

and Robert Rantoul, jr., have held the same opinion.

Encouraged by this bold opinion of the Wisconsin Court, we cannot doubt that before long the Northern courts generally will come to the same conclusion; and then, in face of the mass of judicial opinion in the largest section of the country, the law cannot stand, but must be materially modified or repealed. Let it be pronounced by the Judges unconstitutional, as it has been adjudged by the people to be inhuman and wicked, and it will soon be swept away from the statute book which it disgraces.

From the Boston Commonwealth.

#### THE FUGITIVE SLAVE ACT UNCONSTITUTIONAL.

Several weeks ago, Judge A. D. Smith, of the Supreme Court of Wisconsin, discharged from custody Sherman M. Booth, accused of rescuing a slave, upon the ground that the Fugitive Slave Act was unconstitutional and void. Judge Smith's decision is a document of great clearness and ability, and we intended, before this time, to publish it, or at least that part of it in which he so clearly shows that Congress has no right whatever to pass any such statute, and vindicates the necessity of the State authorities standing up firmly against the usurpations of the General Government. An appeal was taken from the decision to the full bench, and on the 19th inst., at Madison, Chief Justice Edward V. Whiton, delivered the opinion of the Court, (Justice Crawford only dissenting) sustaining the decision of Judge Smith, and re-affirming the order discharging Mr. Booth. The New York Tribune of yesterday contains the decision in full. It occupies three columns of that paper, about half of which space, however, is occupied with incidental and collateral questions, (some of them very important, such as, for instance, the right of a State Court to take a person out of the custody of the United States officers.)

Approaching the question of constitutionality, the Court consider the argument of counsel that it has been settled by decisions of the Supreme Court in reference to the statute of 1793. The Court held that there are certain points of difference between the law of 1793 and the act of 1850, which are essential; and that, therefore, a decision of the constitutionality of one, does not, of necessity, embrace the other—except, perhaps, as to the question of the power of Congress. This point, so ably argued by Judge Smith, is passed over by the whole Court. They consider, in the first place, the Constitution to be violated, because the act attempts to vest judicial powers in officers created by Congress, and unknown to the Constitution; and, in the second place, withholds from the person claimed the right to a trial by jury, before he can be delivered up to the claimant.

Upon the second point, the Court quote the words of the Constitution, that no person shall be deprived of his life, liberty, or property, without due process of law; and also the language of judicial decisions, that "due process of law" means "by indictment, or presentment of good and lawful men." The plea that slaves are not persons, within the meaning of the Constitution, does not avail, because persons who are free are liable to be arrested and deprived of their liberty without trial by their peers. We quote the reasoning on this point, being the conclusion of the decision:

"It will be observed, that the claimant can go before any Court of record, or any Judge thereof, in vacation, and make satisfactory proof to such Court or Judge in vacation, of the escape, and that the person escaping owes service or labor to such party.

"It then becomes the duty of the Court to cause a record to be made of the matters so proved, and also a description of the person escaping, and such record being exhibited to any Judge, Commissioner, or other officer authorized by law to cause persons escaping from service or labor to be delivered up, shall be held and taken to be conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. This testimony is taken and this record is made in the absence of the person to be affected by the proceeding; he has no opportunity to cross-examine the witnesses who depose to the facts which are thus conclusively proved; but without his knowledge, evidence is manufactured, which, by virtue of this act, proves beyond question that he is a slave, and that he has escaped from servitude.

"We are at a loss to perceive how this proceeding, by virtue of which a freeman becomes a slave, can be justly called 'due process of law,' in the sense in which that language is used in the Constitution. We are aware that it has been said that the proceedings before the Commissioner do not determine the question of freedom or slavery, that the fugitive is only sent back to the State from which he is alleged to have escaped; and when he reaches there, he is a freeman or a slave, as his status shall be determined by the local law. It is further said that these proceedings are analogous to those by which the fugitive from justice is delivered up, to be taken to the State from which he has escaped; that a person may be arrested by virtue merely of indictment, founded on an affidavit, made before a magistrate, charging him with treason, felony, or other crime, committed in in some other State; and that, upon the production of a copy of the indictment or affidavit certified as authentic by the Governor or Chief Magistrate of the State or Territory from which he fled, he shall be delivered up, to be taken back.

"It is said, that as this proceeding does not deprive the person of his liberty in the sense in which that term is used in the Constitution, but merely delivers him up, to be taken to the State where, according to the indictment or affidavit, the offence was committed, to be dealt with according to the local law, so neither do these proceedings accomplish more than the mere transfer of the alleged fugitive to the State where, as is claimed, he owes service or labor, by force of the local law. We think this is a mistaken view of the question. The fugitive from justice is delivered to an agent appointed by the Governor of the State where the offence is alleged to have been committed, without any adjudication upon the question of his guilt or innocence; in other words, he is delivered to the officer of the law, and is in the custody of the law, for the purpose of being taken to the State where alone he can be tried for the alleged offence. But the case is very different with the alleged fugitive from labor. There is an adjudication before the Commissioner that he owes service or labor, and that he has escaped. By force of the act of Congress under consideration, the record made in the State from which he is said to have escaped, is conclusive evidence that his status is that of a slave.

"The Commissioner is obliged, if his identity is proved, so to adjudge, and the certificate which is given to the claimant is given because the Commissioner has so adjudged. Moreover, the Commissioner can only give the certificate to the claimant, who must be the person to whom the labor or service is due, his agent or attorney, and it is given to him for that reason. It is not material to inquire what the condition of the person will be when he has been taken to the State where the labor or service is said to be due. He may regain his freedom; but if he does, it will be by force of the law of the State, and not by virtue of the act of Congress under consideration; for under that he has been adjudged a slave, and by force of it he has been taken as a slave, by the person adjudged to be his owner, his agent or attorney, from the State where he was arrested to the State from which he is alleged to have escaped.

"We are therefore obliged to conclude that the alleged fugitive from labor is taken back to the State from which he is said to have escaped, not as a person merely charged with being a slave, but as a person who has been proved and adjudged to be a slave, and, as we believe, without due process of law—without having his rights passed upon and determined by a jury of his peers. We think it essential that his right should be maintained by all courts and all tribunals, and for the reasons above given we must affirm the order made in this case, discharging the relator."

We hail this decision of a highly respectable State Court, as evidence of a tendency in public sentiment towards a healthy state on this subject. As the United States Court is at present constituted, it is the agent of the slaveholding power, and must be expected to conform in its decisions to the will of that power. But the judicial opinion of the country at large is rapidly changing. Judge Hoar, in his recent charge, clearly indicated his opinion of the unconstitutionality of the act; many eminent ex-Judges, like Hornblower, of New Jersey, and Hutchinson, of Vermont, and lawyers of the highest rank, like Charles G. Loring