the forays and counter-forays of the semi-barbarous English and Scottish borderers; terminated there, by the union under one monarch, of two hostile nations; but originating and growing up, here, between brethren of the same race, and living under a government which we boast of as the best on earth, the last and greatest effort of political science. An edifying lesson it will, in truth, be to the nations of Europe, now seeking to improve their condition by the establishment of republican institutions similar to our own.

But the evil and disgrace of a petty border warfare may not be the last or worst consequence of the continued violation, by the nonslaveholding states, of the constitutional guaranties on the subject of slavery. This glorious Union itself, which for more than half a century has held out the promise of liberty, peace and happiness to the white man, at least for an indefinite series of ages, in a territory capable of sustaining in comfort, the whole population of Europe, may be rent asunder by the feuds which are becoming daily more embittered on this exciting subject. The members of this committee are not in any degree emulous of the character of alarmists. But they cannot forget that in one of the fables which the wisdom of antiquity has bequeathed to us, the cry of "the wolf," "the wolf," was disregarded by the drowsy shepherd—once too often.

Nor does the note of alarm come first from them. It was sounded by Alexander Hamilton, a northern statesman, more than sixty years ago, when he told the people of New York, in convention, that the Union could not have been formed without the guaranties demanded by the south on the subject of slave property. It was sounded by Fisher Ames, a northern statesman, at the same period when he made a similar statement to the people of Massachusetts in convention assembled. It was sounded by the supreme court of the state of Pennsylvania, when it announced through one of its most venerable oracles of the law: "That the south would not have consented to have become parties to the constitution, unless their property in slaves had been secured." It was sounded by the supreme court of the United States, when it announced to the north, through the lips of a northern judge: "That the full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding states, and was so vital to the preservation of their domestic interests and institutions, that it constituted a fundamental article, without the adoption of which, the Union could not have been formed."

Look well at these solemn warnings, and then look at the actual state of things in the sixtieth year of the constitution! It is simply and undeniably this: That the south is wholly without the benefit of that solemn constitutional guaranty which was so sacredly pledged to it at the formation of this Union. Our condition is precisely in effect, that which it was under the articles of the old confederation. No citizen of the south can pass the frontier of a nonslaveholding state and there exercise his undoubted constitutional right of seizing his fugitive slave, with a view to take him before a judicial officer and there prove his right of ownership, without imminent danger of being prosecuted criminally as a kidnapper, or being sued in a civil action for false imprisonment—imprisoned himself for want of bail, and subjected in his defence to an expense exceeding the whole value of the property claimed, or finally of being mobbed or being put to death in a street fight by insane fanatics or brutal ruffians. In short, the condition of things is, that at this day very few of the owners of fugitive slaves have the hardihood to pass the frontier of a nonslaveholding state and exercise their undoubted, adjudicated constitutional right of seizing the fugitive. In such a conjuncture as this, the committee would be false to their duty—they would be false to their country, if they did not give utterance to their deliberate conviction, that the continuance of this state of things cannot be, and ought not to be much longer endured by the south—be the consequences what they may.

In such a diseased state of opinion as prevails in the nonslaveholding states, on the subject of southern slavery, it may well be imagined what the character of their local legislation must be. Yet it is deemed by the committee their duty to present before the country the actual state of that legislation, that the people of this commonwealth and of the entire south may see how rapid and complete has been its transition from a fraternal interest in our welfare to a rank and embittered hostility to our institutions. The legislation to be found upon this subject, on the statute books of the nonslaveholding states, may be divided into two classes.

The first of which, would embrace the legislation of those states, which, professing a seeming respect for the obligations of the constitution, do, under the pretext of conforming to its requisitions, subject the slave owner to conditions utterly incompatible with the recovery of his slaves.

These laws, in the general, provide,

1st. That the fact, whether the person claimed be a slave or not, shall be tried by a jury as in other cases of jury trial.

2d. That he shall be defended at the public cost.

3d. If the finding of the jury shall be in favour of the slave, that he shall be set at liberty, and shall never thereafter be molested on the same claim.

4th. That the claimant of the slave shall not be entitled to any process for the recovery of him until he shall give bond with securities, resident and freeholders of the state, in a heavy penalty, and with conditions to pay all costs legally chargeable against him; to pay to the slave so much per week whilst the proceedings are pending; to pay not only costs, but the *expenses* of the slave, if the jury should find in his favour, and also to pay a heavy sum to the slave, and all damages which he may sustain in consequence of the proceeding.

5th. No judicial officer of the state shall issue any process, except under said acts, and of course shall not execute the act of congress, upon that subject, under pain of being held guilty of a misdemeanor.

It has already been well observed in regard to this class of laws, "that they aim an insidious blow at the institution of slavery, through the *forms* of honest legislation. That they are palpable frauds upon the south, calculated to excite at once her indignation and her contempt. It is an insult to her intelligence to suppose, that she can see in it any purpose to do her justice. On the contrary, it is manifestly, plainly, and beyond all question, a contrivance to defeat justice; to get around the plain provisions of the constitution; to defeat by indirection, the rights of southern men, and to give liberty to the southern slave under the specious and deceitful pretence of extending the right of trial by jury."

But in the maddening progress which abolitionism has made in the northern states, this class of laws has fallen far behind the spirit of the times, and has yielded to a new brood of statutes, marked by deeper venom and a more determined hostility. And in this class are embraced,

Second. The laws of those states which affect no concealment of their hatred to southern institutions, nor of their utter and open contempt and defiance of the obligations of the federal compact.

Of this class, which is now indeed the prevailing legislation of almost the whole nonslaveholding states, an act passed by the general assembly of the state of Vermont, on the 1st day of November 1843, may be cited as a fair illustration. It is in these words:

"*An Act for the protection of Personal Liberty.*

"*It is hereby enacted by the general assembly of the state of Vermont, as follows:*

"Sec. 1. No court of record in this state, nor any judge thereof, no justice of the peace nor other magistrate, acting under the authority of this state, shall hereafter take cognizance of, or grant any certificate, warrant or other process, in any case arising under section three of an act of congress, passed February twelfth, seventeen hundred and ninety-three, entitled 'an act respecting fugitives from justice, and persons escaping from the service of their masters,' to any person claiming any other person as a fugitive slave in this state.

"Sec. 2. No sheriff, deputy sheriff, high bailiff, constable, jailor, or other officer or *citizen of this state* shall, hereafter, seize, arrest, or detain, or aid in the seizure, arrest or detention, or imprisonment in any jail or other building belonging to this state, or to any county, town, city, or person therein, of any person for the reason that he is or may be claimed as a fugitive slave.

"Sec. 3. No sheriff, deputy sheriff, high bailiff, constable, or other officer or *citizen of this state*, shall transport, or remove, or aid or assist in the transportation or removal of any fugitive slave, or any person claimed as such, from any place in this state to any other place within or without the same.

"Sec. 4. If any such judge, justice of the peace, magistrate, officer or citizen, shall offend against the two preceding sections, such judge, justice of the peace, magistrate, officer or citizen, shall be subject to the penalties provided in section five of this act.

"Sec. 5. Any judge of any court of record in this state, any justice of the peace or other magistrate, any sheriff, deputy sheriff, high bailiff, constable, or jailor, or *any citizen of this state*, who shall offend against the provisions of this act, by acting directly or indirectly under the provisions of section three of the act of congress aforesaid, shall forfeit a sum not exceeding one thousand dollars, to the use of the state, to be recovered upon information or indictment, or be imprisoned in the state prison not exceeding five years."

Laws of similar character and in almost the same language are to be found on the statute books of Massachusetts and Rhode Island.

But the state of Pennsylvania has gone a bow shot beyond all the rest in this new legislative war against the constitutional rights of the slaveholding states. An act was passed by the legislature of that state on the 3d of March 1847, entitled "an act to prevent kidnapping, preserve the public peace, prohibit the exercise of certain powers heretofore exercised by judges, justices of the peace," &c.

The *first section* makes it highly penal to kidnap any free negro or mulatto.

The *second* section makes it only a little less penal, knowingly to sell, transfer or assign any free negro or mulattto, for the purpose of fraudulently removing, exporting or carrying such free negro or mulatto out of the state, with design of making him or her a slave or servant for life.

On these salutary additions to the *criminal code* of Pennsylvania, the committee will make but a single remark. It is, that the southern slaveholder, against whom all the remaining sections of the act are in terms directed, is passed upon, by the legislature of this our sister state, along with kidnappers, thieves and felons. *Ex pede Herculem.* Such is the spirit of nonslaveholding legislation!

The *third* section is in accordance with the legislation of Vermont, Massachusetts and Rhode Island, and forbids all of her judicial officers to execute the act of congress of the 12th of February 1793.

The *fourth* section is as follows:

"Sect. 4. That if any person or persons claiming any negro or mulatto as fugitive from servitude or labour, shall, *under any pretence*

of authority whatsoever, violently and tumultuously seize upon and carry away to any place, or attempt to seize and carry away in a riotous, violent, tumultuous and unreasonable manner, and so as to disturb or endanger the public peace, any negro or mulatto within this commonwealth, either with or without the intention of taking such negro or mulatto before any district or circuit judge, the person or persons so offending against the peace of this commonwealth, shall be deemed guilty of a misdemeanor, and on conviction thereof, before any court of quarter sessions of this commonwealth, shall be sentenced by such court to pay a fine of not less than one hundred dollars, nor more than one thousand dollars, with costs of prosecution; and further, to be confined in the county gaol for any period, at the discretion of the court, not exceeding three months."

It is impossible to wink so hard as not to see through the transparent veil which covers this penal section. The pretended object of the section is to preserve the public peace; its real object is to make highly penal the exercise by the southern slaveholder, within the limits of Pennsylvania, of his undoubted and adjudicated constitutional rights. It points out to the fanatic and abolitionist an easy mode of defeating, by the use of a little wholesome violence, any attempt by a slave owner to reclaim his fugitive slave. The owner of the slave, under the authority of the constitution and the act of congress, attempts to seize him, or in fact has seized him, in order to take him before a judge of one of the federal courts. In the actual state of public opinion in Pennsylvania, such an attempt cannot be made without producing an assemblage of abolitionists, fugitive slaves and others actuated by hostile feelings. Under such circumstances, nothing is easier than to produce a tumultuous and riotous movement. A breach of the peace ensues. The slave is rescued and conveyed to a place of safety, while the owner is arrested on the charge of having attempted to seize his slave, or of having actually seized him, "in a violent, riotous and tumultuous manner." The prosecution may *possibly* result in the acquittal of the slave owner; but in the meantime his slave has escaped, and the true object of the fourth section is attained.

The *fifth* section gives to the judges of that state the authority to award legal process to take the slave from the possession and custody of his master, whilst it denies to the same judges all authority to interpose on behalf of the owner in the recovery of his property.

The *sixth* section forbids, under heavy penalties, the use of the public gaols of the state to preserve the property of the master from the violence of irresponsible mobs, whilst it opens these same gaols as a secure refuge to the slave from the demand of the master.

But this disgusting and revolting exhibition of faithless and unconstitutional legislation must now be brought to a close. It may be sufficient to remark, that the same embittered feeling against the rights of the slaveholder, with more or less of intensity, now marks, almost without exception, the legislation of every nonslaveholding state of this Union. So far, therefore, as our rights depend upon the aid and co-operation of state officers and state legislation, we are wholly without remedy or relief.

This committee was directed to enquire how far the existing legislation, under the third clause of the second section of the fourth article of the constitution, fulfils the intent and object of that instrument, in affording an adequate remedy for the recapture of slaves absconding from this state to the nonslaveholding states of this confederacy.

The only provisions so far made by congress to carry into effect this guaranty of the constitution, are to be found in the 3d and 4th sections of an act passed on the 12th of February 1793. These sections are in the following language:

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

"SECT. 4. That 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 shall rescue such fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbour or conceal such person, after notice that he or she was a fugitive from labour, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars."

It has already been remarked that this law did not result from any complaint upon the part of the south; that at the period of its passage, the constitution itself found a self-sufficing efficacy in the good faith, the integrity and the patriotism of the northern people; and that its existence upon the statute book is to be ascribed solely to its incidental connexion with a kindred provision in the constitution, on which remedial legislation was at that time deemed necessary. Passed under such circumstances, it could scarcely be presumed to possess the requisite energy to reach the intensity and extent of that evil which now threatens such disastrous consequences to the Union. Besides, the founders of our government, many of whom were members of the second congress, knowing how essential good faith was to the stability of their mighty structure, and believing that every consideration of self-interest, of sound policy and of constitutional obligation, would urge the northern states to a faithful execution of this clause in the

compact, committed the most of its high functions to state officers and to state agents. It is superfluous to say, after the details which have been presented in this report, how groundless has proved the confidence that was reposed in the patriotism and good faith of the nonslaveholding states, and how worthless and inadequate has the remedy provided by the law of congress proved. In the mild but expressive language of the chief justice of the United States, "the act of congress of 1793 scarcely deserves the name of a remedy."

It is true that act does enable the owner of a slave, under certain circumstances, to apply to a district or circuit judge of the United States; but when it is recollected that in many of the states there is but one district judge, and that there are but nine states which have judges of the supreme court residing in them; and when we farther examine the other provisions of the law, we shall see, since the withdrawal of state support, in the language of chief justice Taney, "*how ineffectual and delusive is the remedy provided by congress.*"

This law does not authorize the judge to issue a warrant to arrest the fugitive; it does not authorize a demand by the slave owner upon the services of the marshal or any other ministerial officer of the federal government. Before the law can operate at all, the master, always, of necessity, a stranger, must go into a free state, seize his slave without form or process of law, and unaccompanied by a single civil officer, must carry that slave, in the face of a fanatical and infuriated population, perhaps from the centre or extremities of the state, a distance of two or three hundred miles, to the place where the judge may happen to reside, before he can have any legal or judicial action in his case; and suppose that he had passed through the almost insuperable barriers incident to such an undertaking, and had succeeded in bringing his slave before the judge, and had obtained the certificate which the law prescribes, there is no provision in that law by which the judgment can be enforced, or the power of the national government be invoked, through its marshals and officers, to sustain the rights of property thus adjudicated in his favour.

Fortunately we are not without the highest judicial exposition of the extent and character of our rights, and of the solemn duties and obligations which devolve upon congress at the present moment.

The supreme court of the United States, in the case of Prigg *v.* the State of Pennsylvania, thus defines the rights of the slave owner under that article of the constitution.

"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. The question can never be, how *much* the slave is discharged from, but, whether he is 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."

"If this be so, then all the incidents to the 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.

"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 of 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 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 modes of proof 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 been, in a great variety of cases, a delusive and empty annunciation.

"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 whom such labour or service is due.' 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? 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 enquiry and examination into it by local tribunals or otherwise, while the slave is in possession of the owner, or 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.*"

Such is the clear and explicit annunciation by that court of the rights of the slave owner. No less clear and explicit is its opinion as to the powers and duties of congress.

"If indeed the constitution guaranties 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. On the contrary, the natural and necessary conclusion is, *that the national government is bound, through its own proper departments, legislative, judicial and executive, to carry into effect all the rights and duties imposed by the constitution.*"

Having shewn the defects existing in the present legislation of congress, and the duty which pertains to that body to provide an effectual remedy for the security of the rights of the slave owners of the south, this committee has been farther required "to suggest such relief as the urgency of the case requires, and also the mode in which the rights of the citizens of this state and of the other slaveholding states of the Union shall be brought to the attention of the congress of the United States."

It is the opinion of this committee, that it will be difficult for human wisdom to devise an act or a system of legislation by congress, by which the rights guarantied to the owners of fugitive slaves can, at the present time, and under the feelings now prevalent at the north, secure our rights to the full extent that they were designed to be secured at the adoption of the federal constitution. Two generations of men have been born, and the second has well nigh passed away, since the rights in question were bought and paid for. Our northern brethren of this generation, for the most part, have forgotten, or never knew, that their ancestors received, and that they are now enjoying, a full equivalent for conceding to us the rights in question. Not one in a thousand has ever read, or will ever read the evidence contained in this paper, of the contract made by their fathers. Or, if they be never so well versed in the history of the compromises of 1788, it is to be feared they will still seek to embarrass the recapture of the slaves taking refuge within their borders, because of their misguided and perverted sentiments of philanthropy and public policy.

Against such a current of popular feeling and prejudice as now prevails on this subject in the nonslaveholding states, it will therefore be difficult to legislate, so as to accomplish the full and perfect enforcement

of our rights, at all times and under all circumstances. Still much of the evil that now threatens to disturb the relations between the two great divisions of this confederacy, and to endanger the future peace and tranquillity of this nation, may be repressed by wise, energetic and judicious legislation upon the part of congress. We at least shall have discharged our duty to our country by pointing out in an honest spirit to that tribunal having cognizance of the subject, those remedies which may control and restrain the evil within the limits of a patient endurance. Upon congress, if it shall refuse to adopt the suggestion herein set forth, or wiser or better remedies than those suggested, be the painful responsibility of the consequences that must inevitably follow.

This committee would therefore recommend, that an earnest effort be made through the senators and representatives from this state in the congress of the United States, to procure such amendments to the law of the 12th of February 1793, as shall confer:

1st. Upon every commissioner, clerk and marshal of the federal courts, and every postmaster and collector of the customs of the United States, the authority now granted to the judges of the circuit and district courts of the United States, to give to the claimant of a fugitive slave the certificate authorized by said act, and to make the duties herein prescribed mandatory.

2d. To authorize, upon proper affidavit, the claimant, when deemed necessary by him, to apply to the judges of the circuit and district courts of the United States, and to every commissioner and clerk of the federal courts, and to every postmaster and collector of the customs of the United States, for a warrant directed to the marshal of the United States, for the seizure and arrest of his fugitive slave, and after certificate given, to require said marshal to aid in the removal of said slave beyond the limits of the state into which he has escaped.

3d. To authorize and require the marshal to employ as many assistants as he may find necessary to carry the judgment and process of the court into effect—the services of such assistants to be paid from the public treasury of the United States.

4th. To authorize all the officers clothed with judicial powers under such law, when distant from the residence of the regular marshals of the United States, to appoint one who shall, for all the purposes of carrying into effect the process of the court in such case, be invested with the power and authority conferred on the marshals of the United States.

5th. To increase the penalty now prescribed by law for obstructing and hindering a claimant in seizing and arresting his slave, and to enlarge the provision so as to embrace all persons assisting him; to increase the penalty for harbouring and concealing fugitive slaves, with a provision giving one half of the penalty to the informer.

6th. To declare all assemblies for the purpose of obstructing the execution of the process authorized by this act, unlawful assemblies, the parties concerned to be guilty of misdemeanors—all breaches of the peace resulting from such assemblies, to be also misdemeanors—and all mayhems and deaths resulting from such unlawful gatherings to be felonies—and that all such offences be cognizable and punishable by the courts of the United States.

The committee accordingly conclude this report by recommending the adoption of the following resolutions:

1. *Resolved by the general assembly of Virginia*, That the senators and representatives of this state in the congress of the United States, be requested to use their earnest and persevering efforts, to have the act passed on the 12th of February 1793, so amended, as more effectually to secure to the slave owners in the south, the rights guarantied to them by the 3d clause, 2d section and 4th article of the constitution of the United States.

2. *Resolved*, That the governor of this commonwealth be, and he is hereby requested to forward to each of our senators and representatives in the congress of the United States, and also to the governors of the several states of the Union, a copy of this report and resolutions.