SPEECH OF WM. JOHNSTON, ESQ.,

BEFORE THE

FRANKLIN CIRCUIT COURT OF KENTUCKY.

PREFACE.

CANDIDATES for office frequently find it convenient to lay down new platforms suited to the current opinions of the day, and to declare their present, though new, zeal in behalf of doctrines known to be popular. It is the felicity of Judge Johnston, that his earlier, as well as his later, productions may be safely trusted with his fellow citizens of the present day, without note or comment. Before the great Proviso of Freedom had taken a new name, and been spread upon the banner of party—while Wilmot and Van Buren were coöperating with Southern politicians under the lead of Mr. Polk—Judge Johnston, in the year 1846, in the capital of Kentucky, fearlessly asserted the *whole truth* on this subject, earnestly and without equivocation. The following is the speech which he made on that occasion, as reported and published at the time.

Franklin Circuit Court, Kentucky, April 10, 1846, *before the* HON. MASON BROWN, *Circuit Judge.*

The State of Ohio, *v.* Forbes and Armitage.

SLAVERY—KIDNAPPING—FUGITIVES FROM JUSTICE.

THE facts proved upon the inquiry, were substantially these:

Jerry Finney was born a slave in the house of Hezekiah Brown, of a colored woman named Rose. This woman and Jerry were held by Brown, not in his own right, but as the property of his wife; Rose having belonged to a former husband by the name of Long, by whom, previous to her marriage with Brown, she had eight or nine children, among others, Thomas Long. In the last will and testament of Hezekiah Brown, he loaned to his wife a number of articles of property, real and personal, among other things, the boy Jerry, to be held during her natural life, and, after her death, to go to her heirs. After the death of Brown, his executors, Henry Brown and John D. Richardson, executed a paper relinquishing to Mrs. Brown, who survived her husband, all claim on the part of Brown's estate to the boy Jerry, and declaring that they knew him to be her property, and part of her former husband's estate. Thomas

Long, one of Mrs. Brown's sons by her former husband, purchased in his lifetime the interests of all the other heirs, except three, and died, leaving Bathsheba Long his widow, who administered upon his estate, and purchased in her own right the remaining interests of the other heirs, except the third of one share, which is outstanding. Mrs. Long has settled up, and made distribution of all her husband's estate, except Jerry. One of her children is still a minor.

Sixteen or seventeen years ago, Mrs. Brown, after her husband's death, hired the boy Jerry to a gambler, by the name of Allgaier, who represented that he was going to work him on a farm in Woodford county, Kentucky—with a stipulation on Allgaier's part, that he should not take him out of the State.

Allgaier took Jerry to the State of Ohio, and kept him in his service there for six months; when, learning the fact, Mrs. Long, who held the remainder in Jerry, wrote Allgaier a letter, directed tc him at Cincinnati, requiring him to return Jerry immediately, and threatening to sue him if he did not comply; upon which Allgaier returned him to his mistress, Mrs. Brown, who was still living, now deceased. A few weeks after, Jerry asked permission to return to his last place of residence for his clothes, which his mistress gave him, and he went away and never returned till he came back in custody of Forbes and Armitage. Mrs. Brown advertised him as a runaway slave, and offered a reward for his apprehension; and since then, knowing that he was in the State of Ohio, Mrs. Long has given three different powers of attorney, at different times, to different persons, to bring him back, but always failed. A short time ago, she, Mrs. Long, executed regularly, according to law, a power of attorney to Forbes, whom she at the time had never seen, to apprehend and return Jerry to her, at Frankfort, Kentucky. It is admitted that the prisoner at the bar is the same Forbes, and that the prisoner Armitage acted, in the matter of Jerry's seizure, in conjunction with Forbes.

SPEECH OF MR. JOHNSTON.

May it please your Honor:

Without setting up any claim to modesty, I confess that I appear before you laboring under great embarrassment—such as I never before felt. Not that any imflammatory excitement is felt against me personally, for I know there is none,—not on account of any personal hazard to be incurred by anything I am about to say—for I know I am safe,—but on account of the novelty of my position, and the intrinsic importance of the

cause in which I appear, and the vast moment of the questions involved in it. I come here not to quarrel with the domestic institutions of Kentucky, nor to add to the excitement unhappily too great on both sides of the water. I had rather contribute my efforts to promote peace and good will between citizens of sister States, whose interests, rights, and feelings are so nearly one; who have so often mingled the blood of consanguinity in the bonds of peace; and the blood of patriotism on the field of battle, to secure the common blessings of union, liberty, and law to both. I come here as the agent of the Executive of Ohio, with a legal requisition for certain persons charged as fugitives from justice. It is my mission to urge certain legal and international rights of the State which I represent; and I feel that in this community I may safely discharge that duty as fully and boldly, as if I stood in the halls of justice in the capital of my own State.

Before I ever set my foot in this State, one of the first incidents which called my attention to the character of its people, was the valedictory address of a veteran Statesman, who, having finished his career, and resigned the cares of public life, had come up, as he said, to lay his bones in Kentucky; because he knew that if they reposed in Kentucky earth, the foot of a tyrant should never tread upon them. And I feel a strong and abiding confidence, as I stand before you today, to debate these vexed and exciting questions, that if there be any spot on earth where the ashes of the dead or the rights of the living are secure, it is on the soil and in the judicial tribunals of Kentucky.

Let me, then, as well as I may, overwhelmed by the kindness and the cheers of this venerable assembly, approach the question involved.* And first: The statute of Kentucky, of 1820, under which this proceeding is had, is at variance with the Constitution of the United States, and the law of Congress of 1793, and void. The statute runs thus:

"SEC. 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That in all cases where any negro slave or slaves, have, or may hereafter run away from his, her or their owners, and take protection in any of the United States, and the owner or owners of such slave, by themselves, their agent, or any other person, with their approbation, shall have removed, or shall, hereafter, remove any such slave, or slaves, from any other State within the United States, into this Commonwealth, and he, she, or they have been, or shall hereafter be indicted for the same, in any one of the United States, and the Governor of said State shall demand of the Governor of this State, the person, or persons, so indicted, or who may, hereafter, be indicted, to be delivered to him agreeably to the Constitution of the United States, and this State, it shall be the duty

* The courthouse was crowded, and some five or six of the Ex-Governors of Kentucky, who had taken their seats with the Judge on the bench, had responded to the preceding passage, with long continued cheering.

of the Governor of this Commonwealth, upon such requisition being made according to law, to issue his warrant to the Sheriff of the county where such supposed fugitive may reside, if he has a known place of residence, requiring him to take into custody such supposed fugitive, or fugitives, from justice, as are named in such warrant and indictment, and bring him, her, or them, before a Circuit Judge; and, if the Circuit Judge shall be of opinion that the person, or persons, named in such warrant and indictment, are the owner, or owners, of the slave, or slaves, named in such indictment, or that he, she, or they, acted as the agent, or by the approbation of the owner, or owners, of such slave, or slaves, it shall be the duty of the Judge to discharge the person, or persons taken by virtue of said warrant, out of custody.

SEC. 2. *Be it further enacted,* That if the Judge shall be of opinion that the person, or persons, taken into custody by virtue of the Governor's warrant, is not the owner, or owners, of the slave, or slaves, in the indictment found against him, her, or them, in any one of the United States, for stealing and conveying a slave, or slaves, which are not their own property; or that he, she, or they, did not act as the agent, or by the approbation of the owner, or owners, of such slave, or slaves, then it shall be the duty of the Judge to remand such person, or persons, into custody again, to be dealt with according to the laws now in force on that subject."

Two questions of minor importance spring up under this act. First, are these persons within the meaning and protection of the Statute, not being "indicted" by a jury of inquest, but only charged by the affidavits of private citizens? and, secondly, was the statute intended to protect any but persons having a legal residence in Kentucky? I suggest these points to the consideration of the Court without argument, and proceed to the main question: Is the law constitutional? It will not be pretended that the Legislature of Kentucky have not a right, that it is not their duty, in some cases, to pass laws in aid of the Constitution, and for the purpose of directing the *mode* in which its provisions shall be carried out. The provision of the Constitution, Art. IV. Sec. 2, is—"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 the 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."

It was well remarked by my brother Morehead, that the delivering up of a fugitive from justice, under the constitution, was an executive act. It is so, not because the constitution in so many words designates the executive as the only proper department, for it does not. The act of Congress of 1793 imposes this duty on the executive. The *mode* then of delivering up may, nay, ought to be directed by statute. But no statute can be valid which thwarts the design of the constitution, or in any way impedes the action or impairs the powers of the executive demanding, or the executive delivering up, such fugitives. Thus, as by the act of 1815,

the statute may direct that an issue be made before a judge of the court to ascertain the identity of the persons claimed as fugitives. But when the statute, as in the act of 1820, takes the case out of the hands of the executive, for the purpose of trying issues the result of which may defeat the ends of the constitution, it is unconstitutional and void, and the court has no jurisdiction under it.

The act of 1820 proposes to protect from the laws of the demanding State, the owners of slaves, the agents of slave owners, and persons acting by the approbation of slave owners; irrespective of the manner in which they proceed in recovering the slave, or what infractions of law they may have been guilty of in recovering him. Surely the constitution never intended such a thing as this.

The clause in the constitution authorizing persons to whom labor or service is due, to recover the persons held to such labor or service, does not authorize the claimant to seize them *sans ceremonie*, wherever they may be found — bind them hand and foot, and drag them away without proof of ownership, and in the teeth of the laws of the State whither they may have escaped. It says, "They shall be delivered up on claim of the party to whom such service or labor may be due." "Delivering up," implies some act by authority, in the State to which the fugitive had fled — not an act of physical force on the part of the claimant. And so the Congress of 1793 understood the constitution. It is there provided, "That, when a person, held to labor 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 territories, the person to whom such labor or services may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city, or town corporate wherein such seizure or arrest shall be made; and, upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labor to the state or territory to which he or she fled."

Clearly this act contemplates a judicial examination as to the right of the claimant. It contemplates no other mode of reclaiming, and, as this act was passed in aid of the constitution, by a congress, composed to a great extent of the same men, who but five years before had framed the

constitution; it may well be received as a fair exponent of that instrument. But whatever protection the owner of the escaping slave may take under the constitution, without such judicial examination as to the ownership, clearly the agent can take none. Agents, in such cases, are not known to the constitution, nor to the ordinance of 1787. The statute of 1793 is the first enactment in which agents are known; and that act provides for such examination.

We in Ohio think such examination indispensable to the cause of justice and humanity. We see nothing but endless confusion, injustice, and oppression growing out of the right to drag men, women, and children from their homes without such examination. We see encouragement given to a horde of pirates who infest the waters of the Ohio on both its banks, and make mancatching a trade.

I do not say these wretches are Kentuckians. They are to be found on both sides of the water, and do not deserve a name or local habitation on either. They are the enemies of the human race: without sympathy for anybody, and entitled to sympathy from nobody: men who will steal your slave *from* you today, and sell him *to* you tomorrow.

There is a distinguished character now in the Ohio penitentiary, who made a fortune by first persuading slaves to run away from their masters, quartering them on credulous black people (who, on account of their color, could not be witnesses against him), till a reward should be offered, and then conveying them back again for the reward. There are unfortunately others out of the penitentiary who follow the same calling, until, if you were on the southern line of Ohio, you would almost imagine you were on the slave coast of Africa.

About eight years ago a free colored woman, born in Ohio, and residing in Brown county, in the absence of her husband, was seized, and, without examination, or any forms of law whatever, carried into Mason county, Kentucky, and lodged in jail, under pretense that she was the slave of Arthur Fox, high sheriff of Mason county. Mr. Fox disclaimed ownership in her; and then she was retained in prison under pretense that she was the slave of Mrs. Johns, of New Orleans. Mrs. Johns also disclaimed her; and, then being in prison as a runaway slave, she was subject to be sold at the end of fourteen months for jail fees. She was only set at large by executive interposition. I mention this case, not because it is a singular one, but because I happen to be familiar with it, and because it is a matter of record in both States. Cases far more aggravated, of which no record exists, have often occurred. Men believed to be freemen, have been knocked down with a "colt" in the streets, in the night season, dragged into boats, and carried — God only knows where.

To prevent such outrages, the Legislature of Ohio have enacted two

statutes against kidnapping. The one against seizing and carrying away free persons: the other against seizing and carrying away any person whatever, without a hearing. These statutes of Ohio in nowise contravene the Constitution of the United States or the act of 1793, nor embarrass the owners of fugitive slaves in recovering their property. Ought not these laws to be respected?

Forbes and Armitage stand charged by affidavit under both these statutes. We say Jerry was, by operation of law, a free man, and that in seizing and carrying him forcibly away, they were guilty of kidnapping. The act was perpetrated in Ohio, by citizens of Ohio, and the tribunals of Ohio alone have jurisdiction of the matter. They alone have a right to inquire whether, under the laws of Ohio, such a state of facts exists, as to bring these men within the law against kidnapping.

Again: we say that even if Jerry was a slave, Forbes and Armitage had no right to carry him away without a fair hearing under the act of congress of 1793; and that in so doing they were guilty of kidnapping. And the act being perpetrated in Ohio, we claim for the Ohio tribunals the sole right to try the question, whether they did thus seize and carry him away without trial, or upon a mock trial, or in any way in violation of the laws of Ohio.

Is this claiming too much on the part of a sister in the glorious confederacy? Are not the rights and claims of a sister State to be respected in a case like this? Yet this act of 1820 steps in, as I insist, in violation of the Constitution and Laws of the United States, and takes the case out of the hands of the executive and transfers it to the Judiciary, to try questions which belong to the tribunals of Ohio alone. The executive obeys implicitly the statute of 1820, and it is for this court to determine, if your Honor should be satisfied that the statute is void, whether it will take jurisdiction of the matter; or simply try the question of identity under the act of 1815.

If, however, it should be held that the statute of 1820 is valid, then three questions of fact will arise.

1. Is Jerry a slave?
2. Who is his owner?
3. Did Forbes and Armitage act as the agents or with the approbation of the owner?

Upon the second question I do not propose to raise a doubt; for, if Jerry be a slave at all, it may be conceded that Mrs. Long is the owner: for, either in her own right, or as the executrix of her deceased husband, she represents twenty-six twenty-sevenths of him; so that if he be the property of anybody, he is the property of Mrs. Long.

The third point may be conceded, also, so far as Forbes is concerned; because it is in evidence that he acted under a power of attorney, regu-

larly executed by Mrs. Long. But there was now power of attorney authorizing Armitage to act in the premises; nor is there any proof of *express* approbation of his conduct on the part of Mrs. Long; nor any other approbation, except what she may have bestowed on him after he arrived at Frankfort, with Jerry in his custody. If approbation *ex post facto*, be contemplated by the act of 1820, I have not another word to say on this point. But I believe the statute means no such thing.

But the first is the leading and controlling question. Was Jerry a slave at the time Forbes and Armitage seized him at Columbus? Because, if he were not a slave, neither Mrs. Long nor any one else could be his owner; and all authority to act, based upon such ownership, falls to the ground; and all acts under such nugatory authority, are without the protection of the act.

This question, whether we will or not, leads to discussion of the institution of slavery, as it has existed, and now exists in the United States.

And first: Slavery is not recognized by the law of nature. This broad self-evident truth is laid down in the Declaration of Independence,—"that all men are created equal; that they are endowed by their Creator with certain *inalienable* rights; that among these are life, liberty, and the pursuit of happiness." The great men who put forth this declaration did not mean to say all men, *except negroes*, are created equal, and endowed by their Creator with the *inalienable* right of *liberty*. Nor did they mean by this declaration to annul existing institutions at variance with this great self-evident truth,—as slavery undoubtedly is,—but they meant then, and for all future time—for themselves and their posterity—to set up this great, self-evident moral truth, as the standard by which all law, and all civilization, should thereafter be tried; not to unravel an evil already too intimately interwoven with the warp of society to be removed without destroying its texture; but in the name of their country, whose independence they sought to establish, and in the name of the Creator, who bestowed these "inalienable rights," to protest against its future progress.

This doctrine is in strict accordance with the original charter given by God to our great ancestor, before sin or oppression had marred the beauty and glory of his new creation. With the archetypes of all that was beautiful and good before his mighty eye, "God said, Let us make man in our OWN IMAGE, after our likeness; and let them have *dominion* over the fish of the sea, and over the fowls of the air, and over the cattle, and over all the earth, and over every creeping thing that creepeth upon the earth. So God created man IN HIS OWN IMAGE; in the image of God created he him; male and female created he them." As they stood thus before the bridal altar, glowing in the charms of youthful love, with this

immense dowry before them, he pronounced upon them his parental benediction, and delivered them the charter of their future estate: "And God blessed them, and said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it: and have dominion over the fish of the sea, and over the fowl of the air, and over every living thing that moveth upon the earth."

All that was not conveyed to man by this charter, the Grantor reserved to himself. And that there might be no misunderstanding, either as to the property granted, or names of the creatures included in the grant, he gave him "livery of seisin"—brought the mighty menagerie "to Adam, to see what he would call them; and whatsoever Adam called every living creature, that was the name thereof." As if God had said to man, Catch that bounding steed, and put thy brand on his crest, and thy caparison on his back, and make him bear thee whither thou shalt list. Seize that powerful ox, and, putting thy yoke on his neck, compel him to plow the soil. Shear that sheep, and clothe thyself with his fleecy spoils. Snatch down the eagle from the cloud, and draw up leviathan from the deep. Make all living creatures in the heavens above, in the earth beneath, and in the waters under the earth, thy slaves; for *they are thine:* but as for thee, and thy posterity by this beautiful bride, I have stamped *my own image* upon you. YE ARE MINE! Thus stood the *meum* and *tuum* of the pristine world.

It is not pretended that the divine law of property, thus laid down, has been always respected; or that slavery has not existed since a very early period of history. Alas! who can look around him on the wrongs and oppressions which wring the hearts of innocent millions without, or feel the workings of ten thousand bitter pangs within, without acknowledging that society has been sadly bruised and disjointed by the fall of man! The first man that was born of woman, murdered the second; and thus on, depravity, disorder, and oppression spread over the whole inhabited earth. We see wars arise, and prisoners of war sold into slavery; nay, whole nations carried away captive, and sold into bondage as a punishment for their crimes, the nations thus punishing them frequently not less criminal than themselves. We see depravity and wickedness, by Divine permission, working out their own penalty and their own cure: but this does not alter the Divine law. Still, property in man is contrary to the law of nature. It exists, and is tolerated, in society, like some hereditary disease; not as a part of man's original constitution, nor as his constitution ought to be, but superinduced by remote causes at first, and now too deeply fixed to be amputated or rooted out, without inconvenience, pain, or loss of life. It was with reference to this great principle, that, although slavery existed in some form or other, as a local institution in almost all nations, and in Rome herself, it was one of the laws of the twelve tables

of Rome, that whenever there was a question between liberty and slavery, the presumption should be on the side of liberty.

But again: Property in human beings is not only contrary to the law of nature, but is contrary to the law of nations. There is no existing obligation, moral, legal, or international, on the part of one State, to deliver up fugitive slaves from another State. I know that a dictum from the court, in the Amistad case,* has been often referred to, to establish a different rule, but that dictum is clearly not to the point. In that case, the captive negroes were claimed, not upon any principle of international law, but under the existing compact of 1795, between Spain and the United States, for the mutual delivery of property in certain cases. The case did not require a decision under the treaty, because the negroes in controversy never had been lawfully slaves.

I say it is contrary to the law of nations, not because it is so written in the black-letter books, but because, for a quarter of a century, the traffic in slaves has been condemned by all the civilized nations of Europe and America. Because the ministers of the principal European powers, in the Congress of Vienna, in 1815, solemnly declared, in the face of Europe and the world, "that the African slave trade had been regarded by just and enlightened men in all ages, as repugnant to the principles of humanity and universal morality, and that the public voice of all civilized countries demanded that it should be suppressed; and that the universal abolition of it was conformable to the spirit of the age and the generous principles of the allied powers." Because, as early as 1821, there was not a flag of any European States, which could legally cover this traffic, to the north of the Equator. Because, by the Act of Congress of 1820, and by the Act of the British Parliament of 1824, it is declared to be piracy, and punishable with death.

It will be asked, how these acts can affect slavery as a domestic institution? I answer, that they in no wise affect it, so long as it is domestic, and stays at home. But they stamp upon it the character of a domestic, a local institution. They forbid it to travel on the high seas; and the same principle of law, adjudged by the judicial tribunals of the several States, forbids it to travel by land.

Slavery is, then, *strictly local*. About this there can be but one opinion among those who have examined the subject. In most of the British Colonies, till recently, slavery has existed from time immemorial. We are today indebted to Great Britain for the institution among us. It was one of the counts on which Mr. Jefferson, in his original draft of the Declaration of Independence, indicted the British King, that "he had waged cruel war against human nature itself, violating its most sacred

* 15 Peters' R., 518.

rights of life and liberty, in the persons of a distant people who never offended him — captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of *infidel* powers, is the warfare of the *christian* King of Great Britain. Determined to keep open a market where MEN should be bought and sold, he had prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce."* Yet, though slavery has been thus tolerated as a local institution in the provinces of Great Britain, it has been justly the boast of every Englishman, in the eloquent language of Curran, "that the spirit of the British law makes liberty commensurate with, and inseparable from, the British soil;" that it "proclaims, even to the stranger and sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of UNIVERSAL EMANCIPATION! No matter in what language his doom may have been pronounced; no matter what complexion incompatible with freedom; an Indian or an African sun may have burnt upon him; no matter in what disastrous battle his liberty may have been cloven down; no matter with what solemnities he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains, that burst from around him, and he stands redeemed, regenerated, and disenthralled, by the irresistible genius of UNIVERSAL EMANCIPATION."

Such, too, is the common law of France. Property in human beings is strictly local, and cannot exist for a moment, after the slave passes the territorial limits into a State where slavery is not tolerated. And this principle of law in France is clearly recognized by the courts of Louisiana, where this peculiar institution is far dearer to the people than it is to the people of Kentucky. In the case of *Maria Louisa* v. *Mariat and others*,† the defendants had carried a colored girl, admitted on all hands to have been a slave in Louisiana, into France, where slavery is not tolerated, and brought her back into Louisiana as a slave; Justice Matthews holds the following language: "The question is, whether the fact of her having been taken to that kingdom by her owners, where slavery or involuntary servitude is not tolerated, operated on the condition of the slave so as to produce an immediate emancipation. That such is the benign and liberal effect of the laws and customs of that State, is proven by two witnesses of unimpeachable credibility. This fact was submitted to the consideration of the jury who tried the cause under the charge of the judge, which we consider to be correct, and was found in favor of the

* Jefferson's Works, Vol. IV.

† 8 Louisiana Rep. 475.

party whose liberty is claimed. Being free for one moment in France, it was not in the power of her former owner to reduce her again to slavery."

This principle has been held in our own country, in every instance where the nature of the case made it necessary or proper for a court to express an opinion. Without multiplying cases to prove a position that will hardly be doubted, in the case of *Jones* v. *Vanzandt*,* Justice McLean says: "Slavery is local in its character. It depends on the municipal law of the State where it is established. And if a person held in slavery, go beyond the jurisdiction where he is so held, and into another sovereignty where slavery is not tolerated, he becomes free. And this would be the law of these States, had the Constitution of the United States adopted no regulation on the subject."

"Recaption," says the judge, "has been named as a common law remedy. But this remedy could not be pursued beyond the sovereignty where slavery exists, and into another jurisdiction which had entered into no compact to surrender the fugitives. There is no general principle in the law of nations, which would require a surrender in such a case."

We have seen that by the law of nature, by the law of nations, by the common law of England, by the common law of France, and by the common law of our own country, slavery is strictly local. That property in slaves, unlike that in anything else, is incapable of crossing the territorial line, from one State to another. Within the territorial limits of a State, men, women, and children may be bought and sold like "beasts of the plow," and property in them may be cherished and protected by the municipal laws of the State. They may be subjected to the rule of task-masters, with power to command — to scourge — to exact their sweat and labor. They may groan under their burdens as the Hebrew vassals groaned under Egyptian bondage — without any human ear to hear their complaint, or any human law to relieve their sufferings. But on the territorial line separating one State from another, "the genius of universal Emancipation," stands like the spirit of Omnipotence on the waters of the Red Sea, to let the slave pass over; to intercept the master's pursuit; and to overthrow and overwhelm the prancing horse, the rattling chariot, and all the pomp, and all the pride, and all the power of pursuing forces.

What then is there to change or limit this great pervading principle of liberty and law? The only law varying this great principle, in its application to American institutions, is that found, 1. In the ordinance of 1787 for the government of the Northwestern Territory; 2. In the Constitution of the United States; 3. In the act of Congress of 1793. For this law, whenever it occurs, I shall insist on a strict and literal construction.

The ordinance of 1787 is twofold. The first part municipal and temporary, the second general and perpetual. The former for the govern-

* 2 McLean's Rep., 596.

ment of the territory only, and to remain in force until the other laws should be established, and no longer: the latter unalterable and inherent in the bond of confederacy between the States. Or, to use its own broad, deep, and unmistakable language: "It is hereby ordained by the authority aforesaid, that the following articles shall be considered as articles of compact between the original States and the people and States of said territory, and forever unalterable except by common consent, to wit:"—And here follow six articles of older law than the Constitution of the United States, the Constitution of Kentucky, or the Constitution of Ohio, and paramount to them all. The sixth of these was intended forever to prohibit slavery northwest of the Ohio river, without disturbing rights already acquired in this species of property in the old States. "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always that any person *escaping into* the same, from whom labor and service is lawfully claimed in any of the *original States*, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."

The general rule laid down in that document, is, "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted." The restriction to this general rule, is, "Provided always, that any person *escaping into* the same, from whom service or labor is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid." This general rule, securing freedom, can not be annulled by any State, or United States convention: and lest it should be overlooked or forgotten, it is copied verbatim into the Constitution of Ohio: "There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted." The restrictive clause, though not so literally copied, is preserved with equal care, in the Constitution of the United States: "No person held to service or labor in one State, under the laws thereof, *escaping into* another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service or labor may be due." But neither the Constitution of the United States, nor that of Ohio, pretends to alter, enlarge, or diminish the ordinance of 1787. It is still in full force, and paramount to both.

Mark you then their peculiar language. "*Escaping into*" are the words employed in each and all of these documents. "*Escaping*" implies a voluntary act of the slave, contrary to the will of his master. If he thus *escape*, he drags his chain with him. He may flee from State to

State all over the Union, and into what State soever he may fly, where the the ordinance of 1787, or the Constitution of the United States is in force —

"He drags, at each remove, a lengthened chain,"

but the moment he sets his foot on the soil of the North-Western Territory, by any other means than by his own voluntary *escape*, he becomes *ipso facto* free. Every lock, and bolt, and link of his chain melts into thin air; and his emancipated limbs, charmed by the spirit of freedom, are proof against all future manacles.

These restrictive clauses, by all known and universal rules of construction, must be strictly construed. That in the ordinance, on which both the others are founded, should be strictly construed, because it is a proviso, a saving clause, limiting and restricting the general rule of the law. Freedom is the rule; slavery in a certain case, is the exception. The body of the law protests forever against slavery and involuntary servitude. The saving clause provides that *escaping* slaves may be reclaimed. The great object of the law is first to be considered, and if the exception were wholly repugnant to the law, it would be void. It is not wholly repugnant to the law, but it is restrictive of its ends, and must be understood literally — to mean what it says, and no more.

But there are still higher reasons for the strict construction of these clauses. They are repugnant to the law of nature, by which all men are created equal, and endowed with the inalienable right of liberty. They are repugnant to the law of nations, which recognizes no right on the part of a slave owner to pursue an escaping slave beyond the territorial limits of his own State, and which makes him free the moment he sets his foot upon the soil of a State where slavery does not exist. They are repugnant to the common law of England, whence we derive our civil jurisprudence, and the common law of our own country, which does not recognize property in human beings. More than all, they are restrictive of human liberty, and must be strictly construed — as much so as criminal statutes, under which the life and liberty of a citizen may be taken away.

Hitherto, we have discussed abstract principles, applicable alike to every case. Let us for a moment look at what may be called *Jerry's peculiar case*, and see whether he is a slave or a freeman. He has been twice in Ohio; and it is remarkable that he did not "escape" thither in either case. He has returned twice to Kentucky, without his own volition in either instance. The second time he visited Ohio, it is not pretended that the present claimant, Mrs. Long, did not give him permission to go. He asked permission to return for his clothes, and she granted it. Where? To the place where he had served Allgaier. Where was that? At Cincinnati, where Mrs. Long had learned that Allgaier had taken him, and to which she directed her letter, threatening him with a lawsuit if he did not bring Jerry

back. At this time, then, he went by permission of his mistress; as much so as if she had come herself, with Jerry attending on her as a servant. He went by her direction, on her business, to a State where slavery is not tolerated; and, if, indeed, we can suppose he was a slave after his return with Allgaier, this last act made him free. In the case of *Ohio* v. *Hoppess*,* tried on habeas corpus, before Judge Read, of the Supreme Court of Ohio, this doctrine was clearly laid down. And, although the facts of the case, in his opinion, did not authorize the discharge of Watson from the defendant's custody, the Judge lays down the doctrine thus: "If a master bring his slave into the State of Ohio, he loses all power over him. The relation of master and slave is strictly territorial. If the master take his slave beyond the influence of the law which creates the relation, it fails — there is nothing to support it — and they stand as man and man. The slave is free by the laws of the State to which he has been brought by the master, and there is no law authorizing the master to force him back to the State which recognizes and enforces the relation of master and slave."

The same doctrine is laid down by Justice McLean in the Circuit Court of the United States, in the case of *Jones* v. *Vanzandt*,† which was an action brought under the act of Congress, by the master, against a citizen of Ohio, for aiding fugitive slaves to escape from labor, etc. The Judge holds this clear language: "Now, if the slaves left the service of the plaintiff, with his consent, or in any other mode, except as fugitives from labor, and come into the possession of the defendent, as alledged, the plaintiff has no right to their services, and still less, to recover from the defendant their value."

So, too, the rule was held by Chief Justice Shaw of Massachusetts, in the case of *Massachusetts* v. *Avis*.‡ In this case, the slave, Med, was carried into Massachusetts, for a very temporary purpose, indeed — merely to wait on her mistress, while on a visit to her father and friends in Boston, and then return again to New Orleans. The opinion of the Judge is a very elaborate one, and is, in itself, a valuable digest of the law of slavery; and, after examining numerous authorities, from different States, he comes to this conclusion: The "constitution and laws of the United States, then, are confined to cases of slaves escaping from other States, and coming within the limits of this State, without the consent, and against the will, of their masters, and can not, by any sound construction, extend to a case where the slave does not escape, and does not come within the limits of this State against the will of his master, but by his own act and permission. This provision is to be construed according to its plain terms and import, and cannot be extended beyond this, and where the case is not that of an escape, the gen-

* Western Law Journal, 270. † 2 M'Lean's R. 596. ‡ Law of Slavery, 357.

eral rule shall have its effect. It is upon these grounds, we are of opinion, that the owner of a slave in another state, where slavery is warranted by law, voluntarily bringing such slave into this State, has no authority to detain him against his will, or to carry him out of the State against his consent, for the purpose of being held in slavery."

In support of this doctrine, Chief Justice Shaw cites two cases, among others, which I beg leave to refer to, not because they are stronger than fifty others which might be cited, but because they are the decisions of one of the best and purest of the Judges of the United States Court, himself born and educated in a slave State, and a slaveholder. I refer to the decisions, of Justice Washington, in the cases of *Butler* v. *Hopper*,* and *ex parte* Simmons.† In the former of these cases, it was held in terms, that "the provision of the constitution does not extend to the case of a slave voluntarily carried, by his master, into another State, and there leaving him under the protection of some law declaring him free." This was a case somewhat peculiar, as the master claimed the benefit of a law of Pennsylvania, allowing members of Congress, and sojourners, to retain their domestic slaves; both of which rights he had forfeited; the one by ceasing to be a member of Congress, and the other by becoming a resident. But the case is an authority to this point; that the claimant of a slave, to avail himself of the provisions of the Constitution of the United States, must bring himself within their plain and obvious meaning, that they will not be extended by construction, and that the clause in the Constitution, is confined to the case of a slave escaping from one State and fleeing into another. The latter case was an application under the act of Congress, of 1793, for a certificate of ownership, to enable the master to carry away a slave; and the same Judge held, "that both the Constitution and the laws of the United States apply only to fugitives, escaping from one State and fleeing into another, and not to the case of a slave voluntarily brought by the master." In the case at bar, the slave neither *escaped from* one State, nor *fled into* another.

What has been said in relation to the second time Jerry went to Ohio, applies with equal force to the first: perhaps with greater force in Kentucky.

I am well aware that if has been held by the Court of Appeals of Kentucky, in the case of *Graham* v. *Strader*, and in some older cases, that for the temporary purpose of a mere sojourner, a slaveholder may take his slave within the North-Western Territory, without forfeiting his property. But there is no case in the books, in Kentucky, or elsewhere, that I have met with, where it has been decided that a man actually domiciled in Ohio, as Allgaier was, may keep a slave at hard labor for six months,

* 4 Wash. C. C. Rep. 396. † 1 Wash. C. C. Rep. 499.

without an infraction of the Constitution or the ordinance, which forever inhibit "slavery or involuntary servitude," within the territory into which he has voluntarily gone. Surely no judicial tribunal has attempted to extend the municipal law of Kentucky, by which alone slavery exists here, into Ohio.

I have said that slavery is strictly local, and that its limits are territorial. Then, on every principle of State sovereignty, an obligation arises on both sides, to let each other, and each other's local and domestic institutions, alone. "Hands off," is the principle. The people of Ohio have no right to say, you shall, or shall not, do this, or that, with your slaves. If it be a sin against Heaven, upon you, and your children, be the consequences. If it be a political evil, you, and your children, shall be the sufferers. But, as for us, we have no right, no power — I trust no disposition — to intermeddle. But, while we thus disclaim all right to intermeddle with the institutions of Kentucky, we insist upon the mutuality of the obligation. Slavery may not come upon the soil of Ohio, or even leave its footprint in the sand above the low-water mark. The ordinance of 1787, like the blessing of a patron saint, infused into the soil of Ohio an incapacity to support the footsteps of any other than a freeman. The name of Nathan Dane, is as dear to us as the name of Daniel Boone is to Kentucky. We are not privileged to inter his bones and erect his monument at our capital.* But he has a more enduring monument in the results of his far-seeing policy. This ordinance has clothed thousands of fields with waving corn; covered thousands of hills with bleating sheep; set in motion a thousand plashing waterwheels, and ten thousand busy spindles; erected thousands of free and public schools; and made thousands of hardy, intelligent peasants, as with their sun-burnt sons at their heels, each tills his hundred and sixty acres of land, exult in the thought that there is no State like the State of Ohio. Yet, if the doctrine should be established, that this ordinance is only to affect the rights of those who reside within the North-Western Territory, and that those who reside out of it, though parties to the compact, are not bound by it, but may carry their slaves with them, when and where they please, to work an hour, a day, a week, a month, or six months; then this ordinance, the poor man's shield, the freeman's boast, the inspiring soul of the North-Western Territory, is frail and worthless as a withered leaf driven before the autumnal winds.

Let us take a plain case, and see whether the domicile of the master can affect the question. A rich slaveholder in Kentucky, opposite Cincinnati, quarters on the bank of the river one thousand able-bodied

* The remains of Daniel Boone have recently been removed from Missouri, and deposited in a new cemetery at Frankfort, where an elegant monument is to be erected to his memory.

slaves, and furnishing each of them with a horse and dray, sends them every morning at sunrise to compete with the free laborers of Cincinnati, requiring that each shall be in quarter in Kentucky, before the sun goes down, lest any one might suspect that either the slave or his master was domiciled in Ohio. May he exercise this privilege? By the Constitution of the United States, "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States." Thus, the life, the liberty, the character, the property, of every Kentuckian who comes on the soil of Ohio, are as sacred, not merely to the law, but to the hearts of the Ohio people, as if they were their own. But may a citizen of Kentucky, merely because he is domiciled in Kentucky, exercise in Ohio, a privilege denied by the ordinance, and by the Constitution of Ohio, to her own citizens? And is the law of "escaping slaves" applicable to each of these one thousand negroes, every evening when he returns to his quarter? If so, then slavery and involuntary servitude may be superinduced on Ohio by any citizen of Kentucky, or by any citizen of Ohio, who shall choose to build his house southwest of the Ohio river, in spite of all the ordinances and constitutions in the universe.

Let me ask you, sir, what was the condition of Jerry during the six months he worked in Ohio? Was he a free man or a slave? "He was a fugitive slave," some gentleman on my left suggests, and I thank him for the suggestion. And pray, sir, what is a fugitive slave? The ordinance of 1787, the Constitution of the United States, and the act of congress of 1793, all define it in the same way. A person owing labor or service, &c., "*escaping into*" the territory. The word "fugitive" does not occur; the less classical but more pregnant word "ESCAPING" does. Did Jerry come into Ohio as an "*escaping*" slave? He no more "*escaped*" into Ohio with Allgaier, than he "escaped" out of it with Forbes and Armitage. Can any man, bound hand and foot, and without his own volition carried across a river into another State, be said to "*escape?*" Jerry, to be sure, was not literally bound hand and foot; and to the observation of one who did not know his condition, seemed to have all the attributes of a man. But not so. The fetters of the law were upon him. He did not possess, in his own right, one attribute of a man. He was a slave — the slave of Allgaier — who for the year had as complete dominion over him as Mrs. Brown could have had. It was his duty to feed, clothe, house, and physic him. It was his privilege to command, govern, and punish him. He said to him, go, and he went; come, and he came; do this, and he did it. Jerry's heart might have belonged to some one else, but his hands were the hands of Allgaier; his feet were the feet of Allgaier; his will was the will of Allgaier; and by the will of Allgaier, and not his own, he was brought to Ohio. Call you this an escaping slave?

Again I ask your honor, what was the condition of Jerry during the six months he served Allgaier in Ohio? He went to Ohio a mere chattel, without a hand, a foot, a will, or an action of his own, and could in no sense be considered an escaping slave. He could not be a slave in Ohio, other than an *escaping* one, else the ordinance of 1787 is perfectly nugatory. If Jerry was not in a state of FREEDOM during this six months, he was in a state of profound mystery. I hope one day to see with better eyes, and hear with better ears, but while I remain in this muddy vesture of flesh and blood, I shall never be able to penetrate this mystery.

I have heard the fine-spun distinction taken, between the right to be free, and freedom itself. But however much force may be in this distinction in a State where a colored man is *prima facie* a slave, and where persons are sometimes wrongfully kept in slavery, who by law are entitled to be free, it can have no force whatever where a slave, without "escaping," comes into a State where every man not a criminal, is not only *prima facie*, but absolutely, free. This distinction was repudiated in the case of *Lunsford* v. *Coquillon*,* and the rule held, that, in a free State, whosoever was entitled to freedom was, in fact, already free. Being free, then, in the language of Justice Matthews, before cited, "but for a moment," he could never again be reduced to bondage. Never! Not even by his own voluntary act, for the right of liberty being inalienable, he could neither sell it, nor give it away, nor in any other way forfeit it, except by the commission of a crime. The runaway slave may return to his master and remain a slave, because, by "escaping," he does not change his condition, and he never was free: but the man once made free by operation of law, can never again become a slave.

But it is useless, with the existing state of facts, to moot the question, whether a freed slave may voluntarily alienate his freedom, and go back into slavery; because, in this case, Jerry came as he went, not by his own will, but by the will of Allgaier. And in thus carrying a free man into slavery, Allgaier committed an act of tortious violence, which could, in no way, affect the rights of Jerry. I say his act was tortious, although no physical violence may have been offered; because it matters nothing whether an act of oppression be perpetrated under pretense of authority where none exists, or by physical violence without such pretense. Jerry was a free man, without knowing it. Allgaier enslaved his mind—riveted on his imagination the chains of the law—and, thus imprisoned and manacled, he carred him back and delivered him to his former owner. This could in no wise be considered the voluntary act of Jerry, nor so construed as to affect his rights. And so the rule was held by Justice Martin, of Louisiana, in the case of *Lunsford* v. *Coquillon*, just cited.

* 14 Matthews Rep., 401.

So, too, the rule was recently held by Justice McLean, in the Circuit Court of the United States in Indiana, in a case not yet officially reported. where the master had brought his slave from Kentucky within the limits of a free State, and, taking the alarm lest they should be induced to leave him, took them, for greater security, to the State of Missouri. In this case the Judge held, that it was not necessary to pass upon the question whether the slave might waive his right of freedom after it had accrued, and again return into slavery, because, in that case, they passed over to Missouri, in custody of the master, as slaves. That the master was guilty of a tort, in thus taking them over, and that their rights could not be affected by this act. On this point I need not multiply cases. The books are full of them; and if they were all blank on the subject, common sense would speak out and say, that a slave, while in the custody of his master, has no will. This is the great point of distinction between a freeman and a slave. The freeman has a will; the slave has none. Then, whatever rights Jerry may have acquired in going to Ohio by the will of his master, came with him back to Kentucky; because they could not be taken from him by the act of Allgaier.

But we are met with the fact that Allgaier was a bailee merely. Agreed. He was a bailee for hire for the term of one year, and his dominion over Jerry, though complete while it lasted, was of limited duration. But a bailee can no more establish slavery in the Northwestern Territory, by carrying slaves into it and working them, than their lawful owner can. The prohibition is broad and comprehensive. "There shall be neither slavery nor involuntary servitude within the territory,"—without any exception in favor of bailees or bailors. There shall be no slave labor in the territory, and no person reclaimed as a slave, unless he shall have *escaped into* it.

We are told that it would be a great hardship if Allgaier, by his faithlessness, should be permitted to deprive this lady of her property. If I remember rightly, this Allgaier was a gambler by profession; and if so, it was his trade to rob poor women of their property, and poor children of their bread, and leave them without remedy. But Mrs. Long was not left without remedy. She had her right of action against Allgaier for the loss of Jerry's services; and that was her only remedy. This remedy she seems to have understood well enough, when she wrote a letter to Allgaier at Cincinnati, threatening to sue him if he did not immediately bring back her slave.

It is said, indeed, by lawyers, that a bailee for hire cannot so dispose of the bailor's property as to hazard the rights of the bailor; and that so far as the rights of the lawful owner are concerned, there is no difference between a breach of trust and a larceny. And applying this principle of law to the present case, Allgaier's act, in taking Jerry to Ohio, contrary

to the injunction of his mistress, no more affects her rights than if he had been stolen, or taken away from her by force. This principle of law is doubtless correct in relation to property in ordinary chattels, but can have no application to property in human beings. If Jerry had been a horse, or any other animal, in which, by the law of nature, by the common law, and by the usage of all civilized nations, property exists, Allgaier could not have so disposed of him, not even by the shrewdest slight of the gambling craft; but that his lawful owner could have taken him by replevin, or some other legal process, wherever she found him. But there is this wide distinction between property in animals and property in man: property in animals is sanctioned by the law of nature, and the common law; is universal and binding everywhere: property in man is contrary to the law of nature, contrary to the common law, strictly local, and binding only within the territorial limits where slavery exists by force of the municipal law. The legal notion of *personal* property is, that it is that sort of property which may attend upon a man's person wherever he goes, in contradistinction to that which is fixed and immovable. And upon this hypothesis we say, a man's property acquired in one State, by the comity of nations, is his property in every other State. Admit this principle in regard to property in men, and whither will it lead you? or, whither will it not drive you? A man acquires property in a slave in Kentucky, where, by the municipal law, such property is recognized: it is at his option to establish slavery in every other State in the Union, wherever he may choose to travel, for the slave, being personal property, may attend on his person wherever he goes. But how shall he keep up this relation of master and slave, where, by the organic law of the State, and by a compact of still higher obligation, to which he himself is a party, it is declared that there shall be neither slavery nor involuntary servitude? The moment he crosses the territorial line, this relation ceases, because there is no law to support it. And with it perish all the rules of law regulating property in men, and all the ordinary remedies by which such property is guarded. No such property exists in Ohio. No action of replevin, nor any other action, would lie for the recovery of such property. The only instance in which one human being can lay hands on another, and claim him as his own, is where a person lawfully held to labor or service in one of the original States, shall *escape into* the State of Ohio.

This brings us back to the old question: Did Jerry "*escape into*" Ohio? I think I have shown conclusively from the facts, that when Jerry left the State of Kentucky, where he was lawfully held to labor or service, he was a slave without volition; that he was subject to the will of one having absolute control over him; that he went into Ohio in obedience to the will of a master who had the power to command him, to

whip him, to fetter him, and to carry him when and where he listed; and that under the circumstances, he could be considered in no sense an *escaping* slave.

Jerry Finney then, at the time of his seizure by Forbes and Armitage, was, by operation of law, a freeman of Ohio. Disfranchised, indeed, of the right to hold office, the right to vote, the right to testify: but so far as it regarded the right of any one to claim his labor, or restrain his liberty, he was as free as any of us. No one had a right to pursue him, either in person, or by agent; and these men, by assuming such agency, and carrying him away, have placed themselves within the law of kidnappers, and fugitives from justice, and without the protection of the laws of Kentucky.

I have now urged all the points which I consider material to the issue, and laid down, as fairly as my limited time for investigation, and my feeble abilities, would allow, what I believe to be the law of the case, both as it regards the organic law of the nation, and the municipal laws of Kentucky and Ohio — what is held to be the law in Ohio — what is held to be the law in Louisiana and other States, where slavery exists — and what I believe to be the common law of all christian and civilized nations.

1. The Kentucky statute of 1820, is at variance with the Constitution of the United States, and the law of Congress of 1793, and void.

2. If the statute of 1820 be void, the court has jurisdiction only of the question of identity under the statute of 1815.

If the statute of 1820, be valid, and the court has jurisdiction, then three questions of fact are involved.

1. Is Jerry a slave, and the property of any one?

2. Who is his owner?

3. Did Forbes and Armitage act as the agents, or with the approbation of the owner?

The second point is conceded, for if Jerry be a slave, Mrs. Long, representing in her own right, and as administratrix of her deceased husband, twenty-six twenty-sevenths of Jerry, for the purposes of this case may be considered the owner.

The third point is conceded also, as to Forbes, but insisted on as to Armitage, because there is no proof of the *express* approbation of the owner as to him.

The main question is upon the first point. Was Jerry a slave at the time Forbes and Armitage aided in seizing him at Columbus?

1. Slavery is contrary to the law of nature, and contrary to the law of nations, and exists only by force of the municipal law of the land.

2. Slavery is strictly local and confined within the territorial limits of the State where it is sanctioned, and cannot follow the fugitive beyond those limits, except by positive law binding on both sides of the line.

3. The only law varying these great principles of natural and international law, is that to be found, 1st, in the Ordinance of 1787 for the government of the Northwestern Territory: 2d, in the Constitution of the United States, and 3d, in the law of Congress of 1793, which latter can not be so construed as to diminish the guaranty of liberty contained in

the Ordinance of 1787, or to extend the rights guaranteed to the owners of fugitive slaves, by the Constitution of the United States.

4. The clauses of the Ordinance of 1787, of the Constitution of the United States, and of the law of Congress of 1793, authorizing fugitives from labor to be pursued into the Northwestern Territory, being contrary to the law of nature, contrary to the law of nations, and restrictive of human liberty, must be strictly construed.

5. Strictly construed, these clauses can extend to but one case — that of an *escaping slave*. This implies a voluntary act of the slave, contrary to the will of the master; and if by any other means than by his own will he is carried into the Northwestern Territory, the relation of slavery ceases as completely as if he had been carried into France, or any other foreign State.

6. If the slave becomes free but for a moment, he can never again be reduced to slavery; not even by his own act, because the right of freedom is inalienable.

7. It matters not that the slave was carried beyond the line by a bailee to whom he was hired; if he is carried over in the relation of a slave, even by a person having a temporary dominion over him, he becomes *ipso facto* free, and the owner has his right of action against the bailee for the loss of his services. The law governing chattels does not apply to property in human beings. God gave man dominion over, and property in the beasts of the field, etc., but the property in man he reserved to himself. The property in animals is natural and binding everywhere; that in man is conventional, municipal, local, and to be kept within the literal meaning of the written law.

These points I have urged with some warmth, but no more, I trust, than becomes one believing most religiously the truth of what he says.

But I have another duty to discharge. I can not sit down without thanking the court for the indulgence and facilities afforded me; vacating all other business for my accommodation, and tendering every means in its power to dispatch my mission. The authorities have received me promptly and respectfully, and the citizens have displayed not merely the civility due a stranger, but the courtesy and kindness due to a brother of the Union. For all this, I feel that I owe an expression of hearty gratitude; and, whatever other message the result of the deliberation of the court may require me to bear back to the authorities of Ohio, I shall feel it a duty which I shall execute with the liveliest pleasure, to tell them, that I have discussed the subject of slavery in the capital of Kentucky, with boldness and safety; surrounded by slaveholders who treated me with the utmost consideration and respect.