MAINE STATE LEGISLATURE

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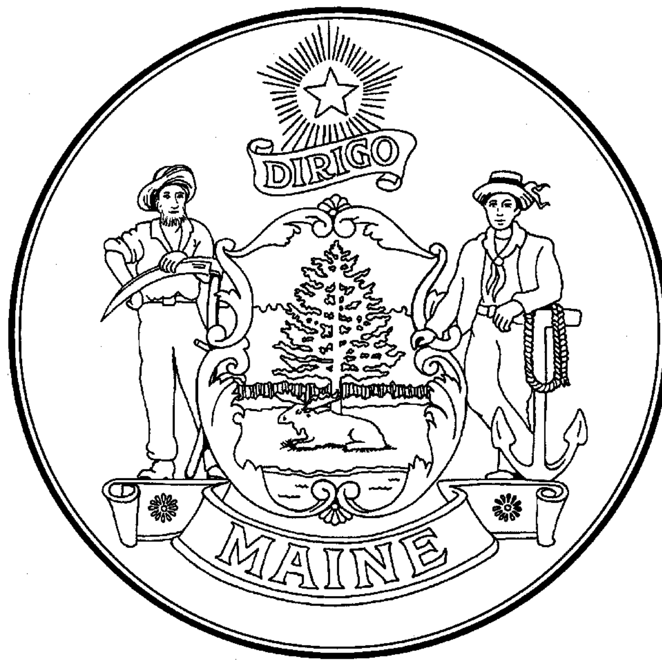

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1843.

AUGUSTA:

WM. R. SMITH & Co., PRINTERS TO THE STATE.

1843.

TWENTY-THIRD LEGISLATURE.

No. 45.] [SENATE.

REPORTS

OF THE

COMMITTEE ON SLAVERY.

[Wm. R. Smith & Co....Printers to the State.]

REPORT.

IN SENATE, March 4, 1843.

The joint select committee to whom was referred the petition of John Godfrey and others, also sundry other petitions upon the same subject, having attended to that duty, ask leave respectfully to

REPORT:

That the petitions, ten in number, embrace substantially, with but little variation of word or matter, the following requests.

First—To forbid all persons holding any office, under the authority of this State, in any way officially or under color of such office, to aid, abet, or *counsel*, in the arrest, or detention, of any person claimed as a fugitive from slavery.

Second—To forbid the use of any jail or other public building of any description, *within* this *State*, for confining or detaining any alleged fugitive from slavery.

Third—That our Senators in Congress be *instructed*, and our Representatives requested, to oppose utterly, the annexation of Texas to this Union.

Fourth—To instruct our Senators, and request our Representatives in Congress to use their influence to procure the repeal of all laws, rules, orders and resolutions, which *directly* or *indirectly* implicate this State in sustaining slavery, which infringe the sacred right of petition, or the freedom of *speech* or debate, and to prevent the enactment of such laws, or the adoption of such rules, orders, &c., in future.

Fifth—To propose such amendments to the constitution of the United States, as shall *forever* separate the people of Maine from all connection with slavery.

It will be readily perceived that the two first requests embrace

substantially the *same* principle, and contain the same proposition, that is, to prohibit the civil authorities of this State from assisting in the recovery of fugitive slaves.

The constitution of the United States, article 4th, section 2d, provides that no person held to service, or labor in one State, under the laws thereof, escaping into another, shall in consequence of any law, or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

The petitioners contend that the delivering up is accomplished, and that requisition of the constitution is complied with, when the claimant is permitted to come and take his fugitive slave away, as, say they, would be the engagement of a neighbor to deliver up a stray horse, or other misplaced property, when he permits the owner to come and take it.

They also cite judicial decisions to the effect, that the civil authorities of a State may not be used for the *arrest* and *delivery* of fugitive slaves, if the State by legal enactments prohibits such use, or, in other words, that it is optional with the States to prohibit or permit such use.

Let us see how this stands.

Here then is a solemn compact entered into between the *slave*-holding and the *non*-slave-holding States, to deliver up fugitives from service. A compact which is morally binding upon the State as a whole, and upon every citizen indvidually, and which places every citizen within the reach of the general government, so far as the means necessary for carrying it into effect are concerned. The language is imperative—shall be delivered up; the object to be attained a definite one—the recovery of fugitives from service; and the power granted to Congress to carry it into effect, extends to all means necessary and proper to effect that object.

But what is the import of the words, shall be delivered up? It is a rule in the construction of all contracts, so to construe them, that they shall not destroy themselves or become nugatory, and this rule must apply with imperative force to constitutional compacts. The framers of the United States constitution, as will appear from

their debates, were extremely cautious in the choice of words. They no doubt intended the words, shall be delivered up, should have their ordinary import and force. The term to deliver up, implies in all its applications, a person, or agent, delivering an object to be delivered, and a person to whom it is delivered. In the compact, shall be delivered up, necessarily implies action on the part of those who bind themselves to deliver. A mere passive acquiescense, permitting the person claiming service to come and take, cannot comply with the terms.

The compact binds the State as a whole, and each of its citizens severally, under the strongest moral obligation, to assist in the delivery. How then is Congress to carry the power implied in this compact into effect? In this, as in all powers granted in the constitution, the authority of Congress reaches to every individual citzen. Their laws under the constitution, are the supreme law of the land, and every citizen is bound to obey and to assist in carrying them into effect. It is the excellency of the constitution, compared with the old confederation, that it places the citizens individually, instead of the States as a whole, within the reach of Congress. It was undoubtedly understood, that the means ordinarily resorted to, in the States, for the apprehension and delivery of fugitives, should be employed. In this case, Congress can reach the people of a State only through its executive officers, including the supreme executive, or Governor, and all the magisterial officers under him, as the executive power in the whole.

The power of Congress to command and control the powers of the States, is limited only by the extent of the means necessary and proper to carry into effect the powers granted them in the constitution, and by the means necessarily reserved, to be exclusively employed by the States, severally for the maintenance of their own powers and sovereignty. Hence is it that the United States cannot employ the judicial power of a State, for its own judicial purposes. The judiciary of a State is called into full requisition, and all its services are necessary to maintain State sovereignty.

The States may then prohibit their judicial officers, as such, from being used by the United States. They may also exempt

them from the liability and the penalties attached to it, of being called upon to assist in apprehending fugitives. This has been decided in cases too numerous to cite. But if a judge, feeling his moral obligation as a citizen stronger than his obligation to his official duties, choose to assist, he may not be punished by the State, further than removal from office. Any further punishment would be an interference with his private rights, and his duties to the supreme law of the land.

But it is believed by your committeee that Congress has the power, to use directly our executive officers of every grade in the accomplishment of the object now under consideration. That it would be competent for them to pass a law directing application to be made directly to the supreme executive, as in the case of fugitives from justice, and that the Governor, or executive, would be bound to see their order carried into effect, by apprehending and securing the fugitive through the magisterial and other State officers, it is presumed none will deny. But it is evident from comparing the paragraph which relates to fugitives from service, with the next preceding one, relating to fugitives from justice, that application directly to the supreme executive, was not contemplated. In the case of fugitives from justice, the application is directed explicitly to be made to the executive of the State. In the case of fugitives from service, no such direction is given, but it is simply said, on claim of the party. Claim upon whom? Evidently upon the magistrates, and such other of the inferior executive officers as are usually employed by the States for the purpose of apprehension and delivery. That it was so understood, by the framers of the constitution, and that it has been so construed by all subsequent congresses, is evident from the fact, that the only act passed upon this subject, that of February, 1793, enacted by a Congress convened soon after the adoption of the constitution, and composed of many members who assisted in framing that instrument, and who must of course have understood its meaning, makes no provision for the arrest and delivery of the fugitive; but simply points out the kind of tribunal before which the adjudication shall be had. Again, Congress has from the first organization of the government used the

inferior executive powers of the States, for carrying into effect this, as well as the other powers bestowed upon them by the constitution; and their right so to do, has not been called in question.

*The marshal of a State is empowered to serve all precepts, and to command all requisite assistance of State officers, in the execution of his duty. And has not Congress, whose creature the marshal is, the same power? The sheriff and every other officer of this State is under oath, to support the constitution of the United States, as well as of this State. And can they be prohibited from obeying laws, necessary to that support, and punished for so doing? Certainly not.

The act of Congress, Sept. 24, 1789, provides that the arrest of offenders, against the United States, may be made through the justices or other magistrates of a State agreeably to the usual mode of process in such State.

The laws of New York have provided for the arrest of fugitives from service on a writ of habeas corpus (Kent, vol. 1, page 405). We may then consider it a point established, by the terms of the compact itself, by long established and undisputed usage, by legal enactments of the States themselves, that Congress has the power to use the justices and other magistrates of the State, for the arrest and securing of fugitives from service, and that no legislation by the States can destroy that power.

It is however a point, settled by judicial decisions, that in order to carry that, as well as all other powers granted in the constitution, into effect, Congress must enact laws directing the manner in which it is to be carried into effect, and that until such laws are enacted the State may prohibit its officers from acting in the premises. In relation to the use of jails for the custody of fugitives, the same principles would seem to hold good. But the jails are the public property of the State, necessary to its own purposes; as such, it would, therefore, seem reasonable that the State should have the authority to say who shall, and who shall not be admitted into them. Accordingly by resolutions of Congress, March 3d, 1792, the jailors of the several States, are to take custody by the direction of

* Act of Congress, Sept. 24, 1789.

the marshal, where the legislatures of the several States, in conformity with the recommendation of congress, have made it their duty so to do; otherwise, the marshal, under the direction of the district judge, is to provide his own place for securing.

The State then may, and it may not prohibit the use of its jails, directly to the United States. According to the views above taken, it would be bound to grant it, when application is made, through the supreme executive of the State. Is it then expedient that the State should prohibit the use of its jails, under any circumstances? Is it expedient, b cause Congress has not passed laws requiring her officers to assist in the arrest and delivery of fugitives from service, that she should prohibit their acting, until such laws, enacted, shall render it imperative for them to act? What would be the consequence of such prohibition? If because Congress has not deemed it necessary, especially, to empower and authorize State officers to assist in the apprehension of slaves, the State should forbid them from so doing, might she not be justly charged with violating the constitution? With violating so far as in her lies the great compact, without which, this union would never have been formed? So far as she can possibly act, that is, through her officers, she virtually proclaims that fugitives from service, shall not be delivered up. No one can for a moment doubt, that the consequences must be bitterness of feeling, acts of reprisal, and finally disruption of the Union.

The public peace here requires, that what is done should be done through our own officers. Suppose for a moment, that the State has the right to refuse, and should refuse, our own officers in executing the laws of Congress. No one can doubt that Congress has the power to enforce that article of the constitution in some way, and that way must be by appointing officers of its own for that especial purpose.—Officers stationed amongst us, attached to a foreign interest, who, like the consuls and other officers, sent abroad under the Roman government, would be looked upon with jealousy, their acts scrutinized and denounced, riotous proceedings follow and the States be put in direct collision with the general government.

The next subject which presents itself for consideration, is the annexation of Texas to this Union. Whatever opinion, aside from its slavery aspect, your committee may entertain as to the expediency or policy of such annexation, they do not feel themselves called upon, here, to give expression to that opinion. They are not aware, that any movement is now making, or is likely to be made, towards the accomplishment of that object. It is believed by them, that the constitution of the United States must be altered, before Texas can be admitted to this Union. Without such alteration, as well might we talk of annexing Mexico, Columbia, the Russian possessions in America, or even Russia, and Great Britain herself. The constitution of the United States, provides other ways for procuring its amendment, than through the action of this Legislature alone, and your committee are of the opinion that such action is not now called for.

The next subject in order, for consideration, is the repeal of laws, rules, orders, &c., which implicate this State in slavery, or infringe the rights of petition and freedom of debate—(debate it is supposed upon slavery questions.) In relation to the latter part, the infringing the right of petition, and freedom of debate, the representatives of the petitioners before your committee, are understood to say, that they have no complaint now to make, and therefore to waive its consideration by this committee. The subject has been taken up by a previous Legislature of this State, and their opinions upon it, fully expressed, and it is believed that no further action thereon is now required. In relation to the former part, laws, resolutions, &c., which directly or indirectly implicate this State, in sustaining slavery, your committee are not aware that any such exist, which are not necessary to carry into effect the compact, and are therefore constitutional. If any such do exist, it has not been made manifest to them. This part of the subject then, necessarily resolves itself into the next, and last, in order for our consideration:

To propose such amendments to the constitution of the United States, as shall forever separate the people of Maine from all connection with slavery.

What amendments? Such as shall authorize Congress to abol-

ish slavery in the District of Columbia? No. The petitioners contend that they have the constitutional right to do that now. Such as shall withhold the assistance of this State in apprehending and securing fugitives? Certainly not. They have already asked you to enact laws to effect that object, and they contend that you have the constitutional power so to do. What then? We pause for an answer. It is not to be conceded that the representatives of the petitioners endeavored to wink this last request out of sight; and, when it was urged upon them, denied that the sentiment contained in it is the sentiment of abolitionists generally.

But what are the facts? The petitions, ten in number, coming from all parts of the State, are stereotyped editions, mostly word for word, written, many of them, in the same hand writing, and all of them embracing the same requests, except the last, now under consideration. Two of them only, in addition to the other requests, contain this last, written out, word for word, alike. Those two come from parts of the State remote from each other—the one from Lebanon, in York county, the other from Mercer, in Somerset county.

These petitions, then, must have had a common origin; they must have been concocted at head quarters. The sentiment contained in the two last mentioned, must have had the same origin; and however incautious the petitioners may have been in uttering it, however unable the authority at head quarters to whip them into traces, it will be in vain for them now, with the evidence which is before us, to disavow its paternity.

What then, we repeat, is the request? Your committee can view it in no other light than a request to propose the disolution of this Union—that Union for which our fathers fought, and bled, and died—that Union which secures to us, all the social blessings and civil liberty, which make this country so preeminently above all the other countries, blessed and happy; the asylum of the oppressed, the sanctuary of liberty. The heart recoils at the idea; the head refuses further to entertain it; the hand palsies in the attempt to record it.

Your committee would therefore report legislation, upon any and all of the above named subjects, inexpedient.

JOHN HUBBARD, *Per Order.*

STATE OF MAINE.

House of Representatives, }
March 2, 1843. }

The minority of the committee to whom was referred the petitions of John C. Godfrey and others, on the subject of slavery, entertaining different views from the majority of said committee, on the subjects which were before them, felt bound to dissent from the principles advanced in the majority report, deeming them erroneous in principle, and if carried into practice, would leave the States and every individual inhabitant of the several States, to the complete control and caprice of the general government. Believing as they do, that the general government has no constitutional right to use the judicial powers of the several States to regulate *slavery*, either in the slave or free States; therefore we feel bound to protest against principles, which, if carried out, would violate the right of every sovereign State, and every freeman.

The sages and patriots of the revolution declared, "that man is born free," "as a self evident fact," in the first article of our constitution, section 1st, declares, "all men are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending *life* and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness." Believing that each *State* for itself holds supreme, indisputable and uncontrolled jurisdiction over the subject of slavery within its own limits, this entire power never having been delegated to the general government, is reserved to the States. Therefore, as the general government has no power to abolish slavery in the slave States, neither has it any

power to involve the free States in slavery. Your petitioners are of opinion that the petitioners should have leave to bring in a bill, which is herewith submitted.

CHARLES MORSE,
GIDEON PERKINS,
HENRY B. HART.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FORTY-THREE.

AN ACT more fully to protect the colored citizens of Maine.

WHEREAS, by the constitution of the United States
2 no State has the right, in any manner, to interfere
3 with the system of slavery as it exists in many of the
4 States in this Union; and whereas the constitution of
5 this State, recognizes the great principle that all men
6 are born free and equal, and are endowed by their
7 Creator with certain inalienable rights, among which
8 are, life, liberty, and the pursuit of happiness; and
9 whereas it is most desirable to carry out in practice,
10 these fundamental principles, on which the people
11 have based the government of this State.

Be it enacted by the Senate and House of Representa-
2 *tives in Legislature assembled*—as follows:
3 SECTION 1. That from and after the passage of
4 this act, it shall be deemed unlawful, and a high mis-
5 demeanor, for any judicial officer, any justice of the
6 peace, any coroner, sheriff, deputy sheriff, jailer, or
7 other executive officer of this State, in any manner to
8 interfere with any person who may have escaped from

9 slavery, into this State, for, or on account of such per-
10 son being a fugitive from slavery.

SEC. 2. All precepts issued by any judge of any ju-
2 dicial court of this State, or by any justice of the
3 peace, for the arrest of any alleged fugitive slave,
4 shall be utterly null and void; and any judicial officer
5 or justice of the peace, who shall issue such precept,
6 and any executive officer who shall undertake to serve
7 the same, shall be subject to indictment in the su-
8 preme judicial court or district court, within the dis-
9 trict where such offence is committed, and if con-
10 victed thereon be fined in a sum not less than two
11 hundred, and not exceeding one thousand dollars.

SEC. 3. No jail in this State shall be used, under
2 any pretence, to confine any fugitive slave, as such, or
3 any person who has escaped from slavery, for that
4 cause. And any sheriff, jailer or deputy jailer, who
5 shall receive, and confine, any fugitive slave for the
6 reason that he is such, or any person escaping from
7 slavery, for that cause, shall forthwith be removed from
8 office, and shall be subject to indictment in the su-
9 preme judicial court, or district court in the district
10 where the offence is committed, and on conviction
11 shall be fined in a sum not less than two nor more
12 than five hundred dollars.

SEC. 4. Hereafter the use of the jails in this State,
2 shall not be granted to the United States for the pur-
3 pose of confining any fugitive slave, or person escap-
4 ing from slavery, when committed for that cause.

STATE OF MAINE.

IN SENATE, March 3, 1843.

ORDERED, That 300 copies of the foregoing Reports and Bill be printed for the use of the Legislature.

ATTEST: JERE HASKELL, *Secretary*.