

FREE NEGROES—DISTRICT OF COLUMBIA.

JANUARY 11, 1827.

Mr. POWELL, from the Committee for the District of Columbia, to which the subject had been referred, made the following

REPORT:

The Committee on the District of Columbia, to whom was referred a resolution directing the Committee to inquire whether there be in force in the said District any law which authorizes the imprisonment of any free man of color, and his sale as an unclaimed slave, for jail fees and other charges: and, if so, to inquire into the expediency of repealing the same, report:

That, under certain provisions of existing laws in the District of Columbia, relating to the apprehension and disposal of runaway slaves, it might possibly occur that a free man of color might be apprehended as a fugitive slave, and eventually sold as such, if found going at large in the District of Columbia, without any evidence of freedom, and unable to procure such evidence. The committee, however, believe such an event beyond all rational probability. In this District, as in all the slave-holding States in the Union, the legal presumption is, that persons of color, going at large, without any evidence of their freedom, are absconding slaves, and prima facie liable to all the legal provisions applicable to that class of persons. This presumption results from the relations of the white to the slave population; is essential to the security of this species of property; is founded upon immemorial usage in both the adjoining States of Maryland and Virginia; and has been recognized and sanctioned by repeated decisions of the highest judicial tribunals of the latter State. The committee concur in opinion that this presumption is essential to the rights and interests of the slave proprietor, and is in strict conformity with the legislative policy of those States where a large proportion of the population are slaves; and although it may occasionally operate a temporary hardship upon free persons of color migrating to slave-holding States, from States in the Union where there exists no provision of law for the register of the evidences of emancipation or of freedom, they cannot recommend an abrogation of this long established principle. While the committee deprecate the existence of slavery in the United States, they regard the subject, and every measure of policy connected with it, as belonging exclusively to the municipal legislation of the State Governments where slavery exists. And

although the Congress of the United States has, by the Constitution, exclusive jurisdiction over this District, and has the power, upon this subject as upon all other subjects of legislation, to exercise unlimited discretion, yet the committee do not feel themselves warranted in recommending an abrogation of this legal presumption within the District of Columbia. The District is surrounded on all sides by the States of Maryland and Virginia, slave-holding States to a great extent, and is situated in the heart of a large slave population. To establish by law the principle here, that all persons of color, when found wandering at large, strangers, and unknown within the District, are to be presumed and received as free, until the contrary is shown, would make it the favorite resort; in fact, would make it the receptacle of fugitive slaves, to the great loss and constant vexation of slave owners throughout the Southern States, and to the insupportable annoyance of the inhabitants of the District. The committee have been induced to make these preliminary remarks because it will be found that the existing laws in the county of Washington, enacted by the State of Maryland, and in the county of Alexandria, enacted by the State of Virginia, are based upon the presumption that all persons of color are slaves, till the contrary is shown. These laws are evidently intended, not so much to abridge the rights or restrain the privileges of free persons of color, as to prevent slaves from escaping from their owners, and to secure their apprehension when they do abscond. In the county of Alexandria, where the laws of Virginia prevail, as they were at the time of the cession, a slave may be emancipated by will or deed in writing, under the hand and seal of the owner, proved by two witnesses, or acknowledged by the party executing it, in the court of the county where the emancipator resides, the emancipated person is to be furnished with a copy of the evidence of emancipation thus recorded. The same law provides, that, if any emancipated slave be found travelling out of his county, or the county of his residence, without his copy of the registered evidence of his emancipation, that it shall be the duty of any justice of the peace to commit the person so offending to jail, there to remain until such copy is produced, and the jailor's fees paid. In the law regulating the police of the towns, and to restrain the practice of negroes going at large within the State of Virginia, which is the present law of the county of Alexandria, for the protection and security of free negroes, it is provided, that free negroes and mulattoes are to have themselves registered and numbered in the Office of the Clerk of the County, and are to be annually furnished with a copy of such register. The same law imposes a fine upon any person employing free negroes without such certificate of register; and justices of the peace are required to commit such free negroes as are found without such certificate, until it is obtained. The Clerk of the County of Alexandria informs the committee, that no instance of actual commitment has occurred under this provision of the law, because time has in all instances been allowed to procure the certificate. In all cases where a free person of color has come into Alexandria without register evidence of freedom,

proof, by affidavit of a credible free person, white or black, that such person was born free, or has been received and reputed in the place where he generally resided as free, such affidavit is received as sufficient evidence to entitle such person of color to the certificate required by law, and to secure to him ever thereafter all the rights and privileges of a free man of color. The Clerk of the County of Alexandria also states to the committee, that, since his residence in that county, which commenced in 1792, he has never known a man of color taken up as a runaway, who has not had ample time afforded him, upon his allegation of his right to freedom, to procure evidence of the fact, in all instances aided in procuring such evidence by the officer who had charge of him, and in all instances upon the production of such evidence such person has been immediately discharged, without any claim for jail fees.

The conclusions from the foregoing legal provisions are, first, that a free man of color can never be arrested or questioned when he has a copy of the instrument of his emancipation, duly certified.

2dly. That he can never be arrested or questioned if he should migrate to the county of Alexandria, from any part of the Union where no such register of emancipation is provided for by law; or where he derives his freedom by birth, or otherwise: provided he has with him, or can produce, an affidavit, that he was born free, or that he was received and respected as a free man in the place where he generally resided.

3dly. That if no such evidence is in his possession, or is produced within three months, that he is to be hired out to pay his jail fees, till such evidence is produced.

4thly. That, upon the production of such evidence, he is entitled to immediate discharge, without cost; and is moreover entitled to have himself registered, and is to be furnished with a copy of such register.

5thly. That such register, annually renewed, thereafter protects him as a free man.

6thly. That if no such evidence is produced within twelve months, that he may then be sold as a runaway slave, the law presuming him to be such.

7thly. If sold as a slave, and he can ever thereafter show that he was free at the time of such sale, he is immediately entitled to a restoration of his right.

The committee do not, therefore, consider any alteration of the law in the county of Alexandria, in relation to this subject, necessary.

The laws in force in the county of Washington, relative to the same subject, vary in several important respects from the laws in the county of Alexandria. These laws are to be found in Kilty's Laws of Maryland, Chap. 44, Sec. 6, 7, 8, and 9, passed in the year 1715, Chap. 11, passed in 1719, Chap. 72, Sec. 11, passed in 1792. The uniform and settled legislation of Maryland, in relation to persons of color, from the year 1715, is based upon the presumption that all persons of color who are strangers, and who are wandering at large without any evidence of title to freedom, and who cannot procure such evidence, are to be considered as absconding slaves, and to be so dealt

with. In the county of Washington, the laws of Maryland in force at the time of the cession, relating to free negroes and absconding slaves, are now in operation, and the law of 1796 provides for registering free persons of color, by the clerks of the several counties, upon the production of the evidence of such persons of their right to freedom, and directs that they shall be furnished with certificates of such register, which certificate operates a protection to them in all these rights and privileges.

The law further provides, that free persons of color, if found travelling out of the county where he or she resides, without such certificate, such person, if apprehended, and not being sufficiently known, or able to give a good account of himself, when apprehended, shall be left to the discretion of the magistrate before whom such persons shall be brought to judge thereof, and if such person be deemed and taken as a runaway, shall suffer such fines and penalties as are provided against runaways. By the law, entitled "A supplement to the act relating to servants and slaves," it is provided that any sheriff who shall have committed to him any absconding slave, shall, after giving the notice provided for by the same law, sell such fugitive slaves. The same law, after providing for the payment of certain rewards to such as may apprehend runaway slaves found in Pennsylvania or Virginia, and brought into this District, has the following extraordinary clause: "that, if the person so apprehended as a runaway, be a free man, and shall refuse to pay the fees and rewards allowed for apprehending fugitive slaves, that such person shall be committed to prison, till he or she give security for the payment of such fees and rewards, or make satisfaction therefor by servitude or otherwise." The committee are informed by distinguished counsel, that under the construction given to this law, such person or persons are subject to be sold as slaves. The committee, however, believe, that this provision of law is obsolete: no instance having ever occurred in the District, of the sale of free persons of color under this law.

The conclusions from the foregoing legal provisions are—

1st. That free persons of color, whether native or emigrants, are to be registered by the Clerk of the County Court of Washington, upon the production of the evidence of their right to freedom; and that such persons are to be furnished with a certificate of register.

2d. That by such certificate, free persons of color are fully protected in all their rights and privileges.

3d. Persons of color, found in the county of Washington, without such certificate of register, and, in the language of the law, *not being sufficiently known, or able to give a good account of themselves*, shall, after examination before a magistrate, be deemed runaways, and shall be sold as fugitive slaves.

4th. If a free man of color should be apprehended as a runaway, he is subjected to the payment of all the fees and rewards given by law for apprehending runaways, and upon failure to make such payment, is liable to be sold as a slave.

The committee consider that justice demands an alteration of the

existing laws within the county of Washington, and for that purpose report a bill.

The committee, believing that there solution referred to them originated immediately out of the apprehension and imprisonment, during the last Summer, of a man of color, calling himself Gilbert Horton, in the county of Washington, as a fugitive slave, have considered it their duty to ascertain correctly all the facts connected with his case. It appears by the warrant of commitment furnished to the committee, and by the affidavits of John Edds and A. R. Arnold, the latter a police officer, that on the 22d day of July last Gilbert Horton was about the wharves of Georgetown, a strange negro, without any evidence of his being a free man. He was suspected of being a fugitive slave, by Edds, who, in company with Arnold, the officer, called on said Horton, upon examination found that he had no evidences of freedom, and that his story of himself was contradictory and evasive; inquiry was made of the captain of the vessel in which Horton came to Georgetown, whose information only strengthened the suspicion of his being a fugitive slave. He was accordingly apprehended as such, carried before James Gettys, a Justice of the Peace, who, after due investigation, committed Horton as a runaway, by his warrant. The officer and other persons in the District immediately opened a correspondence with persons named by Horton, residing near Peekskill, New York, to ascertain the fact of Horton's right to freedom. Upon producing evidence of the fact, Horton, by a warrant from the Mayor of Washington, dated the 28th of August last, was discharged, after a confinement of 26 days, without being subjected to any charge or expense. It appears that on the 21st day of October last, Horton was again suspected of being a fugitive slave, and apprehended, but was on the same day discharged, the magistrate before whom he was taken being satisfied of his right to freedom, and is now enjoying an uninterrupted residence within the District of Columbia. Although in this case, and cases of a similar character in the county of Washington, fees and charges for maintenance have never been exacted, still, by law, persons thus situated are subject to such charges, and are generally unable to pay them, thereby subjecting the Marshal of the District to a loss, represented by him as amounting to \$500 within the last eight years. The committee recommend such an alteration of the law as will make such charges payable by the corporation of Washington county.