The Anti-Slavery Bugle.

BENJAMIN S. JONES, EDITOR. "NO UNION WITH SLAVEHOLDERS." ANN PEARSON, PUBLISHING AGENT.

VOL. 14.---NO. 44. SALEM, COLUMBIANA COUNTY, OHIO, SATURDAY, JUNE 18, 1859. WHOLE NO. 714.

THE ANTI-SLAVERY BUGLE,

PUBLISHED EVERY SATURDAY, AT SALEM, OHIO, by the Executive Committee of the Western Anti-Slavery Society.

TERMS.—$1,50 per annum payable in advance.

☞Communications intended for insertion, to be addressed to BENJAMIN S. JONES, Editor.

Orders for the paper and letters containing money in payment for the same, should be addressed to ANN PEARSON, Publishing Agent, Salem, Columbiana County, Ohio.

☞Money carefully enveloped and directed as above, may be sent by mail at our risk.

☞We occasionally send numbers to those who are not subscribers, but who are believed to be interested in the dissemination of Anti-Slavery truth, with the hope that they will either subscribe themselves or use their influence to extend its circulation among their friends.

TERMS OF ADVERTISING.

One Square (16 lines) three weeks, : : :	$1,00
" " Each additional insertion, : :	,25
" " Six months, : : : : : : :	4,00
" " One year, : : : : : : :	6,00
Two Squares six months, : : : : : :	5,00
" " One year, : : : : : : :	8,00
One Fourth Column one year, with privilege of changing monthly, : : : :	12,00
Half Column, changing monthly, : : :	20,00

☞Cards not exceeding eight lines will be inserted one year for $3.00; six months, $2,00.

J. HUDSON, PRINTER.

The Anti-Slavery Bugle.

JUDGE SWAN'S OPINION.

J. R. SWAN, Ch. J.:

It is proper to say that a Judge of this Court or the Supreme Court of the State in regular session has no more jurisdiction, or judicial power, or discretion, in determining questions which arise upon *habeas corpus* than a Probate Judge of the county. Each must be governed by the same rules, and each are invested with the same powers—no more and no less.

The relators being brought before us on habeas corpus, our inquiry must be confined to such questions as are properly cognizable under that writ.

The return shows that the sheriff of Cuyahoga county holds the relators in custody under a sentence and judgment of the District Court of the United States for the offense of rescuing fugitives from service. The judgment of the District Court is conclusive, and precludes all inquiry on habeas corpus, unless it is a nullity.

Waving all questions made by counsel as to the power of a State judge on habeas corpus to declare the sentence of a court of general jurisdiction invalid, it is very clear that we cannot on habeas corpus, go behind the sentence, and revise and review the previous proceedings of the court. For instance, if these relators had been tried by a packed jury; found guilty without sufficient proof, and upon an erroneous and illegal charge of the court, we could not set aside the verdict, arrest the sentence, or revise the judg- of the Court. It would, indeed, be imputing to the counsel of the relators the wildest and most absurd views of the law to intimate, that they claim that a judge, on habeas corpus, can go behind a sentence, and review and revise the mode in which a trial was conducted. No such claim is made; but I refer to the subject, because those who are unacquainted with the limitations upon the power of this Court, when deciding upon habeas corpus, are not probably aware, that a judge would be guilty of high handed usurpation, and would deserve impeachment, if he undertook to discharge the relaters on any assumed ground that they were set, in fact, guilty of rescuing fugitive slaves from labor; or had not had a fair or impartial trial.

Neither the verdict of the jury nor the judgment of the District Court can be collaterally impeached, if that Court had jurisdiction of the party and and offense. The verdicts and sentences of Courts in every case would be subject to arbitrary intermeddling, and might be set aside and criminals discharged by any judge who is authorized by statute to issue this writ, if a case could be re-examined and the justice of the verdict and sentence considered on habeas corpus.

And further, if a court, having jurisdiction over an offense created by a valid and constitutional law, pronounces sentence, and the commitment under that sentence is returned on habeas corpus, the form of the indictment or the want of proper allegations therein, cannot be inquired into; for the habeas corpus cannot be converted into a writ of error. In such case the court, having jurisdiction over the offense, must itself pronounce the law of the case, and, until reversed by some competent tribunal, is conclusive on all other courts, and puts an end to all collateral inquiry on habeas corpus. Exparte Watkins, 3 Pet. 193; In the matter of Prime! Barb. 341; In matter Shaw, 7 Ohio, St. Rep. 81. Hence it is that the statute itself relating to this writ excepts from those who are entitled to the benefit of a habeas corpus all persons convicted of some crime or offense, for which they stand committed, plainly and specifically expressed in the warrant of commitment. (Swan's Statutes 450, sec. 1.)

The District Court, then, having by law, if constitutional, jurisdiction over the offense mentioned in the mittimus, and having pronounced sentence, it must be deemed conclusive on habeas corpus. We are bound to take the return as true; and if the relators could, under any state of facts, be liable to imprisonment for rescuing an escaped fugitive in violation of the seventh section of the act of Congress of 1850, the relators must be remanded.

It is true that the officer had procured and has returned with the mittimus a copy of the record. The mittimus itself, however, was and is his authority for holding the relators; it designates with sufficient certainty the cause of commitment; and the fact that the officer has procured a copy of the record and has annexed it to the mittimus and made it a part of his return, does not alter our jurisdiction on habeas corpus. The District Court has exclusive jurisdiction if it has any; and we cannot revise as upon error or motion in arrest of judgment, the sufficiency of the allegations of the indictment or of the facts contained in it. No one would claim that the criminals who have been convicted of murder in the second degree and sentenced to the Penitentiary for life, could be discharged on habeas corpus, because the indictment, contained no allegation of a purpose to kill; an ingredient of the offense, which this Court has held material and substantive, and which they have been unable to find in the forms heretofore used. So in this case, if, under any state of facts, a citizen could be indicted and punished under the seventh section of the fugitive act for rescuing a slave, although the other sections of the act in respect to the mode in which escaped slaves may be reclaimed were unconstitutional and void, we cannot on habeas corpus look into the indictment found in a court, authorized to pronounce sentence for such an offense, and discharge, on account of the want of allegations which would have justified the Court pronouncing the sentence, to arrest the judgment, or an appellate court to reverse it. If Congress has power to legislate at all, facts may exist in which the legal right of the owner is conceded even by the fugitive, independent of all legal proceedings and interference, might be punished.

The only ground, therefore, upon which the relators can be discharged is, to go behind the seventh section of the act, and maintain, that Congress never had any legislative power under the Constitution of the United States to provide punishment for a person who rescues an escaped slave.

This position, if sustained by the court, cuts up by the roots all laws which have been passed, and all laws which may hereafter be passed by Congress, relating to the reclamation of fugitives. It not only disposes of this seventh section of the act of 1850 now under consideration, but the whole law.

Neither the case before us, nor the question thus broadly presented, requires us to consider or determine the powers of the court to appoint commissioners, or the provisions of the law which have been the subject of discussion and condemnation, and which have so deeply agitated the public mind.

The question before us is, whether the seventh section of the fugitive law, under which those relators were sentenced, is a nullity, for want of legislative power in Congress, to pass any law whatever relating to fugitives from labor?

It will be perceived, then, that we have no question before us connected with the facts upon which the prosecution of the relators was founded; or the mode of selecting the jury; or the proofs; or the mode in which the trial was conducted; or the errors or imperfections of the indictment; or the constitutionality of any part of the fugitive act, except the seventh section, upon which the relators were sentenced.

These subjects may have a deep meaning and an exciting interest to these relators and to the public. But they are not in issue, or the proper subject of discussion or argument in the determination of the question before us. They are, so far as these relators are personally concerned, trifling and evanescent, compared with the consequences which may result from the present action of this Court; for if these relators are discharged, it must be, I repeat, on the ground that the laws of 1793 and 1850 have always been void, and consequently that these and all other laws hereafter passed of any kind will now and from henceforth be persistently resisted by the State of Ohio. I say, henceforth persistently resisted, because it will be found, I think, that the same adjudication which determines that Congress has no power to pass any law, determines also a precedent, that the construction of the Constitution shall depend upon the shifting of private opinions of every judge in every State who is called upon to give it an interpretation, whatever may be the decision of the Supreme Court of the United States.

It must be conceded that the power of Congress to legislate on this subject is as deliberately and fully settled by the decision of the Supreme Court of the United States as any other constitutional question that has been presented for its determination. Moore v. State of Illinois, 14 How. 13; Jones v. Van Zandt, 5 How. 215; Prigg v. Com. Pennsylvania, 16 Pet. 539; United States v. Booth, 21 How. Rep.

The Court have held unanimously that inasmuch as the Constitution of the United States secures by express provision the right to the reclamation of escaped slaves, the obligation to protect and enforce the Constitutional right devolves upon the general government. On the other hand it has been insisted that the rights of the master to his fugitive slave must be left to such legislation of the different States as they may deem just and expedient, and that the National Government is powerless to vindicate or protect his constitutional rights; others are of the opinion that the power to legislate is concurrent in Congress and in the States; others that the Constitution of the United States confers all the power necessary upon owners of slaves for their reclamation and that therefore neither Congress nor the States can legislate; others that the amendment to the Constitution, which secures freedom of religious belief, makes provision in relation to the reclamation of slaves subordinate to it, and by implication of no obligation upon those who believe slavery a sin.

The Supreme Court of Massachusetts has very fully discussed this question, and also the constitutionality of the fugitive slave law of 1850, and held that Congress had authority to pass a fugitive slave act. Thomas Sim's, case, 7 Cush. Rep. 285; Commonwealth v. Griffith, 2 Pick. Rep. 11.

The Supreme Court of Pennsylvania (Kauffman v. Oliver 10 Barr. 514; Wright v. Deacon 5 Serg. and Rawle, 62;) the Supreme Court and court of appeals of the State of New York (Jack v. Martin, 12 Wend. 311; same case, 14 Wend. 507; Ex parte Floyd v. The Recorder of New York 11 Wend. 180; Glenn v. Hodges 9 Johns' Rep. 67;) the Supreme Court of Indiana (Graves v. The State, Smiths' Indiana Rep. 258; 1 Carter 368; Johnson v. Vanamringe, 2 Blackf. 311;) the Supreme Court of Illinois, (Thornton's case 11 Illinois Rep. 322, Eells v. The People, 4 Scam. Rep. 498; Fanney v. Montgomery, Bre. 188;) the Supreme Court of California (In re Perkins, 2 Cal. Rep. 524,) have all recognized the power of Congress to enforce by legislation the reclamation of escaped slaves.

The judges of the Supreme Court of Ohio, in 1845–46 were Justices Wood, Burchard, Reed and Hitchcock. Three of these judges had this subject before them. The Supreme Court, in 1846, in regular session in Cuyahoga county, held by Judges Wood and Burchard, brought before them on habeas corpus, one Richardson, who was in custody on a charge of kidnapping; he having knowingly aided to carry one Berry, an escaped slave, out of the State, without taking him before a judge or justice of the county, and there establishing his right of property in Berry, agreeable to the laws of the U S. This was punishable as kidnapping by the laws of this State, passed in 1831. 29 vol. Stat., 422. Swan's Stat. Ed. 1840, 600. The court after referring to the decision of the Supreme Court of the United States that all legislation on the subject of the reclamation of slaves is exclusively in Congress, held that the act in question, upon which Richardson was imprisoned was null and void, under that decision of the Supreme Court of the United States. 9 Law Reporter, 316.

The power of Congress to legislate on this subject was very ably discussed, and was fully recognized by Reed, Justice of the Supreme Court of Ohio in 1845, in the case of the State v. Hoppess, on habeas corpus. 2 Wes. Law Journal, 279.

The cases to which I have referred will be detailed and the rulings of the courts discussed by brother Peck.

I have examined, with some care, the reports of the decisions of the other States, and have been unable to find a single decision of any Supreme Court, of any State in the Union, denying to Congress the power to legislate upon this subject.

The cases decided by the Supreme Court of Wisconsin, have been cited as an exception to this uniform and unbroken current of authority sustaining the legislative power of Congress.

One of the three judges which composes that Court held, that the fugitive slave laws were unconstitutional and void, but the majority of the Court did not participate in that opinion, but discharged the relator on the ground that the offense charged in the indictment did not contain a sufficient description of the statutory offense described in the fugitive slave law.

The General Assembly of the State of Ohio have also recognized, in statutes of the State, the fugitive slave law of 1793 as operative and in force. Swan's Stat., Ed. 1840; 599, 600, secs. 22, 27.

But treating this question as if no decision had ever been made by the Supreme Court of the United States or by any Court of the free States, how does the question stand?

If the Constitution of the United States had not been formed, and a Union of the States thus created, each as distinct States, would have had the right, under the fundamental law of nations, to have decided for itself upon its own internal condition and regulations in its own territories. If any of them, while thus responsible alone to their own people, should have introduced slavery, other Nations or States would have had no just right to interfere, nor would the people of foreign States be responsible, politically or morally, for it. The Constitution of the United States was framed, and the Union perfected, subordinate to, and without violating the fundamental law of nations, to which I have alluded, and it would therefore have been in vain for the government of a free State to insist that they would enter into no compact, because slavery was wrong and unjust. The people and the government of no one State of this Union are responsible, politically or morally, for the domestic institutions or regulations of the others.

In the compact of Union, the framers of the Constitution guaranteed to the owners of escaped slaves the right of reclamation. It is made a part of the Constitution, irrepealable; and to be changed only by the power that made it, in the form prescribed by it.

It was designed to be a practicably and peaceable mode by which a fugitive from service might be delivered up. It cannot be extended by implication, the fugitive must not only owe service or labor in another State, but must have escaped from it. This is the extent and the limit of the right of the master.

The Constitution of the United States went into operation in March, 1789.

In 1793, the second Congress elected under the Constitution of the United States, and composed of many of the members of the Convention which framed the constitution, an act was passed providing for the rendition of fugitives from justice, and a summary mode for the reclamation of fugitives from labor. By this act rescuers, obstructers and harborers of escaped slaves were to be visited with a penalty not exceeding five hundred dollars.

No jurist will deny that if Congress can provide a penal forfeiture for an alleged violation of law, they have the legislative power to superadd imprisonment for the same offense; and that no court can pronounce the one constitutional and the other without legislative authority.

This law was passed by Congress without any traces in history of constitutional objection; has been ever since that time by every department of the government, national and state, not only received and acquiesced in as the law of the land, but in active, practical operation throughout every State in the Union. Enacted at the commencement of our government, it has been in operation for sixty six years.

It is conceded by the counsel for the relators that if Congress has no power to legislate on this subject, they never had any power to legislate upon the subject of fugitives from justice. The same reasons for holding that the one is a usurpation of legislative power, is equally fatal to the other. Both stand precisely on the same ground.

The Executive departments of the States of the Union have, I believe, acted upon, and I am not aware that any have denied, the constitutionality of the law of Congress for the rendition of fugitive criminals.

It may now be well asked if such a long period of recognition and acquiescence in the existence of a law is to be disregarded and the law itself annulled, whether there be anything in our government so settled and stable, as not to be liable to attach and overthrow, to vacillation and change; and after this lapse of time a new and untried experiment upon this and all other irritating questions of constitutional law is to be entered upon, and a precedent set by the judges of this court, that no question can be put to rest by time or acquiescence, when will the construction of the constitution be settled and the land marks of the several departments of the government and the States be permanently fixed?

We have an unbroken and uniform current of judicial decisions recognizing the legislative power of Congress upon this subject to the present time.

If its authority is now to be resisted by the State; if her government is to repel by force, now and hereafter the authorities of the United States in the execution of any and every law on this subject, does it become the official conservators of the public peace, to break through those judicial sanctions which guide and limit their personal discretion and are the only safeguards against arbitrary and capricious tyranny, and be the first to initiate such a civil commotion?

I am of the opinion, and I think the calm judgment of others will concur with the opinion, that in view of these decisions of the Supreme Court of the United States, settling the power of Congress—in view of the adjudications of the Courts of the free States, affirming the same power—in view of the acquiescence of all departments of the National and State governments during two generations—that the Judges of a State Court have no judicial right to interpose their own individual opinions upon a question thus disposed of—change the interpretation to what they believe it should be—overrule the adjudications of the Supreme Court of the United States and the State Courts—strike down the legislative power of Congress now and from henceforth—resist and persistently, on the authority of their private judgment and judicial discretion thus assumed over the interpretation of the Constitution of the United States, the future exercise of all authority by every department of the National government, and force upon the State of Ohio and its people the maintainance of the authority of their own individual opinions as Constitutional law.

It is said by the counsel for the relators, that these are two seperate cases of habeas corpus, in which the court simply discharge two persons from what it thinks unlawful imprisonment; that their decision may be reversed on error by the Supreme Court of the United States, and there end. We do not think so. If we discharge these relators upon the annunciation of the principle that Congress has no power to pass any fugitive law, that principle, instinct with life and action throughout the State of Ohio, gigantic in dimensions and State governmental force, imperatively demanding obedience from every citizen and officer of the State and National Government as the supreme law of the land, and practically nullifying any law hereafter enacted by Congress, however constitutional in its detailed provisions it may be.

It is not simply these relators this Court is dealing with, but also constitutional law. These prisoners can only be discharged by this Court declaring that Congress has no power to legislate. If this Court say that, do they mean it only as to these relators, and that the acts of Congress have operation and effect in Ohio as to everybody else? And if, after striking down the legislation of Congress in this case, will this Court wait until the Supreme Court of the United States have reversed their judgment, before giving force and effect to the law of this case? If this Court hold that the acts of Congress are void, they are inoperative and practically void, as if never enacted, from that moment; through every department of the State government, whenever and however the question may arise. As to the national government, throughout all its departments, the power of Congress to legislate, will be acknowledged, and the laws held valid and in full force and binding obligation upon the people of Ohio, notwithstanding the decision of this Court to the contrary, and whether a writ of error is sued out in this case to reverse our decision or not.

But it is said that the National Government would be content to permit the laws of Congress to remain inoperative in Ohio until their constitutionality could be examined into and decided by the Supreme Court of the United States.

Perhaps they would; for great forbearance is due from each sovereignty. But I am somewhat surprised that those who are so anxious for this Court to utterly disregard and repudiate and practically reverse the decision of the Supreme Court of the United States and the decision of the State Courts, mildly looking to that Court to settle what has already been settled and determined by that Court, and declared by it to be without doubt or question.

I do not perceive how it can be seriously asserted, that there is any question in this case which the Supreme Court of the United States would deem an open one for consideration or adjudication; nor can I perceive if the decisions of the Supreme Court are now to be disregarded, why they may not continue to be disregarded; and while the United States are engaged hereafter from year to year in obtaining the barren fruits of reversals of the decisions of our State tribunals, the legislative power of Congress may not in the meantime be persistently denied and repudiated indefinitely.

When will this happy state of friendly litigation in the Supreme court of the United States begin, if in the meantime, the power of Congress is denied and resisted as a usurpation by the State of Ohio? Is the duty of the national government less imperative to enforce her authority and resist what she believes usurpation than the State government?

No governmental rule can be evolved by construction from the Constitution of the United States without practically becoming a part of the Constitution itself. Thus if, in Ohio, no laws can be passed for the reclamation of slaves by Congress, but laws on that subject may be passed by the General Assembly; and in Illinois, and other free states which have acknowledged the decision in the Prigg case, laws enacted by Congress are exclusively operative, and the laws of their State legislatures are void; that no tariff law shall be operative in South Carolina, but shall be every where else valid; if in Mississippi and Alabama the law against the slave trade is held unconstitutional and void and in every other State enforced, it will be seen the Constitution, by interpretation, will become different in different States. Now, if this can be done as to one provision of the Constitution, it can be done as to all others. Each State construing it in its own way, to promote its own local interest, what would the Constitution of the United States become but a hydra of more than thirty heads, uttering Babel, and conflicting commands, such as each State in its own jurisdiction deemed it expedient to obey, or party strife demanded.

That this state of things was foreseen by the framers of the Constitution of the United States no one denies. That there is some remedy provided for it, all admit. The extent of that remedy has sometimes been questioned, and I do not propose to discuss it.

The Constitution of the United States declares; "that the Constitution and laws of the United States made in pursuance thereof, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." This was the first step. The next was providing for a judicial department in the General Government, and declaring that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made," &c., Art. III, Sec. 2.

Now, with respect to the boundary of jurisdiction between the Federal and State governments, I do not desire to say anything but this: that when Congress has undertaken to enforce by legislation a right guaranteed by the Constitution itself, after the power has been recognized by all the highest judicial tribunals of the States of the Union before whom the question has been presented; acquiesced in by the country for sixty-six years; and if superadded to these circumstances, the federal tribunal in cases arising under the Constitution, repeatedly hold that Congress has the power, it is too late for the judges of the Courts of Ohio upon their private judgement to deny the power.

Again, without asserting myself the truth of the converse of all the following propositions, it is, I think, clear that to maintain our right to do so, we must hold: 1st. That we have the power under the Constitution to determine this question in direct conflict with the settled interpretation of the Supreme Court of the United States. 2d. That we have a right to maintain by the powers of every department of our State government, and to exact obedience as well from United States officers as from all the citizens of the State, to our interpretation of the Constitution. 3d. That this power, on our part, we have a right to exercise when it happens that a majority of our Judges are intellectually satisfied beyond any reasonable doubt upon their minds, from a review of the grounds upon which the federal tribunal and others adopted an interpretation of any provision of the Constitution of the United States, that they were mistaken. 4th and lastly. As we must maintain that we have the judicial right to overrule their previous adjudications and enforce obedience to our own, which are in conflict with theirs; so, subsequent decisions on error, overruling ours not being intellectually satisfactory to us, we may, in the exercise of the same judicial right and power, disregard them.—For, the idea of first asserting the power to overrule their interpretation because we believe it erroneous, and afterwards submit to it, although still believing it erroneous, would be a most undignified and useless assumption of temporary power, merely creating agitation, and ending in nothing but submission.

It seems to me quite clear, that if the individual opinions of every judge is to become the exponent and construction of the Constitution of the United States whenever he feels certain that he is right, without regard to the decisions of the highest tribunals of the country; then the individual opinions of every judge, is the Constitution, not only to himself, but for the time being, to the country.—This, it seems to me, is simply discretion without rule, guide, precedent, or limitation—unstable, capricious despotism.

Is there any judicial incident more common than for a judge to deny himself the individual discretion of declaring what he thinks even the unwritten law of the land should be, and hold his judgment amenable to the law as it has been decided? And is the Constitution to be less stable than the unwritten law? Is a judge to treat the settled interpretation of the Constitution announced to the country in a previous generation, by Congress assuming to legislate, sanctioned by an unbroken current of judicial decisions, as of no binding judicial obligation, and to be overthrown by the authority of his individual convictions that the constitution should have a different interpretation? And if a State Judge can thus by his interpretation, alter the Constitution when it has received such acquiescence and sanction, what provisions of the Constitution, State or National, are safe from change and alteration, under the assumption of judicial power? They would be written upon sand.

For myself, I disclaim the existence of any such judicial power.

Two governments, state and national, over the same people, each exacting obedience within the sphere of its own sovereign powers, could not be adjusted without occasional conflict. But such a government, of more than thirty sovereigns, each jealous of the powers of the national government, each interpreting for itself the powers of the national sovereignty and its own, and the national sovreignty interpreting theirs, and claiming powers denied to it by the states, each clashing and conflicting, and all demanding and enforcing obedience from the same people to their inconsistent and contradictory commands—such a government could have no permanence and would not deserve it. It would be the worst of all governments. If the federal judiciary is not the arbiter, created by the constitution, to bring order and uniformity out of such confusion and anarchy, there is none.

It is true the judicial department of the National or State Government might, under pretence of an interpretation of the Constitution be guilty of a palpable violation of its provisions demanding the impeachment and condign punishment of the judges; and it might be the duty of every other constituted power of the State and of the people to resist such treasonable practices.

And even conceding that it would be the duty of a State to deny the authority of the Supreme Court of the United States to enforce upon a State an interpretation of the Constitution, which palpably and clearly violated reserved rights or State sovereignty, is there anything in the history of the act of Congress, of 1793; the quiet and almost unanimous adoption of it by Congress; its long continued operation without objection to the authority of Congress to legislate; no State, after the lapse of sixty-six years, denying the legislative authority, and recognized by every State in which the question has been raised; do, I say, such circumstances demand of a State Court to assume the power of disregarding the settled interpretation of the Supreme Court of the United States, and resisting the authority of the National Government?

It was said by Mr. Madison: "It may be a misfortune, that in organizing any government, the explication of its authority should be left to any of its co-ordinate branches. There is no example in any country where it is otherwise." 3 Elliott's debates, 523. And, I may add, it cannot be otherwise without intestine war or civil commotion.

The sense of justice of the people of Ohio has been shocked by some of the unjust provisions of the fugitive acts. It is not the authority of Congress to legislate that they deny, but it is the abuse of the power.

That abuse is to be remedied by Congress; and if the power to legislate is denied, the question can be put an end to by repeal. It is the only Constitutional mode left. The other alternative is intestine war and resistance of our National Government.

All must admit that the owner of escaped slaves is entitled to their reclamation. Good faith to sister States demands it; and there would be no resistance in Ohio to a fair and just law affecting that object. As to who shall legislate upon the subject, if the provisions of law secures its execution from all abuse, and by whose instrumentality it shall be humanely carried out, is a question upon which no intense public feeling could be excited. For myself as a member of this Court, I disclaim the judicial power of disturbing the settled construction of the Constitution of the United States as to the legislative authority of Congress upon the subject, and I must refuse the experiment of initiating disorder and government collision, to establish order and evenhanded justice.

I do not repeat here the judicial arguments sustaining the power of Congress, which have been pronounced by some of the soundest and wisest judges that have adorned the American bench; for it is my deliberate and confident conviction, (unswayed by my feelings as a citizen of a free State when dealing as a judge with this necessary stain upon the National Compact of Union, and however much the argument for the denial of the authority may preponderate,) that the question has by time, acquiescence and adjudication passed beyond the reach of judicial consideration of preponderance of argument; certainly beyond the reach of question before this Court.

As a citizen I would not deliberately violate the Constitution or the law by interference with fugitives from service. But if a weary, frightened slave should appeal to me to protect him from his pursuers, it is possible, I might momentarily forget my allegiance to the law and Constitution, and give him a covert from those who were on his track—there are no doubt many slaveholders who would thus follow the instincts of human sympathy. And if I did it, and was prosecuted, condemned and imprisoned, and brought by my counsel before this tribunal on a habeas corpus, and was then permitted to pronounce judgement in my own case, I trust I should have the moral courage to say, before God and the COUNTRY, as I am now compelled to say, under the solemn duties of a Judge, bound by my official oath to sustain the supremacy of the Constitution and the law.—"The prisoner must be remanded."

DISSENTING OPINION OF JUSTICE SUTLIFF.

SUTLIFF, J., held:—

That the return to the writs, necessarily presented for consideration the constitutionality of the act of Congress of 1850, called the Fugitive Law. He thought that if the Court were satisfied beyond reasonable doubt, that Congress had no power to legislate for the extradition of fugitives from service; or even, if having such power, the law under which the prisoners were held was clearly repugnant to express provisions of the Constitution, in either case the return to the writ was insufficient.

After a careful examination of the whole subject, he could not say that he had any reasonable doubt that this act of Congress was unconstitutional upon both grounds.

Upon the first ground he insisted upon the consideration that the legislative power being in the States respectively prior to the adoption of the Constitution, the reasonable presumption, as well as the express provision of the 10th amendment of the Constitution, showed that power still remains with the States, unless delegated under the Constitution to the Federal Government. And if the powers claimed by the Federal Government, to legislate, it is incumbent to show title thereto, by pointing out the clause under which the same had been ceded by the States.

He then referred to the rules given by commentators, which were applicable by the construction of the Constitution. 1st, that the meaning of the instrument was to be sought for according to the sense of the terms and understanding of the parties; that where the terms are clear and the sense distinct from the language, resource to other means is not admissible to ascertain the meaning. 2d, where the words are not plain and clear, but the meaning ambiguous or uncertain, is the only case where interpretation is allowable; then con-