

clause under consideration, a claim is set up to the service of a person. The person who makes the claim is one party, the person who resists the claim is the other party. Thus the constitution has made up the issue and arranged the parties. It allows the claimant to plead—it allows the defendant to plead and to defend his rights. Here, then, are rights of the negro which the constitution of the United States says all white men are bound to respect—the right to appear in court and sue for his freedom, or when claimed by another, to defend himself. Here the constitution recognizes that there must be a trial to decide the claim. This can only be had before a judicial tribunal. The constitution says, "No person shall be deprived of life, liberty, or property, without due process of law." And the constitution vests "the judicial power of the United States in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. The judges, both of the Superior and Inferior Courts, shall hold their office during good behavior, and shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office." (Art. 3, sec. 1.)

The finding of the Supreme Court of Wisconsin is thus stated by Justice A. D. Smith:

"The act of Congress of 1850, commonly called the Fugitive Slave Act, is unconstitutional and void.

"1. Because it does not provide for a trial by jury of the fact that the alleged fugitive owes service to the claimant by the laws of another state, and of his escape therefrom.

"2. It authorizes a hearing and determination of the claim of the master, and the fact of escape, by Commissioners of the United States, who cannot be endowed with judicial powers under the constitution of the United States.

"3. The judicial power of the United States can be vested only in courts or in judges, whose term of office is during good behavior, and whose compensation is fixed and certain.

"4. The functions with which United States Commissioners are endowed by the act of 1850 are judicial, and therefore repugnant to the constitution.

"5. By the said act, any person alleged to be a fugitive may be arrested and deprived of his liberty, without due process of law."

The act of Congress of 1850, commonly called the Fugitive Act, in relation to fugitives from service or labor, is unconstitutional and void; because Congress has no constitutional power to legislate upon that subject.

Justice A. D. Smith gives briefly the following history of the introduction of the 3d clause of 2d section of the 4th article of the constitution:

"On the 6th day of August, Mr. Rutledge, from the Committee of Detail, made a report. In that report, the several sections now contained in the 4th article (except the clause in relation to fugitives from labor, which had not yet been thought of) followed each other. The first suggestion that appears in regard to fugitives from labor, was made on the 28th day of August, 1789, when article 15, as reported by the Committee of Detail, was taken up. The article provided for the surrender of fugitives from justice. Mr. Butler and Mr. Pinckney (of S. C.) moved to require slaves and servants to be delivered up like criminals. "Mr. Sherman saw no more propriety in the public seizing and surrendering a slave or servant than a horse.

"Mr. Butler withdrew his proposition in order that some particular proposition might be made apart from this article.

"On the 29th day of August Mr. Butler offered such provision in these words, 'If any person bound to service or labor in any of the United States shall escape into another state, he or she shall not be discharged from such service or labor in consequence of any regulations subsisting in the state to which they escape, but shall be delivered up to the person justly claiming their service or labor,' which was agreed to *nem con.* (Mad. Papers.)

"Here we have all the discussion upon the subject. Plan after plan for the organization of the government was made and presented, resolution upon resolution offered and discussed, embracing the whole ground of federal and state rights and powers, without one word being mentioned of fugitive slaves; and when it did occur to the minds of some members, suggested, unquestionably, by the clause in regard to fugitives from justice, it is quietly agreed that the states would deliver up such fugitives from labor. No power was asked for the federal government to seize them; no such power was dreamed of; the proposition that the states should respectively deliver them up, was acquiesced in without dissent. Yet we are told *arguendo* by judicial authority, that without such a clause the Union could not have been formed, and that this provision was one of the essential compromises between the South and the North. In point of fact, it did not enter in the slightest degree into the compromises between the North and South."

Justice Smith further remarks on this most important topic: "Can it be supposed for a moment that had the framers of the constitution imagined that under this provision the federal government would assume to override the state authorities, appoint subordinate tribunals in every county in every state, invested with jurisdiction beyond the reach or inquiry of the state judiciary, to multiply executive and judicial officers *ad infinitum*, wholly independent of and irrespective to the police regulations of the state, and that the whole army and navy of the Union could be sent into a state, without the request and against the remonstrance of the Legislature thereof—nay, even that under its operation the efficacy of the writ of *habeas corpus* could be destroyed, if the privileges thereof were not wholly suspended;—if the members of the Convention had dreamed that they were incorporating such a power into the constitution, does any one believe that it would have been adopted without opposition and without debate! And if these results had suggested themselves to the states on its adoption, would it have been passed by them *sub silentio*, jealous as they were of state rights and state sovereignty? The idea is preposterous. The Union would never have been formed upon such a basis. It is an impeachment of historic truth to assert it."

The whole community are greatly indebted for the able and manly manner in which Justice Smith has investigated this subject. It is important that the historic facts should be made to stand out, especially when the tendencies are so unmistakable for the federal government to claim and exercise powers never granted, and not found in the constitution, as understood by the framers of it, as made known alike by their debates in the Confederation and in the respective state Legislatures, and particularly by the manner in which they, the first executive officers of the constitution, carried out and administered its provisions.

W. P.

## Our Own Correspondence.

### THE FUGITIVE SLAVE LAW OF 1850 UNCONSTITUTIONAL.

In the cases of Booth and Rycraft, which came before the Supreme Court of Wisconsin, the Fugitive Slave Law, approved September 18, 1850, was declared unconstitutional. Justice A. D. Smith examines the section of the constitution on which the Fugitive Law is professedly based, which is as follows: "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 claim of the party to whom such labor or service may be due."

He says, "Let it be taken for granted that this clause was intended to refer exclusively to fugitive slaves, of which I think the history of its adoption into the constitution leaves no doubt, the question at once arises, How far and in what particulars, does it affect the persons alluded to in it?"

"1st. It contemplates the fact that certain persons were, or might be, held to service or labor in one or more states under the laws thereof.

"2d. That it was by the laws of such state or states alone under which such persons could be held to service or labor.

"3d. That the laws or regulations of the respective states under which such persons might be held to service or labor, or discharged therefrom, might be different.

"4th. That such persons might escape from one state in which they were held to labor under the laws thereof, into another state in which such persons were held to labor under different laws, or in which they were by the laws of the state discharged from service or labor.

"5th. That the service or labor here spoken of is of a kind which is exacted of such persons by law, and not of a kind stipulated for by contract, and hence is in restraint of and derogatory to human liberty.

"6th. That such persons escaping from one state into another should not be discharged by the laws of the state to which they may have fled, but that the condition of the fugitive should remain the same in the state from which he had fled, in case the person to whom he owed the service should choose to claim him and convey him thither.

"7th. That in the event of a claim by the person to whom the fugitive owed the service under the laws of the state from which he fled being made, he should be delivered up, on establishing the fact that the labor or service of the fugitive was due to such claimant.

"From this analysis it will be seen that the status of the fugitive is essentially different in this state from his status in the state from whence he fled. In the latter he remained subject to all the disabilities of his class, though he may have escaped from the domicile or premises of his master. Here he is entitled to the full and complete protection of our laws, as much so as any other human being, so long as he is unclaimed."

It must be plain that the language, "held to service in one state under the laws thereof," must mean the local laws of that state by which slavery is established; and that the law or regulation of the state into which he flees is the local law of that state, thus settling the matter that slavery is local, being established only by local laws.

According to the constitution, as expressed in the