

Case of the slave Isaac Brown

CASE OF THE SLAVE ISAAC BROWN.

AN OUTRAGE EXPOSED.

Isaac Brown, a colored man, who had been residing in the state of Pennsylvania for more than a year, was arrested in Philadelphia about the 1st of May, 1847, on a warrant issued by John Swift, Mayor of the city, charged with being a fugitive from the justice of the State of Maryland. The arrest was made at the instance of John Zell, a *stranger*, and Brown was committed to await the requisition of the Governor of Maryland. A writ of *habeas corpus* was awarded by Judge Parsons, and the 4th of May fixed for the hearing. In the mean time, however, the Governor of Pennsylvania issued his precept, reciting that his excellency the Governor of Maryland. had given information to him, that a certain Isaac Brown stood charged, upon the oath of Alexander Somerville, with an assault and battery upon said Somerville, with intent to kill him, and authorizing and requiring Judge Parsons "to issue a warrant in due form of law, directed to any constable or other proper officer for apprehending and securing the said Isaac Brown," and causing him, when secured, to be delivered to John Zell, agent of the State of Maryland.

On the day fixed for the hearing, Judge Parsons announced that he had received Governor Shunk's precept, and therefore must discharge the *habeas corpus*. That he was *obliged to obey the command of the Governor*, and surrender the prisoner to John Zell, on being satisfied that he was the person demanded: that he had no discretion in the matter at all, and would give Mr. Zell time to bring his witnesses to prove the identity of the prisoner. The following day was appointed for the examination of the witnesses. When

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Charles Gibbons and Thomas Earle, Esqs., appeared as counsel for the prisoner, and Edward D. Ingraham, Esq., for the Maryland agent. Two witnesses were then called by Mr. Ingraham, who testified as follows:

Thomas C. Wilson, sworn. I reside in Baltimore. I know Isaac Brown—the prisoner. I have seen him in prison in Calvert county, Maryland. He was supposed to be a slave of Mr. Somerville. It has been eighteen months since I saw him.

Cross-examined by Mr. Gibbons. Question.—What business are you engaged in? LC

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Ans. —I am an agent.

Quest. —What kind of an agent?

Ans. —I am a general agent—I follow a general agency.

Quest. —Whose agent are you?

Ans. —I have been agent for Hope H. Slatter of Baltimore for several years.

Quest. —What is Hope H. Slatter's business?

Ans. — *It is to buy negroes and send them to the South.* I have not seen Mr. Somerville short of a year. I am not particularly acquainted with him. He is a planter. I don't think I was ever on his plantation. Never was at his house; don't know how many slaves he keeps. I first saw Isaac Brown in Prince Frederick, Calvert County, Maryland. He was in jail. They *said* he was there for shooting Mr. Somerville. I was in the jail. It is 85 miles from Baltimore. I saw Brown afterwards in Baltimore—don't know how he got there. He was in Mr. Slatter's slave yard when I saw him. That was a year ago last September or October.

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Can't say how long he was there—but I saw him frequently while he was there. There were 35 or 40 negroes there at the same time.

Question.—Did not Mr. Slatter send Isaac Brown to Louisiana, and was he not sold in that State?

This question *was objected to* by Mr. Ingraham, and overruled by the Judge.

Samuel Y. Harris, sworn. This witness testified that he knew the prisoner—had seen him in Prince Frederick jail, in October, 1845—that he was confined there for some time on a charge of shooting Mr. Somerville. *That he was taken from the jail to Mr. Slatter's slave yard in Baltimore*—and witness did not see him afterwards until he was arrested in this proceeding.

This was the only testimony offered to prove the identity of the prisoner, and Mr. Ingraham asked that the Prisoner might be surrendered to the agent of the State of Maryland.

To this, Mr. Gibbons, on behalf of the prisoner objected. He claimed the right to be heard by the Court on the merits of the whole proceeding as fully as in any other case of habeas corpus, and denied the power of the Governor or the Court to suspend that writ, or refuse any of its advantages to a citizen in custody, charged with having fled from the justice of another State. After some conversation between the Court and the Counsel, the Judge decided that Mr. Gibbons might proceed with his argument, which he did,—contending, first, that the precept issued by Governor Shunk was defective, and not in accordance with the act of Congress—and secondly, that it was the duty of the Judge to go behind the precept, and inquire whether it was issued upon proper evidence. He also said that he was prepared to show to the 3 Court, that there was no such evidence presented to Gov. Shunk as the law requires to authorize the arrest and exile of a citizen upon such process, and that the whole proceeding was a fraud upon the Governor and the laws of the Commonwealth. That *Isaac Brown was no fugitive from justice*—but had been sent out of the state of Maryland *against his will*—and the present charge of an assault and

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battery upon Somerville, alleged to have been committed in 1845, was a mere trick, to evade the late act of the Pennsylvania Legislature for the punishment and suppression of kidnapping. The offer of Mr. Gibbons was objected to by Mr. Ingraham, and the objection sustained by the Judge.

Mr. Earle followed on the same side, but had not progressed far in his able argument, when the Court adjourned over for two days. As our object is to give a brief history of facts in regard to this extraordinary case, we must omit a detailed notice of the arguments of the counsel.

Before the time appointed for Mr. Earle to resume his argument, Governor Shunk requested Judge Parsons to suspend further proceedings in the case, until he (the Governor) could obtain the opinion of the Attorney General in relation to it. On Friday, the 21st May, Judge Parsons received from Governor Shunk, a communication informing him, that under the advice of the Attorney General, *he had reconsidered and revoked his precept*, being satisfied that the evidence upon which he had issued it, was insufficient. But he was also informed that Governor Pratt, of Maryland, had sent on a *second* requisition, founded on a bill of indictment against Isaac Brown; (being for the *same* offence of which he was first charged;) a second precept from Governor Shunk, therefore, accompanied the communication received by the Judge. Monday, the 24th May, was fixed by the Judge for a hearing on this second precept, the prisoner in the meantime being kept in jail *under the former proceeding, which the Governor had revoked*, Judge Parsons *declaring it unnecessary to issue a new warrant*.

On Saturday the 22nd of May, Mr. Gibbons caused to be issued out of the Supreme Court another process, called the writ *de homine replegiando*: which is a writ to replevy a man out of prison, and which has never before been successfully used in a like case, in this State. The Sheriff of the County, Henry Lelar, Esq., executed the writ on Saturday evening, by replevying Isaac Brown out of the custody of the keeper of the prison—and 4 finding no other process lodged against him, he set him at liberty.

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On Monday Judge Parsons sent an officer to the prison, with directions to bring Isaac Brown into Court; returning alone, he informed the Judge that Brown was not there. A warrant was immediately issued for Mr. Anthony Freed, the keeper of the prison, a worthy and faithful officer, and he was soon after brought into Court, under arrest. The Judge demanded to know of Mr. Freed why he had suffered Isaac Brown to escape from his custody. Mr. Freed answered that he had not escaped from his custody, but that he had delivered him into the hands of the High Sheriff of the County, on a writ issued out of the Supreme Court of Pennsylvania, a certified copy of which he handed to the Judge, saying, “ *there, sir, is the authority under which I acted.* ”

Eastern District of Pennsylvania, ss. —The Commonwealth of Pennsylvania to the Sheriff of Philadelphia county, greeting:—We command you that justly and without dely you cause to be replevied Isaac Brown, whom Anthony Freed, late of your County, took, and taken, doth hold, as it is said, unless the aforesaid Isaac Brown was taken by our special precept of our Chief Justice, or for the death of any man, or any other right whereof, according to the laws and usages of this Commonwealth, he is not repleviable, that no more clamor we may have for defect of justice; and how you shall execute this, our writ, you make appear to our justices of our Supreme Court of Pennsylvania, at our Supreme Court to be holden at Philadelphia, in and for the Eastern District, on the last Monday of July next, and have you then there this writ. Witness the Honorable John Bannister Gibson, Esq., Doctor of Laws, Chief Justice of our Supreme Court, of Pennsylvania, at Philadelphia, the 22d day of May, A. D., 1847. J. Simon Cohen,

Prothonotary of the Supreme Court of Pennsylvania, Eastern District.

Judge Parsons having read the copy of the writ, informed Mr. Freed that it would not do: it was no answer to the charge of an escape. He said that the Supreme Court *had no right* to order the discharge of a prisoner committed under a warrant from this Court! He denied the power of the Supreme Court to act in the case! *And he ordered Mr. Freed to give*

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bail in the sum of one thousand dollars for his appearance at the next Court of Quarter Sessions, to answer the charge of an escape!

The Hon. B. Champneys, Attorney General said: That when the first warrant was committed to him, he had carefully examined the precedents, and came to the opinion that the affidavit presented to the Governor was insufficient to hold Brown. He had just completed writing his opinion on Wednesday, the 12th inst., when the Secretary of State informed him that a new requisition 5 had been received from the Governor of Maryland, accompanied with a copy of an indictment found on the 10th inst. This precluded further inquiry on the matter. Upon that requisition, he was of opinion that the warrant ought to issue. In the course of his investigation he was forcibly impressed with the circumstance, that if a crime of the ferocity here charged had been committed, *that eighteen months should have been allowed to pass by without an attempt to arrest the prisoner.* All these circumstances impressed him favourably towards Brown.

Mr. Freed then promptly entered the required bail, and was discharged from custody.

In the meantime, says the Public Ledger of the 25th inst., "Mr Gibbons commenced an action in the District Court at the suit of Isaac Brown, against Alexander Somerville, Thomas C. Wilson, Samuel Y. Harris, and John Zell, for conspiracy. Capiases were issued and the bail fixed at five thousand dollars." The defendants have not been found by the Sheriff. After they heard that the writs had been issued, *they prudently returned to Maryland in the first public conveyance.*

All these proceedings against Isaac Brown, based, apparently on the laws of the land, were *contrived* and entered into for the purpose of *kidnapping the man!* His own statement has been embodied in an affidavit, which we copy from the Ledger of the 25th inst., as follows:

"Isaac Brown being duly sworn, according to law, doth depose and say, that he is detained in the Philadelphia county jail, on a charge of being a fugitive from justice of the State

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of Maryland, having, as it is alleged, been guilty of an assault and battery upon one Alexander Somerville, in the year 1845, with intent to kill him. Deponent solemnly avers that he never fled from the justice of the State of Maryland, or of any other State, and that he never did commit an assault and battery upon the said Alexander Somerville, but is entirely innocent of said charge. That during the summer or fall of 1845, deponent was informed that such an assault and battery had been committed upon the said Alexander Somerville. That deponent was at that time the slave of the said Somerville, and had the management of a plantation owned by his master, situated about three miles from his master's residence, and that deponent was on the said plantation when he heard of said assault and battery, and at the time it was committed. That as soon as deponent heard of it, he got out his horse to go to the residence of his said master where the said assault had been committed, for the purpose of seeing him. That deponent was soon after arrested by a body of armed men, and charged with the said crime, and put into the jail of Prince Frederick. That deponent was kept in the 6 said jail for a period of thirty-three days, during which time his hands and feet were twice bound together, his clothing stripped from him, and two hundred lashes in all were inflicted upon him with a cowskin by a jail-keeper, named, or called Sandy Buck. That the said whippings were inflicted within one week of each other, and that deponent received one hundred lashes on each occasion, although there was no evidence to sustain the accusation against him, and although deponent constantly declared, and now declares, that he was innocent of the said charge. Deponent further says, that having been unjustly confined in the said jail for thirty-three days, he was taken out and sold as a slave to one Samuel Harris, a slave trader, for the sum of five hundred dollars, and that he was afterwards sold by the said Harris to Hope H. Slatter, of Baltimore, for the sum of six hundred and sixty-five dollars, as deponent was informed by said Slatter. That deponent was then taken to the slave yard of the said Slatter, in the city of Baltimore, where he was kept a prisoner for some time, and about the middle of the month of December, 1845, was put on board of a ship at said city against his will, together with one hundred and sixty-nine other persons of color, and sent to the city of New Orleans. That the said ship arrived in New Orleans early in the month of January,

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1846, when this deponent was sold with other men to a Planter in the State of Louisiana. This deponent further says, that he did not leave the State of Maryland of his own free will, but was forcibly taken from the said State by the consent and aid of the same persons who now charge him with having fled from the justice of the said State of Maryland, and that the whole proceeding under which he is now detained is, as deponent verily believes, the result of a conspiracy on the part of the said persons to deprive him of his rights and liberty as a citizen of Pennsylvania, in which State deponent has lived for upwards of one year, having his family, consisting of a wife and nine children, in the said State, dependent upon him for support.

ISAAC his X mark. BROWN.

“Sworn and subscribed before me this 22d day of May, A. D., 1847. William McCauley. ”

If the oath of Isaac Brown be admitted as evidence it appears, that so far from being a fugitive from justice, *he was actually sent out of the State against his will!* And if any man doubt this, let him refer to the testimony of Thomas C. Wilson, the agent of Slatter, who says that Isaac was in Slatter's slave yard: *and who was not permitted to answer the question “did not Mr. Slatter send him to Louisiana, and sell him in that State?”* Harris also says, that Isaac was taken from the jail in Prince Frederick, to Slatter's slave yard in Baltimore. *It has never been pretended that the man made his escape from Slatter's yard.* He was sent out of the State of Maryland *in chains*, and sold by Slatter, or his agent, in New Orleans. Somerville knew this *when he made the oath* on which the Governor of Maryland based his requisition. Wilson, *the agent* of Slatter knew all about it—for doubtless the object of his visit to the jail in Prince Frederick, *eighty-five miles from Baltimore*, in October, 1845, was to purchase Isaac and to convey him to Slatter's yard. And Harris knew it too, *the disinterested witness, who travelled one hundred and eighty-five miles to identify Brown, spent day after day in Philadelphia, awaiting his surrender, and fled as soon as he heard of the issuing of the capias against him!*

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But whether Isaac Brown be guilty or innocent of the assault and battery upon Somerville, it is very clear that *he was punished for it under the laws of Maryland in 1845*. The witnesses Wilson and Harris both say, that he was in jail in Prince Frederick in October 1845, on a charge of shooting Somerville. How did he get out of jail? Harris says he was *taken from the jail to Slatter's slave yard*. Wilson says he saw him in Slatter's yard in September or October, 1845. Brown swears that he was taken out of prison and sold, first to Harris for five hundred dollars, then to Slatter for six hundred and sixty-five dollars. The time fixed by the laws of Maryland for holding the Courts in Calvert County, is the second Monday in May, and *the second Monday in October in each year*. It would seem, then, that the Court was actually in session in Prince Frederick, when Isaac Brown was taken from the jail of that town to Slatter's yard in Baltimore! He was in jail upon *legal process* and could only be taken from it by legal process, *issuing from the Court then in session* within a few yards of his place of confinement. He received two hundred lashes while in jail, and surely they were *legally administered*. It may be asked if the Court had any authority to order his sale to Slatter or any other person. The answer is found in the laws of Maryland. The first section of the act of 1818 provides, "that from and after the passage of this law, *it shall not be lawful for the Courts of law within this State to sentence any negro or mulatto slave convicted of any crime perpetrated after the passage of this act, to undergo a confinement in the Penitentiary in this State, any law to the contrary notwithstanding.*"

The 2d section of the same act provides that if any slave shall be convicted of any crime which may not in the discretion of the Court be punishable by hanging, the slave may *in the discretion of the Court be sentenced to be lashed on the bare back*, or the Court *may sentence him to be banished from the State by transportation and sale* into some foreign country, *or some one of the United States—such slave to be valued and paid for as directed by law*. (See Dorsey's Laws of Maryland, p. 702.)

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Every reader must therefore see, from the law and the facts here presented, that Isaac Brown, whether guilty or not, was *actually punished in 1845, under the laws of Maryland*, for the alleged assault and battery upon Somerville! He was both *lashed* and *banished* “by transportation and *sale into*” *the State of Louisiana, and Somerville was paid for him, “as directed by law.*” And yet a grand jury of Calvert County, twenty months after the alleged commission of the crime, and eighteen months after Isaac Brown was punished for it, finds a bill of indictment against him, and lends itself to this outrage of Somerville and his confederates, to trick the Governor of Pennsylvania, evade our laws, insult our people, and kidnap the man!

Had Brown been arrested and detained as a fugitive slave, according to the laws of the land, perhaps the circumstance would have created no unusual excitement. But his master lives in Louisiana—the kidnappers from Maryland had no title to him, and the only chance they had to secure their prey and *swindle his owner* was by means of the fraud that has been exposed. Their purpose was defeated by the writ *de homine replegiando*, and a *citizen of Pennsylvania* is held to bail *as a criminal*, by a *Pennsylvania Judge*, for not disregarding the process of the Supreme Court of our Commonwealth!

It is humbly suggested, that our laws were not made to oppress the innocent and protect the guilty. The Judge acted under excitement, and therefore rashly. Instead of issuing his warrant against a fellow citizen for an act of duty, he could better have vindicated the dignity of his office by ordering into custody the conspirators who have profaned our temples of justice, by as bold an outrage as ever was perpetrated under color of law.

The case of Isaac Brown shows with what facility any honest citizen of Pennsylvania may be seized under a requisition from the Executive of another State, on some false and malicious charge made by a Somerville or Harris, banished from his native soil, tried among strangers before a foreign tribunal, and convicted and punished by the perjury of

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those who *committed* the crime, and who escape by fastening it upon him. *It is a lesson to our Governor, our Courts and our People.*