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The rendition of Anthony Burns

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THE RENDITION OF ANTHONY BURNS.

BY WILLIAM I. BOWDITCH.

BOSTON: PUBLISHED BY ROBERT F. WALLCUT.

NO. 21 CORNHILL.

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RENDITION OF BURNS.

Before any man who is claimed as a Slave can be legally delivered up to his master, it is necessary for the latter to establish three points. (Const. U. S., Art. 4, § 2.) 1st. That some person owed him service or labor under the laws of one of the States: 2d. That such person escaped from thence into another State: and, 3d. That the man who is arrested is that same person. The establishment beyond all reasonable doubt of each of these points, is absolutely essential to make out the case of every claimant; and if a reasonable doubt can be raised upon either of them, it is the duty of the Commissioner to discharge the alleged Slave. On Massachusetts soil, *all* men, without regard to complexion, are presumed to be free (Decl. of Rights, Art. 1.) until the contrary is established beyond a reasonable doubt. And accordingly if such a doubt upon either of these three points can be shown to have existed in the case of the alleged Anthony Burns, it was the duty of Mr. Commissioner Loring to discharge him.

We do not propose to go into the question of the constitutionality of the Furtive Slave Bill. Its constitutionality never has been, and cannot, as it seems to us, be successfully defended upon principle. Its only support is found in certain precedents, which have not as yet been overruled. But as we are desirous of showing, in the clearest possible light, that the Commissioner acted under no legal necessity in delivering 4 up Anthony Burns, we are willing, for the purposes of the present discussion, to suppose that the Fugitive Slave Bill is constitutional, however groundless such supposition may be in point of principle. The first question, therefore, is, was it proved beyond a reasonable doubt that any person owed Charles F. Suttle service or labor under the laws of Virginia?

The Act of Congress, Sept. 18, 1850, (the Fugitive Slave Bill,) provides as follows:—

" Sect. 6. *And be it further enacted,* That when a person held to service or labor in any State or Territory of the United States has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal office or court

of the State or Territory in which the same may be executed, may pursue and reclaim such fugitive person, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district, or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive where the same can be done without process, and by taking and causing such person to be taken forthwith before such court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from 5 which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which such service or labor was due to the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary under the circumstances of the case, to take and remove such fugitive person back to the State or Territory from whence he or she may have escaped as aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first section mentioned shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the State or Territory

from which he escaped, and shall prevent all molestation of said person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

“ Sect. 10. *And be it further enacted,* That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record authenticated by the attestation of the clerk, and of the seal of the said court, being produced in any other State, Territory, or District in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in the said 6 record, of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped: *Provided,* That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid; but in its absence, the claim shall be heard and determined upon other satisfactory proofs competent in law.”

The sixth Section speaks of “satisfactory proof being made by deposition or affidavit, in writing, to be taken and certified” by the Court or Commissioner before whom the case is pending,* “or by other satisfactory, testimony, duly taken and certified by some Court, &c., magistrate, &c., authorized to administer an oath and take depositions under the laws of the State * * from which such person owing service or labor may have escaped, with a certificate of such magistracy or other authority as aforesaid, with the seal of the proper Court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit of the identity of the person whose service or labor is claimed to be due,” * * that he “does in fact owe service or labor” to the claimant in the State from which he may have escaped, “and that said person escaped.” Under this Section, therefore whoever tries the case must act upon satisfactory proof in the form of deposition or affidavit, in writing, taken and certified by himself or upon “ *other* satisfactory testimony” taken and certified by some Court or magistrate in the State from which the party is alleged to have escaped. But it may be very fairly argued that by the expression “ *other* satisfactory

* In the first case that occurred under the law in Pennsylvania, Mr. Justice Crier ordered the testimony of the claimant's witnesses to be reduced to writing by the clerk of the Court.

7 testimony” could not have been intended written depositions or affidavits; for if such had been the intention of the law, the expression used would be, “ *like* satisfactory testimony, or satisfactory testimony of the *same* kind.” Accordingly, the Court or magistrate in the State from which the party escaped must take oral testimony as to the facts of owing service and escape, and if satisfied with the proof must certify under its seal that such testimony is satisfactory; but the testimony itself, on which the action of the Court is based, is not required to be given at length in the certificate, because this would make it into a deposition or affidavit.

On the other hand, the tenth Section provides that in case of such escape of a person owing service or labor, the owner, &c., “may apply to any Court, &c., of record” in such

State, “and make satisfactory proof to such Court, &c., of the escape aforesaid, and that the person escaping owed service or labor to such party; whereupon the Court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record, authenticated by the attestation of the clerk and of the seal of the said Court being produced in any other State in which the person so escaping may be found, and being exhibited to any Commissioner, &c., * * shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in said record, of the identity of the person escaping, he or she shall be delivered up to the claimant.”

If, therefore, the claimant please to act under the tenth Section, he may obtain from a court of record in his own State “full and *conclusive* evidence of the fact of escape, and that the service or labor of the person escaping is due to him, in the form of the transcript of a record attested by the clerk, and under the seal of the Court. But if the claimant does this, 8 he cannot offer other evidence to the same points, because the law, by providing that in the “ *absence* ” of the transcript of the record the claim shall be heard and determined upon other satisfactory proof, leaves the inference to be irresistible, that whenever such transcript of a record is offered, no other evidence as to owing service and escape can be introduced.

If, however, the claimant chooses to proceed under the sixth Section, he may obtain from a Court in his own State competent proof of the facts of escape and owing of service, based upon “satisfactory testimony, duly taken and certified” by such Court under its seal, and he may *also* offer evidence before the Commissioner on these as well as the other point in his case.

Accordingly, the law marks out two entirely distinct methods of proving the facts of owing service and escape. In the one case, the Commissioner is *bound* to admit the truth of these facts. But in the other he is left entirely free to make up his judgment as he may think proper on all the testimony adduced.

The certificate of a Court under the sixth Section, framed as just stated, and the transcript of the record under the tenth Section may be very similar, not merely in outward form, but in substance also. Both will be attested by the clerk, both must be under the seal of the Court, both may properly be called copies or transcripts from the records of the Court, although the Court under the sixth Section need not be (though it may be,) what is technically known as a Court of Record. It is indeed this difference in the character of the tribunals which seems to form the chief, perhaps the only reason why the certificate under the sixth Section has not the same conclusive character as the transcript of the record under the tenth Section. Only a Court of Record or a Judge of such Court can act under the tenth Section; but not only any Court, but any petty Justice of the Peace who can administer an oath may certify under the sixth Section. It cannot, therefore, be considered as certain that a document which is offered by a claimant is a transcript of a record under the 9 tenth Section, merely because it is attested by the clerk of the Court under the seal of the Court, and contains no recital of the evidence upon which it is based, because these things may be found in the case of a Court certificate under the sixth Section. And even the express statement of the clerk that it is such a transcript of a record should be more than outweighed by any act or use of it on the part of the claimant, inconsistent with its conclusive character as such record, because even a certificate under the sixth Section may very likely chance to be a transcript of a record.

It is obviously one of the plainest, as it is one of the most fundamental principles of Right and Justice that a man's liberty shall not be put in jeopardy by *ex parte* testimony;—such testimony should have no weight in any case. It is, therefore, in the highest degree unjust to make it *conclusive* even against a party who is able to prove the contrary—and yet this

is the legal effect of a transcript of a record under the tenth Section. Any Court, therefore, that does not disregard the plainest and simplest rule of Justice, will never consider a document as such transcript of the record, unless absolutely compelled so to do, and will gladly seize every opportunity of escaping from such a conclusion. Any such Court will say to the claimant, The Fugitive Slave Bill allows you to manufacture evidence to suit yourself, and if you strictly pursue the course marked out in the law, we shall not suffer your evidence to be contradicted by the respondent. But as any such proceeding on your part is contrary to the plainest principles of law and justice, we shall do nothing and shall presume nothing to help you in your proceeding;—on the contrary, we shall lay hold of every circumstance in your case which has a tendency to show that you do not seek to avail yourself of this unrighteous and wicked, though legal privilege; and unless the document which you offer as a transcript of a record purports on its face to be made up under the tenth Section of the Fugitive Slave Bill, or else purports to afford under that law generally, "full and conclusive 2 10 evidence" of the facts of escape, and owing service, we will not consider it as the transcript of such a record, or as affording such evidence, especially if you treat it yourself in another light, by offering other testimony on the same points.

Which of the two modes of proof pointed out by this Bill did Col. Suttle pursue in the present case? Did he see fit to rely on a conclusive transcript of a record, or did he proceed under the sixth Section?

The following is a copy of the document that was offered on the part of the claimant:—

" *In Alexandria Circuit Court, May* 16, 1854.

"On application of Charles F. Suttle, who this day appeared in Court and made satisfactory proof to the Court that Anthony Burns was held to service and labor by him, the said Suttle, in the State of Virginia, and said service and labor were due to him, the said Suttle, from the said Anthony, and that the said Anthony has escaped from the State aforesaid,

and that the said service and labor are due him, the said Suttle, the Master of the said Anthony; and having further proved to the satisfaction of the Court that the said Anthony is a man of dark complexion, about six feet high, with a scar on one of his cheeks and also a scar on the back of his right hand, and about 23 or 4 years of age: It is therefore Ordered, in pursuance of an Act of Congress entitled An Act to amend and supplementary to the Act entitled An Act respecting Fugitives from Justice and persons escaping from their Masters, approved February 12, 1793, that the matters so proved and set forth be entered on the records of this Court."

" State of Virginia, County of Alexandria, to wit:

"I, Franklin L. Brackett, Clerk of the Circuit Court of Alexandria County, in the State aforesaid, do hereby certify that the foregoing is a true transcript from the records of said Court.

"In testimony whereof, I hereto subscribe my name and annex the Seal of said Court, this 18th day of May, 1854, and in the 78th year of the Commonwealth.

" F. L. Brackett, Clerk [L. S.] of the Alexandria Circuit Court."

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" State of Virginia, County of Alexandria, to wit:

"I, John W. Tyler, Presiding Judge of the Circuit Court of Alexandria County, in the State of Virginia, do certify that Franklin L. Brackett, whose name is affixed to the preceding certificate as Clerk of the said Court, is Clerk thereof, and that his said attestation is in due form.

"Given under my hand the 18th day of May, 1854.

" John W. Tyler. "

“ *William Brent* was then called as a witness, and testified that he was a merchant of Richmond, Va.; was acquainted with Colonel Charles F. Suttle, and had been for a long time; knew Anthony Burns; the black man in Court was the same—the prisoner at the bar; he knew Burns in Stafford County, and bore the relation of a Slave to a master, being hired out by Suttle; had hired him himself in 1846, '47, and '48, or '47, '48, and '49, and knew of his being hired out since that time; hired him out last year and the present year, as agent for Colonel Suttle, in Richmond; the wages went to Colonel Suttle; knew him as a Slave for twelve or fifteen years; last year, in March, was hired in Richmond by a Mr. Millspaugh, Mr. Suttle receiving the wages; the first letting of Burns by Suttle, to his knowledge, was the year previous to his hiring him himself; when not let out he lived with Colonel Suttle; previous to his being hired, he was a big boy, not capable of doing anything; there was no other Anthony Burns about the places resorted to by Suttle; he had a scar upon his fight cheek and a cut across his fight hand; there were no other marks upon him that he knew; he is about six feet high; I was born within three miles of Colonel Suttle; knew him ever since he could recollect; knew all his family; last saw Burns the Sunday previous to his absence—the 20th of March; he was missing on the 24th; I left Virginia on Saturday week morning; does not know how Burns left, only from his own statement.”

The statements of the prisoner, made on the night of his arrest, were then admitted *de bene esse* —as follows:—

“Burns said he did not intend to run away, but being at work on board a vessel, and getting tired, fell asleep, when 12 the vessel sailed with him on board. On Mr. Suttle's going into the room after the arrest, the first word from Burns was, ‘How do you do, Master Charles?’ The next thing was, ‘Did I ever whip you, Anthony?’ The answer was, ‘No.’ The next question, ‘Did I ever hire you where you did not want to go?’ The reply was, ‘No.’ The next question, ‘Did you ever ask me for money when it was not given you?’ The answer was, ‘No.’ Mr. Suttle then asked, ‘Did I not, when you were sick, take ray bed from my own house for you?’ and the answer was, ‘Yes.’ He then recognized witness, (Brent,) and said,

‘How do you do, Master William?’ Being asked substantially if he was willing to go back, he said he was. Burns's mother lived with Colonel Suttle, and is now on his place; has a sister in Richmond, and a brother in Stafford County with Colonel Suttle; knew of no fact, other than Burns's mother living on Suttle's farm, that she was his Slave.

“When I hired Burns, I gave my bond to Suttle, who claimed to own him; on another occasion, when Colonel Suttle was desirous of making some pecuniary transactions, he gave a mortgage on his property, including this man Burns, in order to raise the money; he then stated that Burns was one of his Slaves; when he sent Burns to Richmond to be hired out, he described him as his ‘boy;’ it is customary in Virginia, to give passes to Slaves, when they go about, one of which Burns had when he came to his (witness's) house in Richmond.

“ *Cross Examined.* —By Mr. Ellis. —I am thirty-five years of age; lived always in Richmond; am in the grocery commission business; own Slaves myself—acquired some by marriage thirteen years ago, and became interested in others by my father's death, in 1848; have bought some—the last in 1841 or 1842; never sold any myself; further than that never traded in Slaves. I came on with Colonel Suttle, meeting him in Alexandria, twenty miles from my residence, I left Richmond Saturday week, morning, reached Alexandria same evening, and left at same time, coming as direct to Boston as facilities would allow; had arranged beforehand with Suttle, that I should come on with him, the boat stopping at Alexandria for him to get on board; he had said nothing about paying my expenses or remunerating me for coming; came on with him, a volunteer, as a friend; never went before on any similar expedition; had accompanied him to 13 Washington frequently as a friend, but never on any matter of an alleged runaway; Colonel Suttle first sent to me about coming on here; I received a letter from him two or three days before coming on, in relation to it; have never in any form communicated with him relative to coming on, and there has been no word or writing between us relative to any compensation; we lodge and room together here, arriving here on Monday night last; Tuesday, after Burns was missing, I wrote to Suttle of the fact; the man who hired him

was named Millspaugh, his term of service commencing on the first of January last: the mortgage already alluded to was in the name of John M. Tolson, of Stafford County, Virginia; the conversation with Burns, since his arrest, occurred in the Marshal's room, in this building, in the presence of several police officers, between eight and-a-half and eight o'clock, on Wednesday night; do not think he had irons on; I have seen him with irons on; the conversation commenced immediately after the remark from Burns, 'How do you do, Master Charles?' Colonel Suttle did say, 'I make you no promises, and I make you no threats;' Suttle also said he would make no compromises with him; heard nothing of any remark by Suttle, as to Burns' better consenting to go back; this is substantially the whole conversation; was in the room some five minutes; went there from the Revere, and then returned; the reply of Suttle about promises and threats, and making no compromises, was after Burns said something about going back; I have lived in Richmond four years; Suttle resided in Alexandria two years; went there two years ago, next August; before I came to Richmond, I lived in Stafford County, where also did Suttle, before he went to Alexandria.

"By Mr. Dana. —Burns's mother lives at Stafford; he has a brother and sister; do n't know that the bond between me and Suttle, as to the hiring of Anthony, is in existence; am not responsible for Anthony's connection with Millspaugh, other than as agent, and which ceased when he escaped; the conversation in the Marshal's room was not in the very words I have given, being categorically; I only answer here the questions put to me, and have stated the conversation as nearly as I can recollect. Burns's so-called mother was generally reputed to be such.

" *Caleb Page* sworn.—Reside in Somerville; am a teamster; was present at the conversation alluded to with Burns in the Marshal's room; did not hear the first of the conversation, 14 but remembered the questions relative to the giving of money, flogging, the use of the bed when sick, &c. Colonel Suttle asked Anthony why he left him, or why he ran away, he did not remember which; he did not hear the answer, not being very near;

Suttle asked him if he did not come in Captain Snow's vessel; Burns replied that he did not; he then asked what vessel he did come in, but witness did not hear the reply.

“ *Cross Examined.* —By Mr. Ellis. —Am a teamster, in Milk Street, working for various firms; own my own team; am not an officer; was asked to come and assist in arresting a man, by Mr. Butman, he saying, ‘You are just the man I want;’ I came to the Court House with the prisoner: staid three-quarters of an hour; was not here all night, that night; I walked behind at the arrest; there were four men besides myself; the room where he was put is the same in which he has been confined; I am still employed in the case by the Marshal; have no written agreement, only his word of engagement; am employed as—[witness did not conclude the remark.]

“ *Q.* — How came Butman to say you were just the man?

“Mr. Parker. —You need not answer.

“No response.”

Evidence was then offered as to the laws of Virginia, and with this the case of the claimant was closed.*

* I quote the testimony as it appears in the pamphlet entitled “The Boston Slave Riot and Trial of Anthony Burns,” published by Fetridge & Co., pp. 45–47.

The document thus offered by Col. Suttle neither purports to be the transcript of a record made up pursuant to the tenth Section of the Fugitive Slave Bill, nor does it profess to afford full and conclusive proof of the facts of owing service and escape, nor is there any other feature about it which necessarily makes it a proceeding under the tenth Section. It may or may not have been so intended in point of fact, but we are not bound to regard it as conclusive proof unless this odious character is necessarily stamped upon its face. On the contrary, unless it is a necessary conclusion from the document itself, that it is a transcript

of a record 15 under the tenth Section, it is the duty of every Court which reverences the fundamental principles of legal justice to refuse to treat it as such.

If, however, there is a doubt as to the correctness of this general conclusion, there can be no doubt that any Court will be fully justified in refusing to consider it as conclusive proof under the tenth Section, when the claimant himself thus treats it. If it really is a transcript of a record under the tenth Section, it is illegal, as we have seen, to offer other testimony on the points of owing service and escape. By insisting, therefore, as he did, on his legal right to prove these facts by Mr. Brent's testimony, Col. Suttle admitted that he had no documentary proof that was legally conclusive, or else consented to waive his right under such document; upon either of which grounds the Commissioner would have been fully justified in refusing to regard the document as conclusive.

If, however, there be a doubt as to the correctness even of this conclusion, it seems impossible to call in question our duty to refuse to treat a document of this kind as conclusive proof, when the claimant himself offers other testimony which overthrows it. Surely, no Court is obliged to rule that such a document is conclusive proof of service due to the claimant, when the claimant himself proves by other testimony that such service is *not* due to him! and yet this is precisely the case that was presented to Mr. Commissioner Loring! The document goes to prove that an Anthony Burns owed service to Col. Suttle; it says nothing about any one else who could claim his service. On the other hand, the testimony of Mr. Brent is explicit, that at the very time of his escape the Anthony Burns who owed service was hired out to Mr. Millspaugh. But the hirer of a Slave is legally entitled to his service and labor during the existence of the lease,* and

* In the absence of all evidence to the contrary, this lease to Millspaugh must be considered as still existing.— *Greenl. on Ev. Sect.* 41–42.

16 consequently Mr. Millspaugh, and not Col. Suttle, should have been the claimant! All the service and labor which was due, if any, was due to Mr. Millspaugh, and not to Col. Suttle—and this upon Col. Suttle's own showing.

“An Act to facilitate the recovery of Fugitive Slaves” was passed by the General Assembly of Virginia, March 31, 1851. The first Section provides “that whenever a Slave shall escape from his owner or person having him in possession, if the County or Corporation Court of the County wherein such owner or person resides be not in session, it shall be the duty of the sheriff or sergeant, upon request in writing of such owner or other person, or his agent, to summon a Court to meet forthwith at the Court House of such County or Corporation, to hear proof of the escape of such Slave, and that he owed service or labor to the owner or person aforesaid, and to order such proof to be entered on the records of such Court, together with a general description of the Slave so escaping, with such convenient certainty as may be, pursuant to the provisions of the tenth Section of the Act of Congress concerning persons escaping from the service of their masters, passed eighteenth September, eighteen hundred and fifty.”

It is beyond all controversy, therefore, that a Slave in Virginia may owe service within the meaning of the tenth Section of the Fugitive Slave Bill, not only to an owner, but also to any “person having him in possession.” But it is obvious that except in cases of tenancy in common, (which is not this case,) two persons cannot legally claim the service of the same Slave at the same time. The Slave must owe service to one, and cannot owe it to two persons; nor can he legally escape from the service of two persons, but only from the service of one. This person, therefore, is the only one who can claim the service of the Slave under the Fugitive Slave Bill. This person must be either the owner of the Slave, or the “person having him in possession.” Where the Slave is in the custody of an agent or overseer of the owner, 17 he is legally in the possession of his owner, and in such case the owner may commence the proceedings. But the hirer of a Slave is entitled to retain possession even against the general owner. Consequently, the hirer of a Slave in Virginia is the only person who is entitled to his service, within the meaning of the Fugitive Slave Bill, and the only person who is entitled to act under the tenth Section of that Bill, To Mr. Millspaugh, therefore, was the service of Anthony Burns exclusively due, and he was the only person who was entitled to claim that service, within the meaning of the Fugitive

Slave Bill. And this fact being made to appear by the claimant's own testimony, Col. Suttle having proved by his own witness that he was *not* entitled to the service of the Anthony Burns who fled, Mr. Commissioner Loring acted under no legal necessity whatever, when he decided the first point in favor of the claimant.

Suppose, however, that it was proved beyond a reasonable doubt that an Anthony Burns owed service to Col. Suttle. The next point to consider is, Was it proved beyond a reasonable doubt that this person “escaped” from Virginia into another State?

“As a general rule,” says C. J. Shaw, (Comm. vs. Aves, 18 Pick. Rep. 217,) “all persons coming within the limits of a State become subject to all its municipal laws, civil and criminal, and entitled to the privileges which those laws confer; that this rule applies as well to blacks as whites, except in the case of Fugitives, to be afterwards considered; that if such persons have been Slaves, they become free, not so much because any alteration has been made in their status, or condition, or because there is no law which will warrant, but there are laws, if they choose to avail themselves of them, which prohibit their forcible detention or forcible removal.” After quoting the constitutional prohibition in relation to Fugitive Slaves, (*Const. U. S., Art.* 4, § 2, *and the Fugitive Slave Bill of* 1793,) C. J. Shaw proceeds: “In regard to these provisions, the Court are of opinion that, as by the general 3 18 law of this Commonwealth, Slavery cannot exist, and the rights and powers of Slave owners cannot be exercised therein; the effect of this provision in the Constitution and laws of the United States is to limit and restrain the operation of this general rule, so far as it is done by the plain meaning and obvious intent and import of the language used, *and no further.* The Constitution and law manifestly refer to the case of a Shave escaping from a State where he owes service or labor, into another State or Territory. He is termed a Fugitive from labor; and the proof to be made is, that he owed service or labor, under the laws of the State or Territory *from which he fled,* and the authority given is to return such Fugitive to the State *from which he fled.* This language can by no reasonable construction

be applied to the case of a Slave who has not fled from the State, but who has been brought into this State by his master."

"The Constitution and laws of the United States, then, are confined to cases of Slaves escaping from other States and coming within the limits of this State, without the consent and against the will of their masters; and cannot, by any sound construction, extend to a case where the Slave does not escape and does not come within the limits of this State against the will of the master, but by his own act and permission. This provision is to be construed according to its plain terms and import, and cannot be extended beyond this; and where the case is not that of an escape, the general rule shall have its effect. It is upon these grounds, we are of opinion, that an owner of a Slave in another State, where Slavery is warranted by law, voluntarily bringing such Slave into this State, has no authority to detain him against his will, or to carry him out of the State against his consent, for the purpose of being held in Slavery."

In other words, Col. Suttle was bound to "show *clearly* " that the Anthony Burns who owed him service "escaped" into another State, and unless he did this, the Commissioner was bound to decide against his claim.

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To prove this, he offered the document already considered. For the three reasons before assigned, the Commissioner was not bound to consider this document as affording full and conclusive proof of the fact of escape. There is nothing in the document itself which refers to the tenth Section of the Fugitive Slave Bill; nothing which speaks of its affording conclusive proof under that Bill of any fact; and nothing which it would seem may not exist in case of a mere certificate of a Court under the sixth Section.

Nor did Col. Suttle so consider it, because he offered other evidence as to the fact of escape, which he could not legally do, if the document was to be considered as prepared under the tenth Section.

But if, notwithstanding all this, it is still to be considered as a proceeding under the tenth Section, it is impossible to doubt the power of the claimant to waive his legal rights under it. It is unjust enough to consider it as conclusive evidence against the alleged Slave, under any circumstances, but to treat it as thus conclusive in favor of the claimant so as to overthrow other testimony which he himself insists upon putting in, is too monstrous an injustice to be laid at the door even of the Fugitive Slave Bill. We surely are not bound to decide that this document *shall* prove an escape, notwithstanding the claimant insists upon putting in testimony that goes to show that no escape was made.

Now to escape implies a will to escape on the part of the person escaping. No captive ever yet escaped by his own act without desiring so to do. Even the noble old tory who promised the sheriff to carry himself a prisoner to Springfield, to be tried for treason, and who did so, was tried and sentenced to death, (though afterwards pardoned for his nobleness of soul) although he was wholly out of the custody of the law on his journey, could hardly be considered as escaping from that custody, simply because the will to escape was wholly wanting. It is true that the Slave laws of Virginia speak of the want of the owner's consent as the only ingredient 20 necessary to convert absence on the part of a Slave into an escape. This may be owing to the fact that a Slave, legally speaking, has no right to a will adverse to his master's pecuniary interest. But the real ground of the omission seems to be the legal presumption that all Slaves are only too willing to embrace every opportunity of escape. It is not of course necessary, in defining an offence, to point out an ingredient which the law presumes to exist in every case, until the contrary is shown.

In order, therefore, to prove that Burns escaped within the meaning of the Fugitive Sláve Bill, it was necessary for Col. Suttle to show a want of consent on his part to Burns's leaving Virginia, and the intent on the part of Burns to escape in so leaving.

But this intent to escape is entirely negatived by the confession of the alleged Burns, which Col. Suttle himself has put in evidence. According to the testimony of Mr. Brent,

“Burns said he did *not intend to run away,* but being at work on board a vessel, and getting tired, fell asleep, when the vessel sailed with him on board.” As we shall see, the third point of the case finally turned upon another part of this very confession. Supposing it to be admissible at all, the Commissioner had the legal right, after receiving the whole confession, to reject this part of it if he believed the statement to be false, but in the entire absence of any testimony which really conflicts with this account of the manner in which he left Virginia—the Commissioner not only was under no obligation to reject, but was bound to receive it as true, and act upon it accordingly. This objection is fatal, whether Burns is considered as owing service to Col. Suttle or Mr, Millspaugh.

In conducting the case, it was the duty of the Commissioner to make every possible presumption in favor of the prisoner. He not only could, but was bound to make every such presumption that was consistent with the facts proved.

Now suppose it to have been proved that Burns owed service to Col, Suttle. Laying aside, then, the evidence, which 21 proves him to have been hired to Mr. Millspaugh, there is nothing which conflicts in the slightest degree with the notion that Col. Suttle sent Burns to work on board the vessel which carried him away, and accordingly we may adopt this as the true state of the case. But we have already seen that if Col. Suttle had voluntarily brought Burns here it would not have been an escape. No more would it have been an escape if he had voluntarily sent him here alone, as is sometimes done. And if he voluntarily exposed Burns to the risk of being brought here, and he is so brought, even without or against Col. Suttle's consent, it is nevertheless not an escape—as this state of facts, which we may presume to be the case, fails precisely within the principle of Jonathan Lemmon's case. He voluntarily placed his Slaves on board a vessel bound for Texas, and against his consent, and under the compulsion of necessity, the Slaves were carried into New York, and Judge Paine set them free on the ground that they had not escaped. Suttle and Lemmon both voluntarily placed their Slaves in a position where a possibility existed of their being taken to a free State. In each case the Slaves were thus carried to a free State without the owner's consent, by an overruling necessity—and if the

Slaves did not escape within the meaning of the Constitution in one case, neither did they in the other.

Upon either, or both of these grounds, Mr. Commissioner Loring would have been fully justified in deciding the second point against the claimant.

But waiving all that has gone before, and assuming it to be proved beyond all reasonable doubt that some person named Anthony Burns owed service to Col. Suttle in Virginia, and escaped from that service into this State, what proof is there that the person arrested is that same Anthony Burns?

The alleged record describes the Anthony Burns who owed service. This description being made up by the claimant to suit himself,* at his leisure, must be construed *strictly,* and

* Other similar documents have been made up to suit the victim who was to be caught.

22 criticised carefully. As an *ex parte* proceeding, which, according to the most fundamental principles of law, is entitled to no weight whatever as evidence, it must not be extended or favored in any way by construction, and must have as little weight as possible. It should have none whatever if the description is not as exactly accurate as it might be made. The alleged Slave has a right to insist on this strictness in a matter of so much moment, and where he is deprived of the ordinary safeguards which world defend him in the possession of the coat on his back.

The description reads, “the said Anthony is a man of dark complexion, about six feet high, with a scar on one of his cheeks, and also a scar on the back of his right hand, and about twenty-three or four years of age.”

On a moderate calculation, fifty men of “dark complexion,” “about six feet high,” and “about twenty-three or four years of age,” live within ten minutes walk of Boston Court House, and these parts of the description will suit any of them as well as it did Burns. The only *specific* marks in the description, are the “scar on one of his cheeks, and also a scar

on the back of his right hand”—and without these particulars the description would be completely worthless. But even these specific marks are not sufficiently exact. *Which* cheek is scarred, the right or the left? The record does not state. Perhaps Col. Suttle thought it wiser not to state, which cheek. But if he leaves it uncertain we are not only at liberty but we are bound to give the victim the benefit of the doubt; to presume that it was the right cheek and not the left, that carried the mark of brutal treatment. There was a scar on the back of the right hand of the alleged Slave. But even this description is fatally inexact. There was another mark on the back of the same hand even more striking than the scar, and more likely to be embodied by a Slaveowner in a personal description of a Slave—and that was the broken bone which stuck out from the back of the hand, and proclaimed, louder than words, his depreciated value as a Slave. 23 The mere scar of a flesh wound does not affect the market value of a Slave. It may go to prove that the spirit of the Slave has been regularly broken, and in so doing perhaps add to his value. But a broken bone in the right hand would seem to be *the* mark of all others that the owner of a Slave would bear in mind—the last which he would omit to mention in a careful personal description. Consequently, if Col. Suttle omitted this prominent feature, we are bound to presume that it was owing to the fact that no such mark existed on the hand of the genuine Anthony Burns, and the fact that the person claimed had such a mark, should be regarded as proof that he was not the Anthony Bums described in the record.

It is however said that Mr. Brent identified the prisoner as the Slave, Anthony Burns, whom he had hired of Col. Suttle in 1846, '47, and '48, or '47, '48, and '49, and whom, as the agent of Col. Suttle, he had hired to Mr. Millspaugh in 1853 and 1854. He testifies that the Slave “had a scar upon his right cheek, and a cut across his right hand,” and he knew “no other mark upon him.”

If this testimony is correctly reported, Mr. Brent made a fatal mistake; for it was the left and not the right cheek of the prisoner that was scarred—if such a disfigurement as his may be called a scar. Probably, however, the pamphlet report is incorrect. According to the minutes taken by Mr. Ellis, the expression used was: “Our Anthony Burns had two marks—

one a scar on his cheek, the other a cut across his right hand.” When giving this testimony, Mr. Brent made a motion with his hand, which the reporter may have construed to refer to the scar being on the right cheek. It is quite remarkable, however, that after having been so kindly allowed by the Marshal an opportunity to see the prisoner on the night of his arrest, he should not have remembered to testify distinctly that the scar was on the left cheek; more especially as the man was before him when he was giving 24 his testimony, so that any, the least mistake was unpardonable.

The most incredible thing about Mr. Brent's testimony is this: he professed to have hired the prisoner himself for three consecutive years, and frequently since. He accordingly had constant, daily, and hourly opportunities of examining and fully knowing *all* his personal marks and defects; and vet in all this time he never once discovered the broken bone in his right hand! *The* mark, *the* defect of all others,' that would have impressed itself on his mind, because it affected his interest, he knows nothing of, and can remember nothing about! The presumption must be that the real Slave did not have this mark.

He is also positive that he saw Col. Suttle's Slave in Virginia on the twentieth of March last. He is as sure of this fact as of any other. But the counsel for the defence showed by the testimony of men whose veracity it was impossible to doubt, that the prisoner was working in South Boston in the early part of March, that is, at the very time that Col. Suttle's Slave was quietly doing labor and service to Mr. Millspaugh, in Richmond.

Jones, the first witness, testified as follows:—

“I reside in South Boston; am a laborer; know Burns; saw him first on Washington Street, the first day of March; I talked with him half an hour; I employed him to go to work on the fourth day of March, in the Mattapan Works at South Boston; worked at cleaning windows; he worked with me there five days; the day I saw him I made a minute of it in Mr: Russell's shop, and asked Mr. Russell to put it down on my book; keep a memorandum; can't write myself; the entries were made in the book by Mr. Russell; I agreed to give him

eight cents a window, and when he got through with the windows, I gave him a dollar and a half; he said I had n't settled up with him right; he went to the clerk about it; I have that memorandum book; (it was handed to the counsel;) on referring to this book I am able to state that I did go with him at this time to South Boston to work."

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Mr. Jones was very closely cross-examined, but the main facts just quoted were abundantly confirmed by other witnesses.

" *George H. Drew* (white,) called. Was book-keeper at the Mattapan Works until the eighteenth of this month; knew that Jones was employed about the first of March to wash windows at the Mattapan Works; he was there several days; there were two or three men with him; there was a colored man working with him; had not seen the prisoner at the bar from the time he worked there until I saw him here yesterday; yesterday came in here, and when I saw Burns, recognized him; now recognize him; saw him before with Jones when Jones came to get a job, and I referred him to Mr. Sanger; I looked at this man, and asked Jones if he was his brother, and he said, All men are my brothers; about the first of March, after I settled with Jones, Burns came to me and asked me how much I paid Jones; do n't recollect the number of days they worked; have no doubt of the identity of the man; recognize him by his general appearance; saw him enough here to recognize him; when I came in yesterday, Burns followed me all around the room with his eyes; I paid Jones for his work.

" *Cross-examined.* Saw him twice to notice him particularly; one of these times was when he came to ask how much I paid Jones; and the other when they came to see about the job; I never noticed the scar on his hand.

" *George W. Drew* (re-called,) testified that the way in which he fixed the day of Burns being at work at the Mattapan Works was by the entry in the cash book; I paid Jones $1,50 on the fourth of March, and made a final settlement with him on the twenty-eighth, paying

him in all $33,50; the work had been finished some days when I settled with him; the first work he did was cleaning the windows."

" *James F. Whittemore* sworn. Reside in Boston; am a machinist; in March last was connected with the Mattapan Works; am a member of the City Council; went West some time in the first of March; returned the eighth of March; know the man at the bar: saw him on the morning of the eighth or ninth of March, at our shop at South Boston; he was cleaning windows with Mr. Jones [Burns stood 4 26 up and was recognized by the witness]; I then noticed the mark on his cheek, and also the mark on his right hand; have seen him in court to-day; when I saw him at the shop, it was the first time I had been to the shop after my return, and I went immediately after my return."

" *H. N. Gilman* sworn. Live in Boston; in March worked for the Mattapan Company; remember Jones's working there, and having a colored man with him; noticed a scar upon his face; I saw him after the work was finished, in the counting-room; the next time I saw him was in the court this morning; Mr. Jones asked me yesterday if I did not recollect the man who was in his employ last spring; have since been summoned; Burns was not pointed out to me; I recognized him; he is the person who was at work for the Mattapan Company, in March.

" *Cross-examined.* Was a teamster for the Mattapan Iron Works; I saw Burns working there four or five days; perhaps half an hour in all; left their employ the thirteenth of April; we were paid off the first of the month, and it was near pay day that I saw him; I feel sure that it was done before the middle of March; I am more sure that it was the first week in March than that it was the second week."

" *Rufus A. Putnam* sworn. Am a machinist; was employed by the Mattapan Company in March; remember Jones and a colored man working there; fix the time by commencing a job at the time Jones was at work there, and also by the change of hours for commencing and ending work.

" *Cross-examined.* Took the job the first part of March, and it was then that Jones was there; it was before the tenth of March; have memoranda which enables me to fix the time; I will swear that it was before the sixth of March that I commenced the job; commenced it before the fifth; I can swear it was before the third of March that I commenced the job; I went to Mr. Ellis's office this morning, by request of Mr. Drew; I went in with Mr. Whittemore; can't say whether I asked him to go in with me; was never in there before; looked at my memorandum on Sunday; I commenced the job just before Mr. Jones was there; the job is not done yet."

" *Horace W. Brown* (police officer). Reside in South Boston [Burns stood up]; I have seen that man before; he 27 was cleaning windows at the Mattapan Works, South Boston; I was at work there as carpenter; I left work there the twentieth of March; saw Jones and Burns at work there some week or ten days before I left; I have not the slightest doubt about the man."

On his cross-examination he said: "I left on the twentieth of March; Burns was at work there about ten days before I left; Burns was at work on the windows; I called on Burns to clean a window where I was at work; I was paid $29,50 on the third of April; it was ten or twelve days after I quit work, before I was paid off; know Burns by his general appearance, and by the sear on his face; thought I should know him by this mark; and said so to some of the men in the police office."

Here, then, are four entirely unimpeachable witnesses, who swear that they saw the prisoner at the bar cleaning windows at the Mattapan Works with Jones, sometime in March, When Drew entered the Court Room, the prisoner doubtless recognizing him as the man with whom he had conversed, followed him with his eyes "all around the room." Whittemore "noticed the mark on his cheek, and also the mark on his right hand." Gilman and Brown both noticed the "scar upon his face." Brown called upon Burns to clean a window where he himself was at work; and he says, "I have not the slightest doubt about the man." The time when this work was done by Jones and Burns is also fixed. Whittemore

says he saw Burns there either on the eighth or ninth of March. Gilman feels sure that it was before the middle of March, and is more sure that it was in the first than the second week. Putnam is sure that he commenced his job before the third of March, “just before Mr. Jones was there.” Brown says we left work on the twentieth of March, and he “saw Burns at work there some week or ten days before he left.”

Two other witnesses, not connected with the Mattapan Works, testified to seeing Burns here the early part of March.

“ *Stephen Maddox* (colored,) sworn. Live at 72 Essex Street; keep a clothing store; kept there in March; know 28 Burns; saw him at my store in March, with Mr. Jones; it was about noon; he was there about five or ten minutes; I fix the time by Mr. Jones asking of me if I had any work; I stated that my outside work didn't commence for two months, the first of May—that is all I can fix the time by. I particularly noticed the mark on Burns's left cheek; I did n't see him again till I saw him to-day at ten o'clock, in this room; came in here with Mr. Jones, Russell, and others; I recognized him myself, without his being pointed out to me.”

“On cross-examination he said: ‘I fix the time of Burns being in my shop by the fact that I told Mr. Jones that my busy time did not commence for two months, which would be the first of May; I mean by my outside work, cleaning windows, shaking carpets, &c.’

“ *John Favor.* Reside in Boston; am a carpenter; reside in Lincoln Street; saw Jones in my shop in March; he had a colored man with him; he came to get employment for the colored man with him; didn't see the man who was with Jones again until yesterday; I thought I could recognize him if I saw him; when I came into court I recognized him as the man who came with Jones to my place, about the first of March; I have no doubt of it; it was between the first and fifth of March, I should think; have nothing by which I can fix the date definitely.

“ *Cross-examined.* When he came with Jones to my shop, I conversed with him.”*

* The rebutting testimony does not shake this evidence, Mr. Benj. True testified as follows: —

“Am a constable of Boston; first saw the prisoner on the night of his arrest; I was asked to go into the Marshal's office; Mr. Freeman said he wanted to use me; he told me to go up stairs to a room where there was a prisoner; I did n't know what the prisoner was there for until I got up stairs; found five or six men there; two of them are sitting beside him now; one is Mr. Pray; Mr. Butman was one; another was Moses G. Clark; Mr. Coolidge was there, and Mr. Page; my instructions were to stay there and see that no one came except by the direction of the Marshal; stayed there Wednesday night, and have been there since; I was armed with a sword and pistol Friday night; these arms are kept in the rooms; there are six of us in the room; the Marshal and ethers came into the room Wednesday night; there was a good deal of talk between the officers and Burns; don't recollect any one saying he mast go back; he first appeared terrified; been talking about Massachusetts, Virginia, and other matters; I never threatened him, or held out any promises to him; we endeavored to treat him well; gave him newspapers, oranges, oyster stews, and candy, when he wished them; he can read and write.

“The conversation was on Friday and Saturday; on Friday conversed with Burns about the length of time he had been here; he said he had been here about two months, perhaps a little short of that; said nothing else about the time he had been here; he said he had been in Richmond, Virginia, before that time.”

The admission of this testimony was resisted at every step, and many of those present smiled, when it finally came out, that in the middle of May, Burns said he had been here *about* two months, because his own witnesses had testified substantially to the same fact. Mr. True having given all the conversation had stopped—but on being jogged by the claimant's counsel, he saw how little service he had done—and added, “perhaps a little

short of that.” We do not think his testimony injured the case of the prisoner at all. He is not even referred to by the Commissioner in his opinion;

There are seven witnesses who are sure that they saw the prisoner here in the early part of March—from the first to 29 the eighteenth. We will suppose that the colored men felt some bias in favor of the prisoner, and shall not rely on their testimony—although there is no real doubt of its correctness. We have then five white persons, whose veracity is unquestioned, who are perfectly unbiased, who have no interest to sway them one way or the other, and who have enjoyed sufficient opportunities for personal inspection to enable them to feel sure as to the identity of the man, and they all agree in swearing that the prisoner was here at the very time that Mr. Brent swears that Col. Suttle's Slave was in Richmond. On this testimony, one of two conclusions is beyond all question true. Either the prisoner was not Col. Suttle's Slave, or else Mr. Brent has made another capital mistake in his testimony.

That here was reasonable ground for adopting the first conclusion, few can doubt. But Mr. Commissioner Loring avoided this, and paid no heed to the other conclusion.

The following extracts are taken from his opinion:—

“The testimony of the claimant is from a single witness, and he standing in circumstances which would necessarily bias the fairest mind—but other imputation than this has not been offered against him, and from anything that has appeared before me, cannot be. His means of knowledge are personal, 30 direct, and qualify him to testify confidently, and he has done so.

“The testimony on the part of the respondent is from many witnesses whose integrity is admitted, and to whom no imputation of bias can be attached by the evidence in the case, and whose means of knowledge are personal and direct, but in my opinion less full and complete than that of Mr. Brent.”

It is no doubt true that the witnesses for the defence had “less full and complete” means of examining the prisoner, than Mr. Brent had for the examination of Col. Suttle's Slave. But what is lost in this respect is much more than compensated by the number of those who concur in identifying the prisoner. One of them, indeed, identified him by the very same marks on the cheek and hand that Mr. Brent refers to.

But is it true, that the only imputation that can be offered against Mr. Brent is, that he stands in circumstances which must necessarily bias the fairest mind?

That he owns Slaves—that he hired out the Slaves of other people, for profit—(a genteel kind of Slave-trading)—that he “volunteered” for the Slave hunt to Boston as Col. Suttle's “friend,” without fee or hope of reward—not even a promise to have his expenses paid, in the estimation of Mr. Commissioner Loring, only proves that Mr. Brent stands in “circumstances which necessarily bias the fairest mind!”

That this owner, and hirer out of Slaves, and consequently criticiser of their manual ability as working tools, should, on his own showing, have had hourly opportunities for the space of three years consecutively, and frequently since, of knowing every personal defect in Col. Suttle's Slave, which would impair at all his working ability—and notwithstanding this, that he never once discovered the broken bone in his right hand— *the* most striking mark in the estimation of a Slave owner, that a Slave could have, in the opinion of the Commissioner—offers no imputation on his integrity as a witness, and does not impair the value of his recognition of that Slave!

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How like a fair and noble minded man he acted, when, on the night of the arrest, when the poor victim was paralyzed by fear and agony, surrounded by armed ruffians who had captured him on a lying pretence, he went into the Marshal's room in Boston Court House, to get evidence for his “friend,” Col. Suttle—and to enjoy an opportunity for refreshing his

recollection of the personal marks, so that there might be no disagreeable mistakes in his testimony!

Nor does it shake Mr. Commissioner Loring's confidence in the fair-mindedness and veracity of Mr. Brent, that he is directly contradicted by five white persons—as he himself admits, equally respectable in point of character—perfectly unbiased—and without any interest one way or the other, He contents himself with thus disposing of the conflict.

“Then between the testimony of the claimant and respondent there is a conflict, complete and irreconcilable. The question of identity on such a conflict of testimony is not unprecedented nor uncommon in judicial proceedings, and the trial of Dr. Webster furnished a memorable instance of it.

“The question now is, whether there is other evidence in this case which will determine this conflict. In every case of disputed identity there is one person always whose knowledge is perfect and positive, and whose evidence is not within the reach of error, and that is the person whose identity is questioned, and such evidence this case affords. The evidence is of the conversation which took place between Burns and the claimant on the night of the arrest.

“When the complainant entered the room where Burns was, Burns saluted him, and by his *Christian* name—‘How do you do, Master Charles? ’ He saluted Mr. Brent also, and by his *Christian name* —‘How do you do, Master *William?* ’ (To the appellation ‘Master,’ I give no weight.)

“Col. Suttle said, ‘How came you here?’ Burns said an accident had happened to him—that he was working down at Roberts's, on board a vessel—got tired and went to sleep, and was carried off in the vessel.

“Mr. S. ‘Anthony, did I ever whip you?’

“B. ‘No, sir.’

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“Mr. S. Did I ever hire you out anywhere where you did not wish to go?’

“B. ‘No, sir.’

“Mr. S. ‘Have you ever asked me for money that I did not give it to you?’

“B. ‘No, sir.’

“Mr. S. ‘When you were sick did I not prepare you a bed in my own house, and put you upon it, and nurse you!’

“B. ‘Yes, Sir.’

“Something was said about going back. He was asked if he was willing to go back, and he said—Yes, he was.

“This was the testimony of Mr. Brent. That a conversation took place was confirmed by the testimony of Caleb Page, who was present, and added the remark that Burns said he did not come in Capt. Snow's vessel. The cross-examination of Brent showed that Col. Suttle said—‘I make you no promises, and I make you no threats.’

“To me this evidence, when applied to the question of identity, confirms and establishes the testimony of Mr. Brent in its conflict with that offered on the part of the respondent, and then on the whole testimony, my mind is satisfied beyond a reasonable doubt of the identity of the respondent with the Anthony Burns named in the record.

“It was objected that this conversation was in the nature of admissions, and that too of a man stupefied by circumstances and fear, and these considerations would have weight had the admissions been used to establish the truth of the matters to which they referred,

that is, the usage—the giving of money—nursing, &c.; but they were used for no such purpose, but only as evidence in reference to identity. Had they been procured by hope or fear, they would have been inadmissible; but of that I considered there was no evidence?"

The admission of this so-called confession was objected to, and it should have been rejected altogether by the Commissioner. "The evidence of verbal confessions of guilt," says Greenleaf, (1 Ev. § 214,) "is to be *received with great caution.* For besides the danger of mistake, from the misapprehension of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory, it should be recollected that the mind of the prisoner 33 himself is oppressed by the calamity of his situation, and that he is often influenced by motives of hope or fear to make an untrue confession. * * The weighty observation of Mr. Justice Foster, is also to be kept in mind, that this evidence is not, in the ordinary course of things, to be disproved by that sort of negative evidence, by which the proof of plain facts may be, and often is, confounded."

All the real evidence of the conversation comes from Mr. Brent. Though the room in which the conversation took place is not a large one, and Mr. Page was present during the whole conversation, yet, with one exception, he cannot testify as to any of the language used by Burns; he only knows that *a* conversation took place. He remembers, however, Burns's denial that he came here in the way that Col. Suttle desired him to confess. We must take this confession, then, solely on the credit of Mr. Brent, a witness who is the friend of the claimant, who is strongly biased against the prisoner, who went into the room for the express purpose of getting evidence to convict him, and whose testimony has been broken down in two very important particulars. But this is not all. We cannot, of course, in a summary proceeding, with no time to hunt up or send for witnesses, test his veracity as to occurrences in Virginia. It is only in relation to events and facts occurring *here,* that we *can* overthrow his evidence. Nor can it be expected that we should be able to *convict* him of falsehood in reporting this conversation, however untrue it may be in point of fact, because no friend of the prisoner was allowed to be present. Consequently we have overthrown the *only* points in Mr. Brent's testimony which it is possible for us to overthrow, namely:

the agreement of the personal marks of the prisoner with those of Col. Suttle's Slave, and that the prisoner was in Virginia when Mr. Brent says he saw him. But if the testimony of a witness is thus completely broken down upon every point in which it can be, the credibility of the rest of his testimony is very much shaken also—if not shown to be worthless. 5

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This conversation, therefore, rests wholly upon the testimony of a witness whose reputation for correctness has been very much shaken, if not overthrown, who went into the room strongly biased against the prisoner—and for the very purpose, if possible, of getting evidence sufficient to convict him. Even if the conversation in itself be admissible, in an issue of Slavery or Freedom, it should be proved by an unimpeached witness, and not by such testimony as this of Mr. Brent.

We cannot, however, too highly praise Mr. Commissioner Loring's originality in discovering so short and easy a method for solving questions of conflicting testimony! Henceforth, when the testimony of one biased witness, whose evidence has been broken down wherever it can be, is contradicted by that of five persons who are wholly free from bias, we shall not be obliged to resort to other witnesses to find out which story is to be believed. All we shall have to do will be to let this same broken down witness support his own testimony—and if he does it satisfactorily, he is to be believed, rather than the five others who contradict him.

Before any confession can however be received in evidence, "it must be shown that it was *voluntary.* The course of practice is to inquire of the witness whether the prisoner had been told that it would be better for him to confess, or worse for him if he did not confess, or whether language to that effect had been addressed to him." * * * "a confession, says Eyre, C. B., forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it; and therefore it is rejected. The material inquiry therefore is, whether the confession has been obtained by the influence of hope or fear, applied by a

third person to the prisoner's mind. * * The rule of law demands that the confession shall have been made voluntarily, without the appliances of hope or fear, by any other person, and whether it was so made or not is for the Judge to determine upon consideration of the age, situation, and character 35 of the prisoner, and the circumstances under which it was made.” (1 *Greenl.* § 219.)

Ordinarily, these appliances of hope or fear are contained in words addressed to the prisoner. It is commonly suggested to him substantially, or in so many words, that it would be better for him to confess. But it can make no difference in principle *how* these inducements are held out, whether audibly, by words, or inaudibly, by signs, gesture, or otherwise, so long as we are sure they *are* held out. It is evident that a deaf and dumb person may be so influenced as to vitiate his confession without a word being spoken on either side. Can there be any more doubt that a Slaveowner may influence his Slave with hope or fear, by a look or gesture, just as inaudibly, as in the case of a prisoner who is deaf and dumb? “The master,” says C. J. Henderson, of North Carolina, (State *vs.* Charity, 2 Dev. Rep. 543) “has an almost absolute control over the body and mind of his Slave. The master's will is the Slave's will. All his acts, all his sayings, are made with a view to propitiate his master. His confessions are made, not from a love of truth, not from a sense of duty, not to speak a falsehood, but to please his master; and it is in vain that his master tells him to speak the truth, and conceals from him how he wished the question answered. The Slave will ascertain, or what is the same thing, think that he has ascertained the wishes of his master, and mould his answer accordingly. We, therefore, more often get the wishes of the master, or the Slave's belief of his wishes, than the truth; and this is so often the case that the public justice of the country requires that they should be altogether excluded. Confessions made to propitiate the good opinion of the gaoler, or to avert harsh treatment are excluded upon the same principle. I think the case of the master and Slave much stronger, The power of the gaoler is temporary and limited, that of the master permanent and almost unlimited. The public justice of the country loses but little by excluding these confessions: for confessions of all kinds are very questionable

guides to 36 truth." In other words, the mere presence of a master overwhelms a Slave with emotions either of hope or fear; so that everything he says or does is involuntary on his part, and is so said or done with the hope of pleasing his master. A Slave cannot act voluntarily in the presence of his master, in relation to any matter in which he thinks his master may have an interest. So that if the prisoner had really been the Slave of Col. Suttle, these confessions or statements which Mr. Brent says were made by him, being so made in the presence of Col. Suttle should have been rejected as involuntary, and made under the influence of hope or fear applied by Col. Suttle.

Is the reason for excluding a confession any less strong, when the prisoner is only claimed as a Slave by the person in whose presence he is? Solomon Northrup was a free citizen of New York; and yet, after being once whipped, he never dared for years to lisp the truth to any white man, so great was his dread of the consequences which might ensue to himself from such a declaration. Though really a freeman, and only claimed as a Slave, he did not for many years dare to avow his freedom to any white person, even in the absence of his claimant. Now, admitting that the prisoner had formerly lived in Virginia as a Slave, and had known Col. Suttle and Mr. Brent, (and there are Fugitive Slaves now in this vicinity who have, with a sinking heart, recognized Col. Suttle in the street,) would not he or any of them be overcome and stupefied with fear, after being arrested on a false pretence, at being suddenly confronted with him in the Marshal's room, and at discovering that he was claimed by him as a Fugitive Slave. If one whipping could silence for years the tongue of a freeman, will not the remembrance of what he has suffered in Slavery suffice to overwhelm with fear a Slave claimed by a person who is not his owner, but whom he knows, and who knows him? He cannot proclaim the truth, that he is a Slave of some other person, for this he knows will be his sure destruction. He may think, too, the claimant has authority from his owner to seize him. At all events, one who 37 is a Fugitive Slave cannot fall to be overwhelmed with fear at the sight of a claimant whom he recognizes, whether that claimant be his real owner, or whether he may be only acting as that owner's agent; and

if so, his confessions, when thus influenced by fear, ought not to be received in evidence against him.

But we are not driven to rely on these reasons for excluding a confession extorted from a Fugitive Slave in the presence of his owner or claimant; because even Mr. Brent is able to recollect that Col. Suttle not only said to the prisoner, “I make you no promises and I make you no threats,” but that “he would make no compromises with him.” Here is then evidence directly to the point, that Col. Suttle applied motive both of hope and fear. I will treat you, he said to the prisoner, in substance—I will treat you, when we get back to Virginia, as your conduct in this proceeding may deserve. If you aid me, well and good; if you endeavor to thwart me, beware! Even the immaculate Mr. True remembers that the prisoner appeared terrified. Indeed, he was so stupefied with terror even the next morning that it was not considered decent to proceed with the testimony. If he was thus overcome with terror caused either by the presence or remarks of Col. Suttle, his conversation with him was not uninfluenced, and ought not to have been received. Even Mr. Commissioner Loring is compelled to admit that these considerations would have weight, had the admissions been used to establish the truth of the matters to which they referred, that is, the usage,—the giving of money—nursing, &c.; but they were used for no such purpose; and accordingly the Commissioner contented himself with giving them a thousand-fold greater importance! He would not receive them to prove the fact that the prisoner owed the claimant a *cent* —not he! But to receive them to prove his identity as the Slave of Col. Suttle, is a much less important matter!

Suppose, however, that these reasons are without force, and that the confession was properly admitted. If it is to be admitted, all or none of it should be received. It is a monstrous 38 act of injustice for the Commissioner to cull out one or two parts of the confession, and to decide the case upon them, and to reject another part which disproves the second point of the claimant's case—and yet this he has, as we have seen, ventured to do!

Does, however, the confession, when strictly analyzed, prove that the prisoner was the Anthony Burns described in the record? It is not only to be *strictly* construed, but we are bound to make every presumption in favor of the liberty of the prisoner, that is consistent with the precise words of the confession, and other facts proved. And if with these presumptions, the confession can receive an interpretation consistent with the idea that the prisoner is not the Slave Anthony Burns, we are bound to give it such interpretation.

The prisoner says—“How do you do, Master Charles?” and afterwards to Mr. Brent—“How do you do, Master William?” The Commissioner, for a wonder, does not rely at all on the expression “master,” probably for the reason suggested by Mr. Dana, that if it had any weight, it would disprove the claimant's case, by proving that Mr. Brent also was an owner. The great overwhelming fact which settles the case—which the Commissioner has underlined in his opinion—is the fact that the prisoner actually knew that Col. Suttle's name was Charles, and that Mr. Brent's name was William. Was it then beyond all reasonable doubt in the Commissioner's mind that no other black man, except the genuine Anthony Burns, could be found in Boston who knew Col. Suttle's Christian name? We were not at liberty to prove the fact, but notwithstanding we are quite sure that the contrary is true, and that many are now in Boston, who, if they had been brought into the Marshal's room that night, under similar circumstances, would have also said, “How do you do, Master Charles?” Now if such an one had been arrested in place of the prisoner, he might, in his terror and confusion, very likely make the same replies that are falsely or otherwise attributed to the prisoner. He might give the same description of his escape. If he had ever been hired to Col. 39 Suttle he might have answered all the questions precisely as stated. There is nothing, therefore, in the whole conversation which is inconsistent with the hypothesis that the prisoner, now free, was formerly a Slave hired out to Col Suttle. And accordingly we are at liberty to make the presumption—because in favor of life and liberty—every reasonable presumption consistent with the facts proved, may be made.

The only circumstance in the whole conversation which even seems to conflict with this view and to imply that the prisoner was the Slave Anthony Burns, is the fact that he answered No, Sir, to the question put by Col. Suttle, “Anthony, did I ever whip you?” But from the form of the sentence, it is unlikely that any emphasis was made upon the name. Col. Suttle did not ask, What is your name? or Is not your name Anthony Burns? in which case the answer would have been unmistakable. But he says, addressing himself towards the prisoner, “Anthony, did I ever whip you?” The flogging is *the* point of the question; and to this an answer is made. The name was not emphasized; it was not given in full, and it is just to presume it was not heard by the prisoner any more than it was by any of those present except the fair-minded Mr. Brent, who went there for the express purpose of hearing as much against the prisoner as possible. Even if, therefore, we rely on the veracity of a man whose testimony has been utterly broken down, wherever it was possible for us to test him; even if we think that one who is claimed as a Fugitive is to be considered as wholly freed from influences of hope or fear, when suddenly brought into the presence of his claimant; even if we think that Col. Suttle, when he said to the prisoner “I make you no promises and I make you no threats,” and “I make no compromises with you,” did not apply to him such motive of hope or fear as will vitiate the confession,—although he is proved to have appeared terrified,—there is nothing in the confession itself which, on a strict analysis of it, is not entirely consistent with the prisoner's being now a 40 free man, though formerly hired to Col. Suttle as a Slave. And such a presumption it is our duty to make.

Even with the confession, therefore, the claimant fails to make out his third point; and without it his third point is entirely disproved.

We have thus gone through the law and the testimony bearing upon the claimant's case. In his opinion, the Commissioner used these words:—

“It is said that the statute is so cruel and wicked that it should not be executed by good men. Then into what hands shall its administration fall, and in its administration what is to

be the protection of the unfortunate men who are brought within its operation? Will those who call the statute merciless commit it to a merciless judge?”

How did *he* thus mercifully protect the rights of the unfortunate man before him? By going beyond the requirements even of this merciless statute, and holding that the *ex parte* record made up in Virginia should be conclusive in favor of the claimant, even though proved by himself to be false! By relying on one part of a confession of the prisoner, to make out a case against him, and refusing to consider another part, which tended in his favor. By considering the testimony of five disinterested, unbiased white witnesses as merely balanced by that of one person who was very strongly biased against the prisoner, and whose testimony had been broken down wherever it was possible to test it. By deciding this conflict of testimony as to identity on the strength of a confession proved only by this one broken down witness, a confession, too, which he himself admits was obtained under such circumstances as to be impaired as evidence to show even the slightest amount of pecuniary indebtedness. He might not let the confession in to prove the pecuniary indebtedness of the prisoner, but he had no doubt of its admissibility to prove a fact which was to doom him to Slavery! Alas for the poor Fugitives, if these are to be considered as the rulings of a merciful judge!