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THE REGISTER.

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We give below a full report of a case, Jones vs. Vanzant, lately decided in Ohio by Judge McLean. The high character of Judge McLean gives to this decision all the weight of authority, and as such it will be read with interest to the exclusion of much other matter. A separate action, instituted by the plaintiff for the recovery of the penalty of \$500 mentioned in the subjoined report of this case, resulted in a verdict for the plaintiff for the full amount, making in all a recovery of \$1700. A few more such cases will make the abolitionist negro thieves look blue.

From the Cincinnati Gazette. LAW INTELLIGENCE.

OHIO—JULY TERM, 1843.

Jones vs. Vanzant.

Circuit Court of the U. States.

The declaration contained nine counts.

1. That the plaintiff being a citizen of Kentucky, where slavery is established by law, owned nine slaves, (naming them) who, without license and consent departed from his services and came to the defendant in Hamilton county, &c.

2. That the above slaves, &c., being fugitives from labor, came to the defendant in &c., who after notice that they were such fugitives, harbored and concealed them, &c., contrary to the statute, &c.

3 and 4. With slight variations, the same as the above.

5. That the above slaves, &c., that the plaintiff by his agents then and there undertook to seize and arrest such slaves, as fugitives from labor, but was then and there knowingly and willingly obstructed and hindered &c., by the defendant from so doing, &c.

6. Charged the defendant with rescuing the fugitives from labor aforesaid, after they had been arrested, &c.

7 and 8. Were counts in trover.

9. That the defendant harbored and concealed Andrew, a fugitive from labor, after notice, &c.

Jones—A witness called by the plaintiff, stated that the plaintiff owned nine negroes, (naming them) and resided in Boone county, Kentucky. That the greater part of them were born his, and that he purchased the others. That on Saturday evening, the 23rd April, 1842, about nine o'clock, he was at the house of the plaintiff, and saw the negroes; the next day at about twelve o'clock he saw the same negroes, with the exception of two of them, in the jail at Covington.—The plaintiff lives ten miles below Covington. Jackson, one of the absent negroes returned in a few days; but Andrew remained absent, and has not been reclaimed.

The plaintiff paid a reward to the persons who returned the negroes of four hundred and fifty dollars, and other expenses which were incurred amounting in the whole to about the sum of six hundred dollars. Andrew was about thirty years old, and his services were worth to the plaintiff six hundred dollars.—That he could be sold in Kentucky, for that sum.

Several other witnesses corroborated the statements of this witness, as to the ownership of the negroes, the reward paid, and the value of the services of Andrew.

Hefferman—A witness stated, that he lives in Sharon, thirteen miles north of

Cincinnati, on the road to Lebanon.—That on Sunday morning a little after day-light, saw a wagon which was driven rapidly, passing through Sharon. It was covered, and both the hind and fore part of the wagon were closed; a colored man was driving it. He knew the wagon belonged to the defendant, and his suspicion was excited. The witness and one Hargrave, another witness, started in a short time in pursuit of the wagon. They overtook it near Bates', about six miles from Sharon. The defendant lives near Sharon. On coming up with the wagon, the boy driving it was ordered by Hargrave to stop; he checked the horses, but a voice from within the wagon directed the boy to drive over him. The wagon horses were then whipped running against Hargrave's horse which threw him off. The horses were driven in a run some two hundred yards, but at length were overtaken by the witness, who seizing the reins of the horses drew them up in a corner of the fence. The driver jumped off and ran some distance, Vanzant, the defendant, then came out of the wagon and took the lines, but the witness refused to let the horses proceed. Eight negroes were in the wagon, one of them called Jackson and Andrew, the driver, escaped; the other seven were brought back to Covington and lodged in jail.

Hargrave—Accompanied the above witness in pursuit of the wagon, which he knew to belong to the defendant.—Being acquainted with the defendant, he knew it to be his voice, which directed the colored boy to drive over the witness. That the wagon tongue being driven against the horse of the witness, he was thrown, and the wagon horses were then driven on the run until overtaken and stopped. Seeing the defendant in the wagon with the negroes, the witness asked him if he did not know that they were slaves. The defendant replied, that he knew they were slaves, but that they were born free.—

He said he was going to Springboro, a village in Warren county. This witness and also Hefferman stated the amount paid as a reward for bringing the negroes to Covington as above.

Hume—Very early on Sunday morning saw the wagon moving very rapidly, & two men on horseback pursuing it near Bates'. Looked into the wagon after it was stopped, and saw the defendant in it with the negroes. He was asked if he did not know that they were slaves, and he replied that by nature they were as free as any one. Witness took the negroes to Covington in a wagon. Some time after this, he saw the defendant who said to him, if you had let me alone the negroes would have been free, but now they are in bondage. And the defendant said it was a christian act, to take slaves and set them at liberty.

Bates—A witness states that he went to the wagon after it had been stopped, looked in it, and saw the defendant with the negroes. The witness said Vanzant, is that you? Have you a load of runaways? The defendant replied, they are by nature as free as you and I.

The witness heard the defendant say, that having been at market in the city of Cincinnati, he returned to Lane Seminary, a distance of two or three miles, to spend the night with Mr. Moore. That he left his wagon standing in the road and when he came to it, about three o'clock the next morning, he found the negroes standing near it. That he did not know how they came there, or where they wished to go. He had no conversation with them. He goaded his horses, hitched them to the wagon and the negroes got into it. He afterwards said that he had received the blacks from Mr. Alley.

McDonald—A witness stated that he heard the defendant say he received the negroes on Walnut Hills, the same place as Lane Seminary. That at 3 o'clock on Sunday morning he found the negroes standing near his wagon in the road; they got into it, and he started for home. That he arose early to have the cool of the morning.

Defendant said he had done right.—That he would at all times help his fellow man out of bondage, and that what he had done he would do again.

Thurman—A witness stated, that he saw the defendant in the wagon with the negroes, the cover closed behind and before. The defendant said to Heffer-

man the negroes ought to be free, but he knew they were not. The defendant lives at Sharon, and this was six or seven miles beyond, on the road to Lebanon.

This is the substance of the facts proved, on which the counsel for the plaintiff rested the case. The evidence for the plaintiff being closed, a motion was made by the defendant's counsel, to overrule the testimony. This motion was argued on both sides with ability and at great length.

Judge McLean, in giving the opinion of the Court on the motion observed; it is proper first, to ascertain the precise character of the motion. By some of the counsel in the argument it has been treated as a demurrer to the evidence; but it cannot be so considered. No demurrer has been filed, and should the motion be overruled the defendant intends to examine witnesses. A demurrer to the evidence takes the case from the jury; the facts proved are admitted to be true, and also every legal inference that can be drawn from them favorable to the plaintiff.

The motion is not technically for a non-suit. Such a motion would not be granted by the Court, where there was evidence conducing to sustain the right of the plaintiff. The motion must then be considered as asking the Court to overrule the evidence, on account of its irrelevancy or incompetency. Now such a motion is never granted where the evidence is competent, and it conduces to establish the case made in the declaration. The jury are the proper judges of the sufficiency of the testimony.

The range of discussion by the counsel on both sides, has not been restricted by the Court. It has embraced slavery in all its forms and consequences, the federal constitution, the act of Congress and the powers of the States. It may be proper to notice some of the topics thus discussed, which have a bearing upon the case under consideration.

The nature of the action has been examined. It must be admitted, that it arises wholly under the constitution and act of Congress. Slavery is local in its character. It depends upon the municipal law of the State where it is established. And if a person held in slavery go beyond the jurisdiction where he is so held, whether the act be by his own volition or by the force of others, into a jurisdiction where slavery is not tolerated, he becomes free. And this would be the law of these States, had the Constitution of the United States adopted no regulation upon the subject.

Recapitulation has been named as a common law remedy. But this remedy could not be pursued beyond the sovereignty where slavery exists, and into another jurisdiction which had entered into no compact to surrender the fugitives. There is no general principle in the law of nations, which would require a surrender in such a case. The remarks of the Supreme Court in regard to a surrender of captured slaves in the Amistad case, were made with reference to our treaty with Spain.

In our colonial governments and under the confederation, no general provision existed for the surrender of slaves. From our earliest history it appears that slavery existed in all the colonies, and at the adoption of the federal constitution it was tolerated in most of the States.

The constitution treats of slaves as persons. The view of Mr. Madison, who "thought it wrong to admit in the constitution, the idea that there could be property in men," seems to have been carried out in that most important instrument. Whether slaves are referred to in it, as the basis of representation, as migrating, or being imported, or as fugitives from labor, they are spoken of as persons.

Property, real or personal, takes its designation and character from the law of the States. To do this was not the object of the federal constitution. It organized a federal government by securing certain delegated powers, and by imposing certain restrictions on the States. Among these restrictions it is provided that no State shall impair the obligations of a contract, nor liberate a person who is held to labor in another State from which he escapes. In this form the constitution protects contracts and the rights of the master but it originates neither.

The traffic in slaves does not come under the constitutional power of Congress to regulate commerce among the several States. In this view the constitution does not consider slaves as merchandise. This was held in the case of Graves vs. Slaughter, 15 Peters. The constitution, in where speaks of slaves as property. But how does this affect the case under consideration? It is clear the plaintiff has no common law right of action for the injury complained of. He must look exclusively to the constitution and act of Congress for redress. The counsel for the defendant admit that, in a given case, the plaintiff has a remedy under the act of Congress. If this be so, what have we to do with slavery in the abstract. It is admitted by almost all who have examined the subject, to be founded in wrong, in oppression, in power against right. But in this case, we have only to inquire whether the acts of the defendant, as proved under the act of Congress, subject him to a claim for indemnity by the plaintiff.

By the 3rd sec. of the act, respecting fugitives from labor, it is provided "that when a person held to labor in any of the United States, &c. under the laws thereof, shall escape into any other of the said States, the person to whom such labor is due, his agent or attorney may seize or arrest any such fugitive, &c. And the 4th sec. provides, that when any person shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, &c., or, shall harbor or conceal such persons, after notice that he or she was a fugitive from labor as aforesaid, shall for either of the said offences, forfeit and pay the sum of five hundred dollars, &c., saving moreover to the person claiming such labor or service, his right of action for, on account of the said injuries, or either of them."

As the first clause in the above section supposes the offender to come into contact with the claimant of the fugitive, his agent or attorney; and as there is no evidence showing an authority from the claimant to those who arrested the fugitives, the second clause only of the section will be examined. The offence under this clause consists in harboring or concealing such fugitive, after notice that he or she had escaped from labor. What acts shall constitute this offence? What shall be a notice under the statute? That a formal written notice from the claimant, his agent or attorney, is not required must be admitted. Nor must the notice, verbal or otherwise, necessarily come from the claimant or his agent.—Such a construction presupposes a knowledge of the individual who harbors or conceals the fugitive. At this stage of the case it is unnecessary to say more on this point than that there is evidence before the jury which conduces to show that the defendant knew the negroes in question were fugitives from labor. Whether the proof is sufficient to establish this fact is a matter for the determination of the jury.

To harbor or conceal a fugitive in violation of the statute, the act must evince an intention to elude the vigilance of the master or his agents; and the act done must be calculated to attain this object. To relieve the hunger of a fugitive slave would not be within the statute, unless accompanied by acts showing a determination to disregard the law.—There is evidence in the case conducing to show such an intention by the defendant, and also to show acts calculated to give effect to such an intention. The sufficiency of this evidence, like that which regards the notice, will be referred to the jury.

The clause in the section "saving to the claimant the right of action for the injuries received, beyond the penalty, presupposes a right of action to exist.—The correctness of this will scarcely be questioned, when the constitutional provision on the subject is considered.

On this motion the question of damages need not be considered, nor the alleged defects in the declaration. These points may be considered in the future progress of the case. The Court overruled the motion.

An unsuccessful effort was made by calling witnesses to impeach the credibility of some of the plaintiff's witnesses.

The case was argued at great length and with much ability before the jury. After the close of the argument

Judge McLean charged the jury as follows:

The attention and patience with which you have heard this case, gentlemen of the jury, show that you appreciate its importance; and I doubt not, that in deciding it, you will follow the dictates of an unbiassed judgment. Here the judge restated the evidence which may be omitted, as it is stated above.

The plaintiff does not seek redress for the injury complained of, on any general principle, legal or equitable, of the common law. He relies on the constitution as the foundation of his right.

The 2d sec. of the 4th article of the constitution declares that, "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."

And the 3d and 4th sections of the act of Congress of the 12th Feb. 1793, as above cited, define more particularly the rights of the master and provide for him modes of redress.

The 7th and 8th counts, which were in trover have been abandoned. These counts state that the slaves were casually lost, in Boone county, Kentucky, by the plaintiff, and that they came into the possession of the defendant, a citizen of Ohio. Now if the slaves left the service of the plaintiff with the consent or in any other mode except as fugitives from labor, and came into the possession of the defendant as alleged, the plaintiff has no right to their services, and still less to recover from the defendant their value.

The 6th count which charges the defendant with having rescued the slaves, after they were seized by the agents of the plaintiff, has also been abandoned. There is no evidence which tends, in any degree, to show a rescue.

The 8th count charges the defendant, under the first clause of the 4th section of the act, that he knowingly and willingly obstructed and hindered the agents of the plaintiff in seizing or arresting the fugitives. That the defendant resisted, to the utmost of his power the arrest of the negroes by Hefferman and Hargrave is undoubted. But in this did the defendant violate the law? The persons who made the seizure had no authority from the plaintiff. And it is the obstruction or hindrance to the arrest, by the claimant, his agent or attorney, that incurs the penalty under the above clause of the statute and also subjects the party to damages for the injury. The resistance then of the defendant to the arrest by Hefferman and Hargrave, was in no sense a violation of the statute. They acted without authority and had no legal right, therefore, to make the arrest.

But it seems from the evidence that the plaintiff when the negroes were returned ratified the acts of Hefferman and Hargrave in making the arrest.—And here the question arises whether a subsequent ratification can legalize the arrest. That the subsequent ratification legalizes the original transaction, is a general principle in agencies. And in this case it is unquestionably good as between the plaintiff and his agents. But the inquiry is, whether such subsequent ratification can have relation back, so as to affect the acts of the defendant. Can it so change the nature of the defendant's acts as to subject him to a penalty, which was not incurred prior to such ratification. Most clearly it cannot. The statute under consideration is a penal one and, consequently, must be construed strictly. It is not within the legislative power to make an act penal which was not so when it was done. Much less can such an effect result from the ratification by the plaintiff in the present case.

We must look to the other counts in the declaration which charge the defendant with harboring and concealing the negroes, after he had notice that they were fugitives from labor. If the evidence shall not sustain these counts, the plaintiff cannot recover. The plaintiff is bound to show that the defendant harbored or concealed the negroes, after he had notice that they were fugitives from labor.

The first as to the fact of notice.

In Kentucky and every other State where slavery is sanctioned, every colored person is presumed to be a slave.—

This presumption arises from the nature of their institutions and from the fact that, with few exceptions all the colored persons within those States are slaves. On the same principle every person in Ohio, or any other free State, without regard to color is presumed to be free. No presumption, therefore, arises from the color of these fugitives alone; that the defendant had notice that they were slaves.

A notice in writing to the defendant was not necessary, nor any special notice from the plaintiff, his agent or attorney. But if, at the time the defendant was connected with these negroes, he had a full knowledge of the fact, however acquired, that they were slaves and fugitives from labor, it is enough to charge him with notice. You must satisfy yourselves on this point by an examination of the evidence. The fact must be clearly proved, and if it be so proved, it would be a reproach to the law and to the administration of justice, to hold that the notice was insufficient.

What shall constitute a harboring or concealing within the statute. This offence is not committed, in my judgment, by treating the fugitive with the ordinary principles of humanity. You may converse with him, relieve his hunger and thirst, without violating the law. In short, you may do any act which does not show an intent to defeat the claims of the master.—But any overt act which shall be so marked in its character, as not only to show an intention to elude the vigilance of the master, but is calculated to attain such an object, is a harboring of the fugitive in violation of the statute. It is clearly within the mischief it was designed to prevent.

To constitute the offence under the statute, it is not necessary to incarcerate the fugitive in a dungeon or room; if he be taken in a wagon and conveyed from the shore of the Ohio to the shore of Lake Erie which enables him to escape into Canada, I suppose no one could doubt that the individual had made himself responsible. And if carrying the fugitive the whole of this route would incur the penalty, on the same principle the conveyance of him, such a part of the route as shall cause the loss of his services to the master would equally incur liability.

The damages claimed by the plaintiff consist of the sum of four hundred and fifty dollars paid as a reward to Hefferman and Hargrave, and other expenses, amounting in the whole to about six hundred dollars. And also he claims the value of the services of Andrew, who has been lost to the Plaintiff. Those services are estimated by the witnesses to be worth six hundred dollars. It is said that this sum could have been realized by the plaintiff for the boy.

Under the statute you will observe that a penalty of five hundred dollars is incurred for harboring or concealing a fugitive, which the party injured may recover, but the present action is not for this penalty. In this suit the plaintiff is only entitled to recover the damages he has actually sustained, by the acts of the defendant. You will first determine whether the proof under the principles here laid down entitle the plaintiff to recover. And if he be so entitled, then you will consider the amount of the damages.

It is earnestly contended by the defendant's counsel, that as Hargrave and Hefferman were kidnappers and violators of the law of the State in arresting the negroes, that they were entitled to no reward, and that the payment of it by the plaintiff does not entitle him to remuneration.

The principle is recognized that the commission of a crime on an agreement to commit an unlawful act, does not constitute a good consideration. Any contract is void that rests upon such a basis. But this principle does not apply to the point under consideration. It may be admitted that Hefferman and Hargrave, were trespassers, if nothing more, in seizing the wagon of the defendant; but the inquiry is, whether by the laws of Kentucky, the plaintiff was not bound to pay the sum he did pay to Hefferman and Hargrave, for the return of the fugitives. There is no doubt of this, as the law of Kentucky is explicit on the subject. If then the plaintiff by the law of Kentucky was obliged to pay the sum he did pay; and if such obligation resulted from the acts of the defend-