BY ROBERT ARMSTRONG.

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CONGRESSIONAL.

SPEECH OF MR. BAYLY,

OF VIRGINIA,

On the Finality of the Fugitive-Slave Law; delivered in the House of Representatives May 25, 1852.

The House being in Committee of the Whole on the state of the Union (Mr. SEYMOUR, of Connecticut, in the chair) on the invalid pension bill—

Mr. BAYLY said:

Mr. CHAIRMAN: There have been two propositions propounded in the debate during this session which I desire to discuss. One is, that the fugitive-slave law, like any other law of Congress, is open to repeal; and the other is, that the compromise measures being the law of the land, resolutions to reaffirm them are idle, if not mischievous. I utterly deny both these propositions. In the first place, I say that the fugitive-slave law was passed to execute a fundamental provision of the constitution, and is an enactment which the constitution requires. I maintain that Congress is under precisely the same obligation to pass all laws which are necessary to execute the provisions of the constitution as it is to abstain from the enactment of laws prohibited by it, and that when one Congress has discharged its duty in this respect, and has passed a law necessary to execute a provision of the constitution, it is precisely as unconstitutional to repeal it, without accompanying the repeal with a substitute equally effective, as it is to enact a law which the constitution absolutely forbids. The duties enjoined by the constitution, as by the decalogue, are as imperative as the acts forbidden. If I be right in these positions, I am certainly right in denying the proposition that you have a right to repeal the present law for the extradition of fugitive slaves, unless the very law making the repeal substitutes other provisions equally effective.

The enemies of the fugitive-slave law, or the most intelligent of them, seem to acquiesce in this; and hence, to excuse themselves, they have taken the position that the provision of the constitution referred to imposes a duty upon the States, but confers no power upon the general government; and that some of the details of the fugitive-slave law are in conflict with the constitution. I know, sir, that I might sufficiently answer these points by saying that the uniform practice of the government, and the decisions of the courts of last resort in most of the States, and of the Supreme Court of the United States, have decided otherwise. But, sir, it is not every man who reads the decisions of the courts; therefore I desire to address myself for a short time to these propositions.

The provision of the constitution of the United States for the surrender of fugitive slaves is in these words:

"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 service or labor may be due."

This provision grew out of a distrust upon the part of the southern people of the disposition of those at the North to surrender up their fugitive slaves; and as the provision grew out of that distrust, it is absurd to suppose that the framers of the constitution relied upon the northern States to pass the necessary laws to execute it. It would have been an anomaly, particularly for such a body as that which framed the constitution of the United States, in the same clause to have expressed distrust and to have implied confidence. And yet to this conclusion all those must come who maintain that this clause only imposed a duty upon the States, and conferred no power of legislation upon the general government. The plain and obvious meaning of the language of the clause required that when legislation was necessary, Congress should act; but if there was any doubt about that, the circumstances under which the constitution was framed would remove it.

We are told here now that this provision of the constitution of the United States is an odious one to northern men, and that the execution of it is painful to them. I doubt not that such is the fact. The prevalence of such a feeling in the North at the time that provision was ingrafted on the constitution made it necessary. Well, sir, if such was the case, would not northern men themselves have required, in putting that provision in the constitution at the instance of southern men, that they should be relieved to as large an extent as possible from the enforcement of it? If they had understood that this provision required that the legislatures of the northern States should enact the laws necessary to carry out the provision, would not they have said, We wish to be free from this disagreeable duty to as large an extent as possible; if this thing is to be done, let it be done by the Congress of the United States, where the South, equally with the North, will be represented, so that we may be relieved, as far as practicable, from the necessity of carrying out the provision?

Besides that, we all know that, in respect to this question of the delivery of fugitives from justice and service, there was just as much necessity of uniformity of legislation as there was in a case of bankruptcy, naturalization, or in any other case. Would not convenience and a sense of propriety alone, on the part of all concerned, have suggested that the legislation upon this subject should be uniform, which would have been impracticable if that legislation had been left to the several States? Take the case of fugitives from justice, the provision for the surrender of whom is in the same clause of the constitution as that for the rendition of fugitive slaves. Could anything be more inconvenient than that a separate code should be consulted upon every demand? Would not everybody say that there is as great a necessity for uniformity of legislation in a case of that sort as there is in respect, for instance, to the authentication of records from the several States?

Do we not all know that the great defect in the articles of confederation which was sought to be remedied by the adoption of the constitution was, that its decrees did not operate upon the people directly, but that it was dependent upon the several States to carry them out? When this defect was felt in other cases, would the framers of the constitution have permitted it to remain in this case alone, which is the precise case in which all must have felt it would have been most embarrassing?

But, sir, my time will not allow me to present any more of these obvious, practical, common-sense views on this subject. These were the views of the president of the convention that framed the constitution. They were the views of the Third Congress which sat under the constitution, composed, to a large extent, of the members who framed it. They are the views that have been entertained by every court before whom the question has ever come whose authority is entitled to any respect.

We all know the origin of the law of '93. In 1791 the governor of Pennsylvania made a demand upon the governor of Virginia for the surrender of a fugitive from justice. When this demand was made, the governor of Virginia questioned his authority in the absence of law to make any such surrender. The constitution did not designate him as the officer to make the surrender; nor did he think it devolved upon him as a State officer. In this case the constitution is freer from difficulty than in the case of fugitive slaves, for it provides that the surrender is to be made upon the demand of the executive of one State; it does not say that it is to be made upon the executive of the other State; but still the inference might have been drawn that the authority making the demand should be responded to by the corresponding authority in the State upon which the demand was made. Beverly Randolph—the governor of Virginia at that time—applied to his attorney general, Mr. Innis, whose character is so well known to this nation, and he gave the opinion that, in the absence of any law prescribing what officer it was whose duty it should be to make the surrender, the provision in the constitution was a dead letter.

The governor of Virginia made this response to the governor of Pennsylvania. He submitted the question to General Washington, and General Washington sent a message to Congress upon the subject. Congress took up that message; and concurring in the opinion of the attorney general of Virginia, they passed the law of '93 prescribing the mode of proceeding in the delivering up of fugitives from justice and labor, and they did it almost unanimously. They thus decided that legislation was necessary to give life to this provision of the constitution, in reference to both classes of fugitives, and they also decided that that legislation comes properly from Congress.

Well, sir, as I have already said that Congress was composed to a very large extent of members of the convention that framed the constitution, and the president was George Washington, who presided over that convention, it might seem, therefore, that without referring to anything else, this might settle the question as to the necessity of legislation to give vitality to this principle of the constitution, and as to the right and duty of Congress to enact the necessary laws. But what has been the practice of the country? I think I may safely say that there is not a State in the Union whose governor at some time or other, without question from any quarter, has not made a surrender of fugitives from justice under this law of '93; and thus acquiesced in its constitutionality. And I venture to say that no such fugitive has ever been released upon *habeas corpus* upon the ground that the law was unconstitutional, and the action of the governor under it was therefore unauthorized.

The supreme court of Pennsylvania, when presided over by the illustrious Chief Justice Tilghman, in the case of Wright vs. Deacon, decided it to be constitutional. In delivering the opinion of the court, he said:

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

The Chief Justice cites the provision in the second section of the fourth article of the constitution, and observes:

"Here is the principle: the fugitive is to be delivered up on *claim* of the master. But it required a law to regulate the manner in which this principle should be reduced to practice. It was necessary to establish some mode in which the claim should be made, and the fugitive be delivered up."

The judge then quotes the enactment on the subject by Congress, and concludes the opinion as follows:

"It plainly appears, from the whole scope and tenor of the constitution and act of Congress, that the fugitive was to be delivered up on a summary proceeding, without the delay of a formal trial in a court of common law. But if he had really a right to freedom, that right was not impaired by this proceeding. He was placed just in the situation in which he stood before he fled, and might prosecute his right in the State to which he belonged."

To this opinion, which was pronounced in 1819, I ask the especial attention of the country, as in a few words it covers the whole ground.

In the case of Jack and Martin, Chief Justice Nelson, of New York, now of the Supreme Court of the United States, indulged in similar reasons. He said:

"The counsel for the plaintiff in error contends, the mode of making the claim and of delivering up the fugitive, is a subject exclusively of State regulation, with which Congress has no right to interfere; and upon this view the constitutionality of the law of this State is sought to be sustained.

"It is material to look into the object of this clause of the constitution, the evil to be guarded against, and the nature and character of the rights to be protected and enforced, in order to comprehend its meaning, and determine what powers, and to what extent, may be rightfully claimed under it.

"At the adoption of the constitution, a small minority of the States had abolished slavery within their limits, either by positive enactment or judicial adjudication; and the southern States are known to have been more deeply interested in slave labor than those of the North, where slavery yet to some extent existed, but where it must have been seen it would probably soon disappear. It was natural for that portion of the Union to fear that the latter States might, under the influence of this unhappy and exciting subject, be tempted to adopt a course of legislation that would embarrass the owners pursuing their fugitive slaves, if not discharge them from service, and invite escape by affording a place of refuge. They already had some experience of the perplexities in this respect, under the confederation, which contained no provision on the subject, and the serious and almost insurmountable difficulties that this species of property occasioned in the convention were well calculated to confirm their strongest apprehensions. To this source must be attributed, no doubt, the provision of the constitution, and which directly meets the evil, by not only prohibiting the States from enacting any regulation discharging the slave from service, but by directing that he shall be delivered up to the owner. It implies a doubt whether they would, in the exercise of unrestrained power, regard the rights of the owner, or properly protect them by local legislation. The object of the provision being thus palpable, it should receive a construction that will operate most effectually to accomplish the end consistent with the terms of it. This, we may reasonably infer, will be in accordance with the intent of the makers, and will regard with becoming respect the rights of those especially interested in its execution. Which power, then, was it intended should be charged with the duty of prescribing the mode in which this injunction of the constitution should be carried into effect, and enforcing its execution—the States or Congress? It is very clear, if left to the former, the great purpose of the provision might be defeated in spite of the constitution. The States might omit any legislation on the subject, and thereby leave the owner without any known means by which to assert his rights; or they might so encumber and embarrass the prosecution of them as that their legislation on the subject would be tantamount to denial. That all this could not be done or omitted without disregarding the spirit of the constitution, is true; but the provision itself is founded upon the assumption that without it the acknowledged rights of the owners would not be observed or protected; it was made in express terms to guard against a possible act of injustice by the State authorities. The idea that the framers of the constitution intended to leave the regulation of this subject to the States, when the provision itself obviously sprung out of their fears of partial and unjust legislation by the States in respect to it, cannot readily be admitted. It would present an inconsistency of action, and an unskilfulness in the adoption of means for the end in view, too remarkable to have been overlooked by a much less wise body of men. They must naturally have seen and felt that the spirit apprehended to exist in the States, which made this provision expedient, would be able to frustrate its object in regulating the mode and manner of carrying it into effect; that the remedy of the evil and the security of rights would not be complete, unless this power was also vested in the national government."

The case was taken to the court of last resort, and the decision of Judge Nelson was affirmed. But Chancellor Wallworth took the ground which is now insisted upon, that the clause of the constitution under discussion imposed a duty upon the States, but conferred no power upon the general government. But he told me no longer ago than last winter that he had yielded that opinion in deference to the decision of the Supreme Court. But, although he held the law of '93 unconstitutional, in delivering his opinion he expressed some sensible views upon the subject of slavery, to which I call the attention of gentlemen from New York:

"However much, therefore, we may deplore the existence of slavery in any part of the Union as a national as well as a local evil, yet, as the right of the master to reclaim his fugitive slave is secured to him by the federal constitution, no good citizen, whose liberty and property is protected by that constitution, will interfere to prevent this provision from being carried into full effect according to its spirit and effect; and even where the forms of law are resorted to for the purpose of evading the constitutional provision, or to delay the remedy of the master in obtaining a return of his fugitive slave, it is undoubtedly the right, and may become the duty, of the court in which any proceedings for that purpose are instituted to set them aside, if they are not commenced and carried on in good faith, and upon probable grounds for believing that the claim of the master to the service of the supposed slave is invalid."

In the case of the Commonwealth vs. Griffin, Chief Justice Parker, of Massachusetts, holds this language:

"This brings the case to a single point, whether the statute of the United States giving power to seize a slave without a warrant is constitutional? It is difficult, in a case like this, for persons who are not inhabitants of slaveholding States to prevent prejudice from having too strong an effect on their minds. We must reflect, however, that the constitution was made with some States, in which it would not occur to the mind to inquire whether slaves were property. It was a very serious question when they came to make the constitution, what should be done with their slaves. They might have kept aloof from the constitution. That instrument was a compromise. It was a compact by which all are bound. We are to consider, then, what was the intention of the constitution. The words of it were used out of delicacy, so as not to offend some in the convention whose feelings were abhorrent to slavery; but we there entered into an agreement that slaves should be considered as property. Slavery would still have continued, if no constitution had been made.

"The constitution does not prescribe the mode of reclaiming a slave, but leaves it to be determined by Congress. It is very clear that it was not intended that application should be made to the executive authority of the State. It is said that the act which Congress has passed on this subject is contrary to the amendment of the constitution, securing the people in their persons and property against seizures, &c., without a complaint upon oath. But all the parts of the instrument are to be taken together. It is very obvious that slaves are not parties to the constitution, and the amendment has relation to the parties.

"It is said that when a seizure is made, it should be made conformably to our laws. This does not follow from the constitution; and the act of Congress says that the person to whom the service is due may seize, &c. Whether the statute is a harsh one is not for us to determine.

"But it is objected that a person may in this summary manner seize a freeman. It may be so; but this would be attended with mischievous consequences to the person making the seizure."

We all know that the Supreme Court of the United States has pronounced the law constitutional; but as the gentleman from New York [Mr. FLOYD] and others have assailed that Court, and attempted to destroy confidence in its decision, I have, from choice, referred to the decisions of other jurists, for whose decisions, I presume, he has more respect.

I could multiply references to similar opinions almost indefinitely; but it is useless. Those I have referred to are of the highest authority, and are entitled to the most profound respect.

The other objections to this law grow out of its details. I shall not refer to them one by one, because my time will not permit it, and because it is not necessary; for all of them resolve themselves into one point—which is, that the proceedings under it are summary and not according to the usual rules of proceeding. There are no objections to its details, that I am aware, which are not included under the general objection that the proceedings are summary, and not in accordance with the rules of the common law. In answer to this, I will say that the provisions of the constitution contemplated summary proceedings. Such has been the decision of the courts, as we have already seen, and such was the construction given to that clause of the constitution by Judge Story. At page 676, volume 3, of his Commentaries upon the Constitution, he says:

"This clause (the one providing for the recapture of fugitive slaves) was introduced into the constitution solely for the benefit of the slaveholding States, to enable them to reclaim their fugitive slaves who should have escaped into other States where slavery was not tolerated. The want of such a provision under the confederation was felt as a grievous inconvenience by the slaveholding States, since, in many States, no aid whatever would be allowed to the owners, and sometimes, indeed, they met with open resistance. It is obvious that these provisions for the arrest and removal of fugitives of both classes contemplate summary ministerial proceedings, and not the ordinary course of judicial investigations, to ascertain whether the complaint be well founded, or the claim of ownership be established beyond all legal controversy. In cases of suspected crimes, the guilt or innocence of the party is to be made out at his trial, and not upon the preliminary inquiry whether he shall be delivered up. All that would seem in such cases to be necessary is, that there should be *prima facie* evidence before the executive authority to satisfy its judgment that there is probable cause to believe the party guilty—such as, upon an ordinary warrant, would justify his commitment for trial.

"And in the cases of fugitive slaves there would seem to be the same necessity of requiring only *prima facie* proofs of ownership, without putting the party to a formal assertion of his rights by a suit at the common law. Congress appear to have acted upon this opinion; and accordingly, in the statute upon this subject, have authorized summary proceedings before a magistrate upon which he may grant a warrant for removal."

And that such was the design is palpably evident from the proceedings of the convention which formed the constitution. It is evident that the question of freedom or slavery was never designed to be raised upon the application for the surrender of the fugitive from service, any more than the question of guilt or innocence is in the case of fugitives from justice. It would have been harsh and unjust had it been otherwise. The question of slavery in the one case, and of guilt in the other, depends upon the law of the State from which the fugitive fled, so say nothing about the greater convenience for the attendance of witnesses; where exact justice is wanted, the claimant of it, of course, would be safer before a tribunal well versed in the law of the place. A man with a bad case will stand a better chance before an incompetent tribunal, because he may benefit by its blunders; but a man with a good case is safer in the hands of a competent one, as a blunder fatal to him is less likely to occur.

Supposing that a northern tribunal and a southern one, equally impartial, (and in this connexion we must assume that they are so,) before which one would a negro really free stand the best chance for a decision in his favor? Suppose the case of a negro really free in Virginia, but who had escaped from a man holding him as a slave, and for many years had held him and treated him as a slave without question from any one, and that his father had so held and treated him, and his right to freedom depended upon a question of fact, to be proved by witnesses—such, for instance, as whether he was born before or after a particular date, (and such questions frequently arise)—where would the negro have the best chance for justice—in Massachusetts or the place of his nativity? The claimant could take on his witnesses. But how could the negro compel the attendance of his? In Virginia he can do it without reward to the witness or fee to the officer summoning him. Is such the case in Massachusetts? Can her courts compel witnesses to attend from Virginia? or even in Virginia, to appear without fee before a commissioner to take depositions? Sir, our laws in Virginia afford facilities to a negro in asserting a claim to freedom greater than are allowed white men in any case. If any person conceives himself illegally held as a slave, our laws provide that he may complain to any judge or justice of the peace, who, in such cases, is required to order the sheriff of the county to take the complainant immediately into custody, and to safely keep him at the expense of the person claiming to be the owner, until he give bond with security in double the value of the negro, supposing him to be a slave, that he shall be forthcoming at the trial before such court as the complainant may elect, and in the mean time to allow him reasonable opportunity to prepare for trial. The law also requires that the court shall assign him counsel, who, without reward, shall aid him in prosecuting his suit; and our courts always consult the wishes of the negro in assigning him counsel, and the result almost invariably is that he has eminent counsel. The law also provides that he shall have, free of costs, all needful process, services of officers, and attendance of witnesses; that his case shall be a privileged one on the docket; that it shall be tried by a jury free from exception, and that the complainant shall not be embarrassed by legal technicalities. *In the event the jury find in his favor, they are authorized to find for him damages for the detention; and the court is required to award him the damages and costs.*

Now, just here let me say a word to those gentlemen who charge that the fugitive-slave law offers a bribe of five dollars in each case to the commissioner to make the surrender of an alleged fugitive slave. Our law offers a bribe, if gentlemen choose to call it such, of twenty times, and more than twenty times of that sum, to all the officers of the court to set him free. If the negro is found to be a slave, the counsel, sheriff, witnesses, clerk, everybody, lose their fees. *But* if he is found to be a free man, out of the damages and costs awarded him everybody is paid, including the counsel; and I have known some of the latter from that source, and the voluntary service of the negro afterwards, to get pretty round fees.

Now, sir, tell me in what northern State he can have all these facilities in asserting his right to freedom. If impartial justice, and not fanatical outrage, be the object, tell me if it be not better, even for the negro, that he should be sent before tribunals where all these safeguards are thrown around him.

But suppose another case, which prejudiced persons can better appreciate, although, as far as law is concerned, it is the same case. Suppose the same negro should be seized in Georgia—and it is a supposable case, for some of our free negroes go to the South—I have known them to go to New Orleans—where would he stand the best chance for his freedom? The Georgia tribunals are as impartial as those of Virginia. But would the negro have as fair a chance for justice far away from the place of his birth as at home? At the time of the formation of the constitution nearly all the States were slaveholding. At that time, therefore, the Georgia case would have been the general one. Laws similar to those of Virginia exist in all the slaveholding States.

Besides the facilities afforded the negro in suits for freedom by our law, the tribunals in administering it have always given the negro the benefit of all doubts. Our court of appeals, in at least one case, carried this, in my opinion, to an unwarrantable extent. In that case, where the identical negro was concerned, they decided one way when the controversy was between claimants of him as property, and a different way when the suit was one for freedom; and leaning "in favor of liberty," they allowed proceedings to be had which they would have refused in any other case.

Well, then, might Chief Justice Tilghman, of Pennsylvania, say: "If he (the fugitive) had really a right to freedom, that right was not imposed by this proceeding, (the issuing of the warrant for his surrender.) He was placed just in the situation in which he stood before he fled, and might prosecute his right in the State to which he belonged."

Well, then, might Judge Washington, in a case which came before him in Philadelphia, in which the fugitive offered to show that, by the laws of Virginia, from which he admitted he had fled, he was free, respond, "I am well acquainted with the laws of Virginia, and the character of her courts; and if the fugitive be really entitled to freedom, he can establish it better in Virginia than here."

If there could be any doubt that the question of freedom or slavery in the case of fugitives from labor, any more than the question of guilt or innocence in the case of a fugitive from justice, does not arise on the application for the surrender of him, it would be removed by the proceedings of the convention which framed the constitution.

On the 29th of August, 1787, the following proposition was proposed and *unanimously* adopted:

"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 regulation subsisting in the State to which they escape, but shall be delivered up to the person justly claiming their service or labor."

The committee, on revision, proposed the following in lieu of it:

"No person *legally* held to service or labor in one State, escaping into another, shall, in consequence of regulations subsisting therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

The word "*legally*" was stricken out by the convention; and, after the word "State," the words "*under the laws thereof*."

Will it be said that, if this be the law, freemen at the North might be dragged from their families, and be forced to assert their freedom before the tribunal of another State, which would be a great hardship? Not greater than for an innocent man to be dragged from his family to be tried for a crime in another State—nor so great. In the case of the fugitive from justice, he would not have the favor shown him by the law which the fugitive from service has; and if he was found to be innocent, he would have no redress. But if the negro is found to be a freeman, he would have his action against the person making the seizure. In the case I have already referred to, Chief Justice Parker, of Massachusetts, said:

"But it is objected that a person may, in this summary manner, seize a freeman. But this would be attended with mischievous consequences to the person making the seizure."

Besides the civil action in a case where the claimant has no pretence of title, he could be criminally prosecuted.

Sir, the fear that freemen are to be seized under the fugitive-slave law is imaginary. It is almost impossible that any other than a slave will ever be seized under it. This thing of capturing runaway negroes is not such a cheap, pleasant, and safe thing to life and limb that men will freely go into it. The difficulties, the expense, and the danger of it are such that I do not believe that one master in a thousand would ever attempt to catch a runaway slave, except for the sake of the example to those at home. Kidnapping a free negro would not accomplish this. There has never been but one mistake made in the surrender of an alleged fugitive; and in that case the moment the negro was carried to the claimant he disavowed him. And it must always be so. Every southern man's overseers and neighbors know his negroes; and if he were to attempt to go to the North, kidnap a northern free negro, and keep him upon his place, he would be lynched first, and sent to the penitentiary afterwards; as would any one who would attempt to bring to the South, for traffic, such a negro. There is not a planter in the South who would have a northern free negro on his plantation for four times his value. Our laws, under severe penalties, prohibit their being brought by others or coming themselves into the southern States.

The idea, therefore, that any other than slaves will ever be seized under this law is idle; and to their surrender we have a clear and explicit constitutional right, and the denial of which does not benefit the North, although it injures us. On the contrary, it benefits them as well as us. I infer this from the fact that their legislation shows that they do not regard the negroes as a desirable population.

But it has been said upon this floor very frequently, and especially by the gentleman from New York, [Mr. FLOYD,] that this law is odious; that its provisions are stringent; that they are repugnant to northern feeling, and therefore we need not expect this law to be executed. Well, sir, if they are stringent, why are they so? Is it not because the action of the northern people and their legislatures have made stringent laws necessary? And it does not lie in their mouths to object to the stringency of them.

He has ingeniously reasoned that the officers who are authorized to execute these laws are irresponsible people. He contends that the very fact that a man will undertake to execute these laws proves that he is an indifferent character. He says the execution of their laws is left to the sheriffs and constables who are chosen for their fitness—who have given bonds for the faithful discharge of their duties; and he intimates that the execution of this law ought to be intrusted to them. He is right. That was the view taken by the early legislators of the country, who imposed the execution of as many of the laws of the United States as possible upon the State officers, with the statesmanlike view of preventing a conflict between State and federal officers, and by consequence between the States and the general government. The law of 1793 was, as all our laws then were, framed with that view. But did not the legislature of the gentleman's own State pass, and have not the legislatures of most of the northern States passed, laws prohibiting the officers of that State, under severe penalties, from acting so as to make the enforcement of the law of 1793 absolutely impossible? Did they not by legislation nullify that law? If, then, complaints are made that the execution of these laws is not intrusted to the State officers, I say it has become a matter of necessity that their execution should be intrusted to others, and that necessity is not the result of the action of the South; and it does not lie in the mouths of northern men to condemn what their conduct has made indispensable.

But, as to the severity of these provisions, and as to their summary character, they are not more severe or more summary than are those for the delivery of fugitives from justice. There are two classes of fugitives from justice for the surrender of whom our laws provide. Under the treaty of Washington, it is provided that certain fugitives from Great Britain and her dominions to this country shall be delivered up; and they are surrendered under similar rules and regulations to those provided for in the delivery of fugitive slaves, and the laws are executed by precisely the same persons. Yet why are there no complaints that white men are thus summarily delivered up, when they have fled from a land of oppression to one of liberty? Why are the complaints made of the character of those proceedings confined to the delivery of fugitive slaves alone? Is it because, in the case of the fugitive slave, it is impossible, as I have shown, that there can be oppression? He has better opportunities, ten times over, of ascertaining his right to freedom in any of the southern States than the fugitive from justice has in establishing his innocence either in England or the northern States.

Now, sir, I do not mean to come here to say that the repeal of the fugitive-slave law, without the substitution of another equally affective, will lead to the dissolution of this Union. I do not mean to say that, because I know that there is amongst a great many persons a disposition to laugh at the idea that there is any danger of that result; but I do come here to prove it to such men as are rational upon that point.

In the language of the Supreme Court of the United States—

"Historically it is well known that the object of this clause was to secure to the citizens of the slaveholding States the complete right and title of ownership in their slaves as property in every State of the Union into which they might escape from the State where they were held in servitude. The full recognition of this right and title was indispensable to the security of this species of property in all the slaveholding States; and, indeed, was so vital to the preservation of their domestic interests and institutions, *that it cannot be doubted that it constituted a fundamental article, without which the Union could not have been formed.* Its true design was to guard against the doctrines and principles prevalent in the non-slaveholding States, by preventing them from intermeddling with, or obstructing, or abolishing the rights of owners of slaves."

And, in the language of Chief Justice Tilghman, already quoted—

"Whatever may be our private opinions on the subject of slavery, *it is well known* that our southern brethren would not have consented to become parties to a constitution under which the United States has enjoyed so much prosperity, unless their property in slaves had been secured."

When the constitution of the United States was formed, there was not the same necessity for a provision to guaranty the surrender of fugitive slaves as there is now. At that time all the States of the Union, with the single exception of Massachusetts, were slaveholding. Between the slaveholding States there has never been any great necessity for this provision. The provision grew out of the forecast of our fathers, who saw that the northern States would gradually become non-slaveholding States. If we were all to have remained slaveholding States there never would have been any necessity for any such law. The necessity in prospect, however, at that time was so obvious that it was insisted upon as a *sine qua non*, and the constitution would not have been formed but for it. Do gentlemen suppose that when the necessity for it has greatly augmented, the South is so insensible to its rights that they will agree now to give up the provision which they insisted upon as a *sine qua non* at the time of the formation of the constitution? Sir, they not only will not submit to this thing, because they will find their rights to their slave property, and their domestic peace, to be insecure by the repeal of that law; but they will do it for another and a higher reason: They would find by such action that no confidence is to be put in constitutional guarantees. They would find that all the laws of society, under the influence of fanaticism, could be set at defiance; and all friends of liberty, regulated by law, would see that they were in an unfortunate political alliance; and they would be swift to dissolve it.

The House knows that I am no disunionist. Even in my own State I have been accused of having too great an idolatry for the Union, and of a willingness to submit to things I ought not to sustain it. I come not here to threaten gentlemen, but to reason with them. I have already shown that the right of the southern people to have their runaway slaves delivered up to them is a clear, well-defined, and not a disputed right. If it is withheld by those who have in the most solemn manner agreed to secure it, what ought the South to do? With your knowledge of our feelings—I am not speaking of yours—with your knowledge of our feelings, what ought we with those feelings to do? Change our position, and what would you do? I will take an illustration: At the time of the formation of the constitution, the North then, as now, were averse to the increase of slavery by the importation of slaves; they desired the abolition of the foreign slave trade. A portion of the South were unwilling that it should be abolished. But it was agreed that Congress should have the power to prohibit the importation of slaves after 1808. The constitution of the United States does *not require* that the importation of them *shall* be prohibited after that time; but still I am free to admit that such was the understanding on all hands. Now, suppose the South had a majority in the two houses of Congress, and should, in despite of this common understanding—not as in the case of the fugitive-slave law, in spite of the express provision of the constitution, but in spite of this understanding—should repeal the law forbidding the foreign slave trade? The demand for slaves exceeds the supply, and this retards the growth of new slave States. There is room in Texas alone for a million or more of them than she has. Well, suppose we had a majority in the two houses; and, with the avowed object of increasing our political preponderance in the Union, we should repeal the prohibition of the importation of slaves, and at the same time prohibit the migration of white persons: what would the North say? Would they stand it? No, sir; no! And if they would they ought not. Do they suppose that we would be submissive in a more flagrant case? Gentlemen, think of it. Do not say to us you have not the votes to do this. So we have not. But in a case where the constitution is concerned, a majority does not give right. The very object of written constitutions is to protect minorities.

Sir, there have been several vital conflicts between the North and the South. On each recurrence of them there has been an increased residuum of discontent left, both at the North and the South. There was much discontent with the Missouri compromise, more with the tariff compromise, and the sting which is still felt, notwithstanding the late pacification, is greater than on either of those occasions. We all know this. In consequence of it men are estranged who ought to feel in common, and, what is more, do, to a large extent, feel in common. Let the country beware of those who tell them there is no danger of a dissolution of the Union, and of all the dire calamities which will follow in its train.

The gentleman from New York, [Mr. FLOYD,] and others, tells us that this law is an odious one; disagreeable to be executed. There are few laws that are not so. The very necessity for laws, to a great extent, grows out of the fact that it is disagreeable to good men to force bad men to do their duty. You want no laws to compel a man to do what is agreeable; but laws are necessary to compel men to do what is right, although disagreeable. The necessity for laws grows out of the disagreeableness of the performance of the duties enjoined. Does any judge pronounce the sentence of death, or any jury find a verdict of condemnation, from pleasure? It is painful to do it, and hence the law makes it the duty of some one to do it, so that the rights of society shall be respected. And, indeed, in civil suits there are few judgments which are pronounced that are not to force men to do what is disagreeable to them, and the execution of which judgments, therefore, by those to whom their execution is intrusted, cannot be very agreeable.

Sir, gentlemen talk about the law being disagreeable, and that they will not execute it because they do not like this or that provision, or some other provision in the law. What law is it that is acceptable to everybody? Take that masterwork of statesmanship, the constitution of the United States. How many men, if they had to frame it according to their own notions, would have agreed to all of it precisely as it is? Sir, it is not one of those negative pictures which, when viewed by artists, none see much to admire, yet which none would propose to alter, but it is one of those magnificent works of art which, when criticised by the precise persons, each one would suggest some alteration, and yet all the others would demur to the precise one he would suggest.

I come now, sir, to the second proposition I laid down. They tell us that the compromise measures are the law of the land, and until there is a proposition to repeal them that it is idle, if not mischievous, to talk about reaffirming them. So did not think our English or American ancestors, and so have not thought any people. What was Magna Charta? Coke tells us "that it is declaratory of ancient law and liberty in England, not adding any new freedom nor taking away any *lawful* duties, but only a repetition of former privileges, which time or oppression had brought into disuse." Some gentlemen of the present day, had they lived then, would have said, "Why, these things are the laws of England already; it is true, we distrust that the authorities of the country will observe them, but they are the laws of the land, and why require that their authority shall be reaffirmed?"

So did not think the sturdy barons of England—several successive kings were made to reaffirm it, and Lord Coke tells us that up to his time that Magna Charta and the Charta Foresta "have been confirmed, established, and *commanded to be put in execution* by thirty-two acts of Parliament in all." Why was this done? In the first instance it was only declaratory of existing rights; and on the last occasion upon which they were "commanded to be put in execution," they had already been reaffirmed thirty-one times before!

What was it that has brought down to us, through a period of near six centuries, the memorable response of the British lords and commons to the prelates in the time of Henry the Third: "*Nolumus leges Angliæ mutare?*" The occasion upon which that famous response was made was only important so far as the fixed will of the Parliament, *on a principle*, was concerned. The precise bill before them was not very important.

Hume thus describes it:

"There had been great disputes between the civil and the ecclesiastical courts concerning bastardy. The common law had deemed all those to be bastards who were born before wedlock; by the canon law they were legitimate; and when any dispute of inheritance arose, it had formerly been usual for the civil courts to issue writs to the spiritual, directing them to inquire into the legitimacy of the person. The bishop always returned an answer agreeable to the canon law, though contrary to the municipal law of the kingdom. For this reason, the *civil courts had changed the terms of their writ*; and, instead of requiring the spiritual courts to make inquisition concerning the legitimacy of the person, they only proposed *the simple question of fact whether he were born before or after wedlock.* The prelates complained of this practice to the Parliament assembled at Meston, in the twentieth of this King, and desired that the municipal law might be rendered conformable to the canon, but received from all the nobility the memorable reply, '*Nolumus leges Anglie mutare.*' WE WILL NOT CHANGE THE LAWS OF ENGLAND."

Now, sir, what has made this famous response memorable and brought it down to us through a track of six hundred years? It has the eminent loyalty to British law, and the firmness exhibited in it that has embalmed it forever.

During the time of Henry the III, under his encouragement, England was infested with foreigners. They wished to substitute the canon law for the common law. They never hesitated to express their abhorrence of the laws of England. When these laws were at any time appealed to in opposition to their wrongs, they scrupled not to reply, "*What did the English law signify to them? They minded them not.*" And at that time, too, as now, the higher-law doctrine met with countenance not only with the prelates, but with others in authority. Under these circumstances the British Parliament felt it due to themselves, on the first occasion which presented itself, as unimportant as undoubtedly it was in every other respect, not to content themselves with merely neglecting or declining to act upon the proposition to disturb the British law, but to rebuke that attempt with sternness. If they had reasoned as some do now, they would have said: Suppose these prelates have petitioned us to change our laws: what care we? they are the laws, and that is enough. But so did not reason those men, the response of whom has lived for six hundred years, and will live forever. They put down disloyalty to British law, by saying sternly, "*We will not change the laws of England!*" That was a resolution of finality in respect to the attempt to substitute the canon law for the common law. All I have ever wanted was a similar resolution against the attempts to substitute "the higher law" for the constitution of the United States. Sir, in many respects there is a strong analogy between the circumstances under which that memorable response of the British barons was made, and those at present existing with us, under which we have made a similar response.

Then there were aliens in birth, aliens in language, and aliens in feeling, at work to undermine the fundamental principles of the English constitution. Those who are at work to undermine our institution, though not aliens in birth, though not aliens in language, are as much aliens in every feeling of loyalty to the constitution of the United States as any of those in the time of Henry III were to the institution of England. When those people were pointed to the laws of England, they said, What are the laws of England to us? we despise them. This precise answer is made in respect to our constitution by this other class of aliens. They say, What is the constitution of the United States to us? it is a covenant with hell. These aliens to our constitution are more despicable than those of the time of Henry III, for the very reason that, not being aliens in birth or language, they are equally so in feeling.

There are other analogies between the two occasions. The civil courts of England very properly changed the form of their proceedings when it was necessary to execute their laws. We very properly changed the forms of our proceedings when it was necessary to execute the constitution of the United States. They left only to the ecclesiastics "the simple question of facts." We, as I have already shown, leave to the northern tribunals in the case of fugitives "a simple question of fact."

Will it be said that I am exaggerating the case before us in comparing it with *Magna Charta* and the memorable response of the Parliament of Meston? Sir, the only parts of the Compromise which are not finally executed are the fugitive slave law and the laws erecting territorial governments: the principle that lies at the foundation of the first of which is, that Congress shall pass all laws, no matter how disagreeable the duty, necessary to execute the