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REPORT

OF THE

COMMITTEE ON SLAVERY.

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STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 1, 1844. }

The select committee of the House of Representatives, to which was referred the petition of Joseph Prime and als., and also sundry other petitions, all of them referring in some form or other to the institution of domestic slavery, have had the same under consideration, and ask leave to submit the following

REPORT:

The petitions do not uniformly embrace the same subjects; but the Legislature is required to do each of the following things by one or more of said petitions.

1. To pass a law granting the right of trial by jury to every human being in this State, whenever the question of his liberty shall be involved:

2. To pass a law prohibiting all persons holding office under the authority of this State from officially, or under color of office, aiding or assisting in the arrest or detention of any person claimed as a fugitive slave:

3. To forbid all private citizens from furnishing aid or assistance under like circumstances:

4. To prohibit the employment of all our State jails, offices and other public property for the confinement of any persons claimed as fugitive slaves:

5. That the Legislature would propose such an amendment of the Constitution of the United States, as will forever separate the people of Maine from all connection with slavery.

6. That the Legislature would propose such an amendment of the Constitution, as that Representatives to Congress, and direct

taxes should be apportioned among the several States according to their respective numbers of free persons, including those bound to service for a term of years, and excluding Indians not taxed.

Under the Constitution of the United States, which is the supreme law of the land: "No person held to service or labor in any State under the laws thereof, escaping into another State, shall in consequence of any law or regulation, therein, be discharged from such service or labor; but shall be delivered upon claim of the party, to whom such service or labor may be due." According to the clause in the Constitution immediately preceding this, *fugitives from justice* must be given up on demand of the Executive authority of the State from which they flee. The demand must be made on the Executive of the State, to which such fugitive has fled. In such a case, the Constitution requires the Executive officers of the States to act. Not so in the case of fugitives from labor. In the convention a motion was made, "that fugitive slaves and servants should be delivered up as criminals." The motion was opposed because "it would oblige the Executive to do it at the public expense." The motion was withdrawn. Afterwards the clause was adopted in its present form as before cited. The language was chosen to exclude the idea, that the States were to be under obligation to deliver up fugitives from labor.

In the great case of Prigg *vs.* the Commonwealth of Pennsylvania, the Supreme Court have decided, that Congress has power to legislate in order to accomplish the end designed in the aforesaid clause of the Constitution. They have also decided that the power of legislation in relation to fugitives from labor is exclusive in the national Legislature, and that it is not competent for State legislation to add to the provisions of Congress on that subject.

In the year 1793, Congress passed an act on that subject, giving authority to the District Courts in the several districts, to settle the question in such cases, and grant certificates to those persons claiming such fugitives from service, in case they should prove, that service was due to them. This law has been decided to be constitutional in all its provisions, except that which requires State Magistrates to act. Under these circumstances, if the Legislature

should enact a law giving to fugitive slaves the right of trial by jury, it would be unconstitutional, according to the decision of the Supreme Court. That decision settles the law. Although other States have passed laws giving the right of trial by jury in such cases, the committee cannot recommend that this Legislature should follow their example.

It has been judicially settled, that the terms "held to service or labor" include slaves, as well as other servants. Fugitives from labor must be given up on claim of the party to whom such labor is due. That claim may be made on the party, who conceals such fugitives, or who aids them in their escape, or it may be enforced under the constitutional legislation of Congress, in the way they direct.

It was determined in the great case before cited, that State Magistrates are under no obligation to act under the act of February 12, 1793, and the committee think it clearly follows, that if they attempt to act, it would be in violation of moral duty.

In the opinion given by Judge Taney in the case before cited, he says, that it results from the decision in that case, "that the State officers mentioned in the law are not bound to execute the duties imposed upon them by Congress, unless they choose to do so or are required to do so by a law of the State; and the State Legislature has the power if it thinks proper, to prohibit them." This is undoubtedly a correct conclusion, from the principles laid down by the majority of the Court in that case. In accordance with these views, the last Legislature of Massachusetts enacted a law prohibiting, under a penalty, every Judge of any Court of Record, and every Justice of the Peace, from granting any certificate to any person, who claims any other person as a fugitive slave within said Commonwealth, and prohibiting every sheriff, deputy sheriff, coroner, constable or jailor or other officer of said Commonwealth, from arresting or detaining, or aiding in the arrest or detention of any person claimed as a fugitive slave. This law was approved by Marcus Morton, whose high standing as a jurist, gives strong confirmation to the impression, that the law is constitutional. However this may be, the committee entertain no doubt that it

would be perfectly competent to prohibit the use of our jails for the detention of fugitive slaves. They have, however, been induced to look at the question in a practical point of view. They believe that our jails never have been used to detain fugitive slaves, and that they never will be. That no law is needed to prevent such use. The united voice of the people is against it. Under this impression, the committee can see no good in putting on the statute book a prohibitory law, to carry out a mere theory. It would serve to irritate the South, without any corresponding benefit to the North. It having been settled by the Supreme Court, that no State Magistrate is bound to act under the law of 1793, it is believed that none of the magistrates of this State can ever be induced to volunteer their official services in sending men back into slavery.

As the law now stands, no private citizen can lawfully aid any slave in escaping from the State where he is held in slavery, or in the concealment of any such slave, who has escaped. If any citizen should be guilty of concealing any such slave, he would be liable to a penalty of $500, under the act of 1793. Moreover he would, by the Constitution be bound to deliver up such slave on demand, if in his power, otherwise to pay the value in money.

On the other hand, as the law now stands, no citizen, except the Judge of the United States District Court, and those who have aided in the escape or concealment of a slave, is bound to render any aid in delivering up such slave. But Congress may extend and enlarge the provisions of the law of 1793, so as to give the slaveholder a more effectual remedy in recovering his fugitive slave. Congress has as much power as the States, to legislate in these cases so as to reach individuals. Congress may create new offices to carry out the provisions of the Constitution on this subject, and the private citizens of the State may be appointed to fill those offices, and it may become their duty to aid in the recovery of fugitive slaves. The Legislature cannot prohibit the Judge of the District Court from aiding to carry out the provisions of the law of 1793. And for the reasons given, it is thought to be doubtful, whether the Legislature can constitutionally prohibit its private

citizens from aiding in the recovery of fugitive slaves. And they think it inexpedient to legislate, because they do not believe that any of the citizens of the State, except a United States officer, who is under legal obligation, will ever be found to act against liberty in such a case.

The committee have not been disposed to look at the subject as a political hobby to electioneer upon, but as a practical question. Disregarding new theory and political considerations, it cannot be considered necessary to enact the laws asked for at the present time. There can be very few, if any, fugitive slaves in the State. In escaping from slavery, they do not pass through this State. The officers, jails and citizens of this State, are not bound to aid in putting chains on the fugitive slave. The case of Latimer and the case of Prigg *vs.* Pennsylvania, have settled that question. Popular sentiment is so strong, that no magistrate or citizen will venture to put himself in opposition. Our citizens will go as far as the Constitution requires in regard to slavery, not one inch further. The suggestion that such a law is necessary to protect the colored citizens of Maine, is not well founded. The 20th section of the 154th chapter of the Revised Statutes, against kidnapping, selling as a slave, &c., furnishes ample protection. The slaveholder has no right to infringe upon the liberty of any of our free citizens, and if he does, he is liable to indictment under that section of the statute.

Having disposed of the four first questions, we now come to the prayer that the Legislature would propose such an amendment of the Constitution of the United States, as will forever separate the people of Maine from all connection with slavery. The same request was last year treated as a prayer, that the Legislature would propose a dissolution of the Union. Such a proposition, was justly, viewed with horror. The language of the petition is not specific. It would be desirable to understand more definitely, what the petitioners ask for. A proposition to dissolve the Union cannot be considered in the light of an amendment to the Constitution. The committee cannot believe that the petitioners contemplate any such thing. They suppose the petitioners intend to ask the Legislature,

to propose the insertion of an article in the Constitution, declaring all men free. If such an amendment could be adopted, emancipation would be immediate and universal. The heart of the philanthropist would rejoice. But the proposal of such an amendment, *at this time*, would be highly fanatical. Before any amendment can be adopted, it must be ratified by the Legislatures or Conventions in three fourths of the States. Seven States now tolerating domestic slavery, must ratify such an amendment, before it can become a part of the Constitution. But when seven of the slaveholding States shall be willing to adopt such an amendment, we shall know it. They will manifest their willingness, by abolishing slavery in their own territories.

The request that the Legislature would propose such an amendment of the Constitution, as would exclude the principle of slave representation, would be superceded, if the other amendment could be obtained. If slavery could be abolished, there would be no slaves to be represented, and the latter amendment would be unnecessary. Justice to the slave requires the adoption of the former amendment: justice to the free States the latter. Experience teaches, that when men feel power, they are prone to forget right. So long as the States of the south refuse to do justice to their slaves, there is no hope that they can be induced to do justice to the north, by changing the basis of representation.

The voice of the Convention was almost unanimous in the adoption of property as the basis of representation. According to the united voice of the people at this day, that basis is erroneous. It was said in the Convention, that population would indicate the distribution of wealth with sufficient exactness in the northern States. The southern States were considered more wealthy. It had been thought, under the Articles of Confederation, that an addition of three fifths of the slaves to the free population, would be a suitable indication of property in the country, and a fair basis of taxation. This being the case, the same basis was adopted in the Constitution, for the apportionment of Representatives and direct taxes among the States. The basis of representation ought to be changed. 1. Because property is not a suitable basis of represen-

tation. 2. Because, admitting property to be a suitable basis of representation, there is far more property in the free States, than in the slaveholding States, in proportion to the free population. 3. Because no direct taxes are levied, the equivalent to the north has become a nullity, and the contract on that point has failed. The committee therefore think that the proposed amendments to the Constitution would be perfectly just and ought to be made. But they have no hope, that the objects sought, can be *now* obtained. They believe that the friends of the slave have a far more practical question before them, in aiming their efforts at the abolition of slavery in the District of Columbia, and in Florida, and in the kindred and legitimate object of preventing the annexation of Texas to the United States, upon which subjects they have expressed themselves in the Report upon the petition of Moses Emery and als. *Here* the friends of human rights, not only have constitutional ground to stand upon, but, if they persevere in their efforts, they have reasonable prospect of success. These measures do not require any more than a majority of the two Houses of Congress, and the approval of the President, to carry them. The committee, in conclusion, would say, they have no doubt slavery in this country must cease. Its doom is fixed. Emancipation will be universal, but cannot take effect immediately, nor at the same instant. And for the present, the friends of the slave will make more impression, by confining themselves to the single issue of obtaining a repeal of the slave laws of Columbia and Florida, than by multiplying issues on the subject of slavery.

J. C. WOODMAN,
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RICHARD MERRILL,
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STATE OF MAINE.

HOUSE OF REPRESENTATIVES, March 2, 1844.

ORDERED: That 400 copies of the foregoing Report, be printed for the use of the Legislature.

WM. T. JOHNSON, *Clerk.*