of claims presented.

not been heretofore barred by any act of limitation, as shall be presented before the time aforesaid, with the certificates, or other documents in support thereof, and to cause a record to be made of the names of the persons, and of the time when the said claims are presented; which record shall be made in the presence of the person or persons presenting the same, and shall be the only evidence that the said claims were presented, during the time limited by this act.

Officers of the treasury to report to Congress claims deemed invalid.

Sec. 3. *And be it further enacted*, That it shall be the duty of the accounting officers of the treasury to make report to Congress, upon all such of the said claims as shall not be allowed to be valid, according to the usual forms of the treasury.

Approved, February 12, 1793.

Statute II.

Feb. 12, 1793.

Chap. VII.—*An Act respecting fugitives from justice, and persons escaping from the service of their masters.*(a)

Fugitives from justice how to be apprehended and secured.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whenever the executive authority of any state in the Union, or of either of the territories northwest or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such person shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded, with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear: But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.

Copy of indictment, or affidavit charging the commission of the crime to be produced.

Notice of the arrest to be given to the executive authority making the demand.

Fugitive to be delivered to the agent of the executive, or if no agent appointed within six months, to be discharged.

Expenses of apprehending.

Agent to transport the fugitive.

Sec. 2. *And be it further enacted*, That any agent, appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall by force set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year.

Penalty on persons rescuing fugitive.

Proceedings to be had on escape of persons held to labour.

Sec. 3. *And be it also enacted*, That when a person held to labour in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labour or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labour,(b) and to take him or her before

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(a) Fugitives from justice. Holmes v. Jennison, governor of Vermont, 14 Peters, 540.

A foreign government has no right, by the law of nations, to demand of the government of the United States a surrender of a citizen or subject of such foreign government, who has committed a crime in his own country, and is afterwards found within the limits of the United States. It is a right which has no existence without, and can only be secured by a treaty stipulation. Case of Jose Ferriera dos Santos, 2 Brockenb. C. C. R. 493.

(b) Fugitives from labour. In an action for the penalty by the owner of a fugitive slave, for obstructing the plaintiff in arresting and seizing his slave, under the 4th section of the act of Congress of Feb-

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any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testi-

May be arrested on proof as required, and may be removed to the place

ruary 12, 1793, whether the alleged slave owes his service or labour, is a question for the jury to decide. Hill *v.* Low, 4 Wash. C. C. R. 327.

If the defendant knowingly obstructs the owner or his agent in seizing the fugitive, he cannot excuse himself against the penalty, by pleading ignorance of the law, or an honest belief that the person was not a fugitive from service or labour. *Ibid.*

Mere obstruction, hindrance, or interruption, is no offence under this act, unless it be interposed to prevent a seizure in the first instance, or a re-capture in case the fugitives after seizure should escape; and the offence in such case would be complete, although the owner should ultimately succeed in making the arrest. *Ibid.*

After the arrest is consummated, no subsequent obstruction, whilst the arrest continues, although it should afford an opportunity for escape, amounts to the offence; although it might possibly entitle the owner to an action at common law: or if an escape in consequence of the obstruction should happen, it might amount to the other offence, a rescue. *Ibid.*

The act of Congress, respecting fugitives owing service or labour, does not apply to slaves brought by their masters from one state to another, who afterwards escape or refuse to return. Ex parte Simmons, 4 Wash. C. C. R. 396.

A sojourner who brings his slave with him to Pennsylvania, cannot claim him as his slave, after he has resided there six months. He is free by the law of that state of March 1, 1780. *Ibid.*

Under the act respecting fugitives from service of February 12, 1793, the judge or magistrate has no power to issue a warrant to arrest the fugitive, or commit him after the investigation is over, and the certificate is granted; although in practice the judge commits de die in diem pending the examination. The whole power is to examine, decide, and grant, or refuse the certificate. Worthington *v.* Preston, 4 Wash. C. C. R. 461.

If after the certificate is granted, the owner of a slave delivers him to the gaoler, who receives him, he is not officially liable for an escape, even although the commitment were under a warrant from the examining magistrate. *Ibid.*

Neither is the gaoler liable for an escape, as bailor, if there was no contract to pay him a reward for safe keeping, unless gross negligence be proved. *Ibid.*

On a question of freedom or slavery, the same rules of evidence prevail as in other cases concerning the right of property. Baldwin's C. C. R. 577.

A bill of sale is not necessary to pass the right to a slave. *Ibid.*

A citizen of another state, from which a slave absconds into the state of Pennsylvania, may pursue and take him without warrant, and use as much force as is necessary to carry him back to his residence. *Ibid.*

Such an absconding slave may be arrested on Sunday; in the night time; in the house of another, if no breach of the peace is committed. *Ibid.*

This right of the master results from his ownership, and the right to the custody and service of the slave by the common law, and the 11th section of the abolition law of Pennsylvania, and other laws of that state. It is the same right by which bail may arrest the principal in another state. *Ibid.*

The constitution of the United States does not confer, but secures the right to reclaim fugitive slaves against state legislation. Baldwin's Rep. 579.

It is no offence against the laws of a state for a master to take his absconding slave to the state from whence he absconded. The offence consists only in taking a free person by force, under the act of Pennsylvania of 1820, and the act of 1780. *Ibid.*

No person has a right to oppose the master in reclaiming his slave, or to demand proof of property. A judge or magistrate cannot order his arrest or detention, without oath, warrant, or probable cause. *Ibid.*

The master may use force in repelling such opposition, or the execution of such order, and the officer who gives such order, and all concerned in its execution, are trespassers. *Ibid.*

It is historically well known that the clause in the constitution of the United States, relating to persons owing service and labour in one state escaping into other states, 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 in 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 is constituted a fundamental article, without the adoption of which the Union could not have been formed. Its true design was to guard against the doctrines and principles prevailing in the non-slaveholding states, by preventing them from intermeddling with or obstructing or abolishing the rights of the owners of slaves. Prigg *v.* Commonwealth of Pennsylvania. 16 Peters, 539.

The owner of a fugitive slave has the same right to seize and to take him in a state to which he has escaped or fled, that he had in the state from which he escaped; and it is well known that this right to seize or recapture is universally acknowledged in all the slaveholding states. The court have not the slightest hesitation in holding, that under and in virtue of the constitution, the owner of the slave is clothed with authority in every state of the Union, to seize and recapture his slave; wherever he can do it without any breach of the peace, or illegal violence. In this sense, and to this extent, this clause in the constitution may properly be said to execute itself, and to require no aid from legislation, state or national. *Ibid.*

The constitution does not stop at a mere annunciation of the rights of the owner to seize his absconding or fugitive slave, in the state to which he may have fled. If it had done so, it would have left the owner of the slave, in many cases, utterly without any adequate redress. *Ibid.*

The constitution declares that the fugitive slave shall be delivered up on claim of the party to whom

from whence he fled.

mony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such

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service or labour may be due. It is exceedingly difficult, if not impracticable, to read this language, and not to feel that it contemplated some further remedial redress than that which might be administered at the hand of the owner himself. "A claim" is to be made. *Ibid.*

"A claim" in a just juridical sense, is a demand of some matter as of right, made by one person upon another to do or to forbear to do some act or thing as a matter of duty. It cannot well be doubted, that the constitution requires the delivery of the fugitive "on the claim" of the master: and the natural inference certainly is, that the national government is clothed with the appropriate authority and functions to enforce it. The fundamental principle applicable to all cases of this sort would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is intrusted. *Ibid.*

The clause relating to fugitive slaves is found in the national constitution, and not in that of any state. It might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government; nowhere delegated or intrusted to them by the constitution. On the contrary, the natural, if not the necessary conclusion is, that the national government, in the absence of all positive provisions to the contrary, is bound, through its own proper departments, legislative, executive, or judiciary, as the case may require, to carry into effect all the rights and duties imposed upon it by the constitution. *Ibid.*

A claim to a fugitive slave is a controversy in a case "arising under the constitution of the United States," under the express delegation of judicial power given by that instrument. Congress, then, may call that power into activity, for the very purpose of giving effect to the right; and if so, then it may prescribe the mode and extent to which it shall be applied; and how, and under what circumstances, the proceedings shall afford a complete protection and guarantee of the right. *Ibid.*

The provisions of the sections of the act of Congress of 12th February, 1793, on the subject of fugitive slaves, as well as relative to fugitives from justice, cover both the subjects; not because they exhaust the remedies, which may be applied by Congress to enforce the rights, if the provisions shall be found, in practice, not to attain the objects of the constitution: but because they point out all the modes of attaining those objects which Congress have as yet deemed expedient and proper. If this is so, it would seem, upon just principles of construction, that the legislation of Congress, if constitutional, must supersede all state legislation upon the same subject; and by necessary implication prohibit it. For if Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner, and in a certain form, it cannot be that the state legislatures have a right to interfere. Where Congress have an exclusive power over a subject, it is not competent for state legislation to interfere. *Ibid.*

The clause in the constitution of the United States, relating to fugitives from labour, manifestly contemplates the existence of a positive, unqualified right on the part of the owner of the slave, which no state law or regulation can in any way qualify, regulate, control, or restrain. Any state law or regulation, which interrupts, limits, delays, or postpones the rights of the owner to the immediate command of his services or labour, operates, pro tanto, a discharge of the slave therefrom. The question can never be, how much he is discharged from; but whether he is discharged from any, by the natural or necessary operation of the state laws or state regulations. The question is not one of quantity or degree, but of withholding or controlling the incidents of a positive right. *Ibid.*

The constitutionality of the act of Congress relating to fugitives from labour, has been affirmed by the adjudications of the state tribunals, and by those of the courts of the United States. If the question of the constitutionality of the law were one of doubtful construction, such long acquiescence in it, such contemporaneous expositions of it; and such extensive and uniform recognitions would, in the judgment of the court, entitle the question to be considered at rest. Congress, the executive, and the judiciary, have, upon various occasions, acted upon this as a sound and reasonable doctrine. Cited, Stuart *v.* Laird, 1 Cranch, 299. Martin *v.* Hunter, 1 Wheat. 304. Cohens *v.* The Commonwealth of Virginia, 6 Wheat. 264. *Ibid.*

The provisions of the act of 12th February, 1793, relative to fugitive slaves is clearly constitutional in all its leading provisions; and, indeed, with the exception of that part which confers authority on state magistrates, is free from reasonable doubt or difficulty. As to the authority so conferred on state magistrates, while a difference of opinion exists, and may exist on this point, in different states, whether state magistrates are bound to act under it, none is entertained by the court, that state magistrates may, if they choose, exercise the authority, unless prohibited by state legislation. *Ibid.*

The power of legislation in relation to fugitives from labour, is exclusive in the national legislature. *Ibid.*

The right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever state of the Union they may be found, is, under the constitution, recognized as an absolute positive right and duty, pervading the whole Union with an equal and supreme force; uncontrolled and uncontrollable by state sovereignty or state legislation. The right and duty are co-extensive and uniform in remedy and operation throughout the whole Union. The owner has the same security and the same remedial justice, and the same exemption from state regulations and control, through however many states he may pass with the fugitive slave in his possession, in transitu, to his domicile. *Ibid.*

The act of the legislature of Pennsylvania upon which the indictment against Edward Prigg, for carrying away a fugitive slave, is founded, is unconstitutional and void. It purports to punish as a public offence against the state, the very act of seizing and removing a slave by his master, which the constitution of the United States was designed to justify and uphold. *Ibid.*

There is no general principle in the law of nations, which requires a surrender of a fugitive slave. The surrender must be required by compact. Jones *v.* Vanzant, 2 M'Lean's C. C. R. 596.

judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labour, to the state or territory from which he or she fled.

Penalty on obstructing claimants of fugitives from labour.

Sec. 4. *And be it further enacted*, That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney in so seizing or arresting such fugitive from labour, or shall rescue such fugitive from such claimant, his agent or attorney when so arrested pursuant to the authority herein given or declared; or shall harbor or conceal such person after notice that he or she was a fugitive from labour, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving moreover to the person claiming such labour or service, his right of action for or on account of the said injuries or either of them.

Approved, February 12, 1793.

Statute II.

Feb. 18, 1793.

Chap. VIII.—*An Act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same.*

What ships shall be deemed of the United States.

Section 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That ships or vessels, enrolled by virtue of "An act for registering and clearing vessels, regulating the coasting trade, and for other purposes," and those of twenty tons and upwards, which shall be enrolled after the last day of May next, in pursuance of this act, and having a license in force, or if less than twenty tons, not being enrolled shall have a license in force, as is herein after required, and no others, shall be deemed ships or vessels of the United States, entitled to the privileges of ships or vessels employed in the coasting trade or fisheries.

Ships or vessels enrolled under this act alone entitled to the privileges of the coasting trade.

Act of Sept. 1, 1789, ch. 11.

Ships to possess the requisites required by a certain act, to obtain enrolment.

Dec. 31, 1792, ch. 1.

1812, ch. 40.

Sec. 2. *And be it further enacted*, That from and after the last day of May next, in order for the enrolment of any ship or vessel, she shall possess the same qualifications, and the same requisites, in all respects, shall be complied with, as are made necessary for registering ships or vessels, by the act, intituled "An act concerning the registering and recording of ships or vessels," and the same duties and authorities are hereby given and imposed on all officers, respectively, in relation to such enrolments, and the same proceedings shall be had, in similar cases, touching such enrolments; and the ships or vessels so enrolled, with the master, or owner or owners thereof, shall be subject to the same requi-

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Damages for harboring or concealing a slave, in a free state, are recoverable only by the constitution and act of Congress. *Ibid.*

Notice that the persons harbored or concealed are fugitives from labour, need not be in writing by the claimant, or his agent, nor need it be given by either of them verbally. Notice under the act of Congress, means knowledge. *Ibid.*

If there be evidence conducing to show such notice or knowledge, it will go to the jury, who will judge of its sufficiency. The same principles apply to the evidence of harboring or concealing the fugitives. *Ibid.*

Any overt act, which intentionally places a fugitive from labour beyond the reach of his master, or is calculated to have such an effect, is a harboring of the fugitive within the statute. Jones *v.* Vanzant, 2 M'Lean's C. C. R. 611.

If the defendant had full knowledge from the negroes or otherwise, that they are fugitives from labour, it is notice under the statute. *Ibid.*

If the plaintiff was subjected to a certain reward, by the laws of Kentucky, for the return of his slaves, and the defendant was the cause of his liability to such payment, it may constitute a part of his damages. *Ibid.*

Where the defendant has been the means of the entire loss of the slave, evidence may be received of the loss of such slave, by showing what his services were worth, as conducing to show that fact, for what sum he might have been sold. *Ibid.*

The act of Congress on the subject of fugitive slaves is constitutional, and does not conflict with the ordinance for the government of the Northwestern territory. *Ibid.*