AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 5: The Jacksonian Era—Criminal Justice/Habeas Corpus and Due Process/The Fugitive Slave Act of 1793

Jack v. Mary Martin, 14 Wend. 507 (NY 1835)

Mary Martin, a resident of Louisiana, claimed her slave Jack had run away to New York. She obtained a writ of habeas corpus from the recorder of New York City, which entitled her to return Jack to the South and slavery. Under the Fugitive Slave Act of 1793, such a certificate from a state magistrate provided slaveholders with the necessary legal authority to exercise ownership rights over the claimed slave. Jack asked New York courts for a writ "de homine replegiando" (a more complex version of habeas corpus) on the ground that he was free. Jack claimed that the Fugitive Slave Law of 1793 was unconstitutional and, if not, that federal law permitted states to hold trials on whether an alleged fugitive was free. The Supreme Court of New York rejected these claims. Jack appealed that decision to the Court for the Correction of Errors of New York.

The Fugitive Slave Law of 1793 was relatively uncontroversial before 1830. During the Early National Era, both the Supreme Court of Pennsylvania in Wright v. Deacon *(1819) and the Supreme Judicial Court of Massachusetts in* Commonwealth v. Griffith *(1823) rejected constitutional attacks on that measure. Opposition intensified after 1830. Northern states passed personal liberty laws. These statutes provided procedural protections for persons accused of being fugitive slaves. Anti-slavery advocates developed two constitutional objections to the Fugitive Slave Law. First, the fugitive slave clause established only state obligations and did not empower the national government to pass fugitive slave laws. These questions about national power and federalism are discussed in Volume I. Second, federal fugitive slave laws provided constitutionally insufficient protections for free northerners of color accused of being fugitive slaves.*

Jack v. Mary Martin *is the first instance when the highest court in a state questioned the constitutionality of a federal fugitive slave act. The Court for the Correction of Errors returned Jack to slavery. Chancellor Reuben Walworth did so because he believed Jack's status as a slave had previously been determined judicially. In the absence of that judicial finding, the chancellor nevertheless claimed, the New York Constitution guaranteed Jack the right to habeas corpus and a jury trial. Why does the chancellor reach this conclusion? Did* Jack v. Mary Martin *provide accused fugitives with more, the same, or less protection than persons accused of ordinary crimes? Why does Senator Bishop insist that a person seized as a fugitive slave has no right to a jury trial on whether they were a free person of color?*

Most state justices ruled that the Fugitive Slave Act of 1793 was constitutional and that alleged fugitives had no right to habeas corpus or a jury trial. Some state courts followed Jack v. Mary Martin *and insisted a more formal judicial proceeding was necessary when an alleged fugitive claimed to be a free person. No lower federal court justice questioned the Fugitive Slave Law of 1793. Why do you think northern state justices ruled differently than northern federal justices? Consider also the timing of* Jack v. Mary Martin. *Why did the first state judicial attack on the Fugitive Slave Law take place in the early Jacksonian Era and not during the Early National Era?*

By the CHANCELLOR

. . . I am not prepared to say that the congress of the United States had the power, under the constitution, to make the certificate of a state magistrate conclusive evidence of the right of the claimant, to remove a native born citizen of this state to a distant part of the union, so as to deprive him of the benefit of the writ of *habeas corpus* and the right of trial by jury in the state where he is found. In the case of *Martin,* before the circuit court of the United States for the southern district of New-York, to which we

were referred on the argument, the fact appears to be assumed that there is no question as to the identity of the individual, whose services are claimed, and that he is in truth a fugitive from the state under whose laws it is alleged he owes his services or labor to the claimant. If these important facts are conceded or judicially established, with the additional fact that the fugitive was actually claimed, and held in servitude in the state from which he fled, whether rightfully or otherwise, previous to his flight, I admit there can be no reasonable objection in principle to the removal of the person whose services were thus claimed, back to the state from which he fled, as the most proper place for the trial and final decision of the question whether the claimant was legally entitled to his services, according to the laws of that state.

But suppose, as is frequently the case, that the question to be tried relates merely to the identity of the person claimed as a fugitive slave or apprentice, he insisting that he is a free native born citizen of the state where he is found residing at the time the claim is made, and that he has never been in the state under whose laws his services are claimed—can it for a moment be supposed that the framers of the constitution intended to authorize the transportation of a person thus claimed to a distant part of the union, as a slave, upon a mere summary examination before an inferior state magistrate, who is clothed with no power to compel the attendance of witnesses to ascertain the truth of the allegations of the respective parties? Whatever others may think upon this subject, I must still be permitted to doubt whether the patriots of the revolution who framed the constitution of the United States, and who had incorporated into the declaration of independence, as one of the justifiable causes of separation from our mother country, that the inhabitants of the colonies had been transported beyond seas for trial, could ever have intended to sanction such a principle as to one who was merely *claimed* as a fugitive from servitude in another state.

. . . [T]he common law writ of *homine replegiando,* for the purpose of trying the right of the master to the services of the slave, was well known to the laws of the several states, and was in constant use for that purpose, except so far as it had been superseded by the more summary proceeding by *habeas corpus,* or by local legislation. The object of the framers of the constitution, therefore, was not to provide a new mode by which the master might be enabled to recover the services of his fugitive slave, but merely to restrain the exercise of a power, which the state legislatures respectively would otherwise have possessed, to deprive the master of such pre-existing right of recaption. . . . The constitution of the United States being the paramount law on this subject, the judicial tribunals of the respective states are bound by their oaths to protect the master's constitutional right of recaption, against any improper state legislation, and against the unauthorized acts of individuals, by which such right may be impaired; and the supreme court of the United States, as the tribunal of dernier resort on such a question, is possessed of ample powers to correct any erroneous decisions which might be made in the state courts against the right of the master. Upon the fullest examination of the subject, therefore, I find it impossible to bring my mind to the conclusion that the framers of the constitution have authorized the congress of the United States to pass a law by which the certificate of a justice of the peace of the state, shall be made conclusive evidence of the right of the claimant, to remove one who may be a free native born citizen of this state, to a distant part of the union as a slave; and thereby to deprive such person of the benefit of the writ of *habeas corpus,* as well as of his common law suit to try his right of citizenship in the state where the claim is made, and where he is residing at the time of such claim.

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SENATOR BISHOP

. . . The fourth article and second section of the constitution of the United States declares, that "no person held to service 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." . . . . Upon the authority of the foregoing clauses of the constitution, congress passed a law at its second session, substantially authorizing the owner of any fugitive slave, his agent or attorney, to seize such slave and take him before a judge of the circuit or district court of the United States within the state, or before any magistrate in the state where such seizure was made, and upon full and satisfactory proof, to be made to such judge or magistrate, that

the individual so seized in fact is a slave and owes service to the person claiming him, it becomes the duty of the magistrate to deliver a certificate of such fact to the owner, which shall confer upon him power to remove the slave to the state from which he fled. This law of congress has been universally recognized by all the states in the union as constitutional, and paramount over all state authority, and hundreds of fugitive slaves have been removed under its provisions. . . .

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Assuming the constitutionality of the law of congress, the next inquiry which naturally arises is, whether the law of this state, providing a different remedy for the removal of fugitives slaves, is ineffectual and void, or whether it can exist concurrent with the law of the United States. . . . It is difficult to conceive of any subject arising under the constitution, where it is more peculiarly proper that congress should have exclusive jurisdiction, than in the mode to be provided for the removal of fugitive slaves; or where the doctrine of the supreme court of the United States more aptly applies, "that when the nature of the power requires that it should be exercised exclusively by congress, state legislation must cease." What is the nature of the power contained in the constitution? The nature and the spirit of it clearly is, as I have attempted to show, to secure to the slave-holding states a perfect control over, and right to remove their fugitive slaves by some summary and effectual process. And how, I would ask, is this object more simply and effectually to be accomplished than by a uniform mode to be established by congress, requiring the same proof and the same proceedings under it in every state in the Union? A slave-holder in Louisiana is as familiar with, or can as readily have access to the laws of the United States as to the laws of his own state; he therefore comes prepared with the necessary proof to reclaim his fugitive slave in any part of the Union. But if one of his slaves escapes to Vermont and another to New-Hampshire, and the doctrine is to be established that the slave is to be reclaimed according to the laws of those states, the owner leaves his residence wholly ignorant of the requisition of the laws of those states, and finds on his arrival that his claim to his slave in one state is to be tried by a jury, and in the other by the judges of the county courts; in the one case to be established by the oath of one witness, in the other by the testimony of three witnesses; in short he would be subjected to all the machinery and trammels with which the prejudices and conflicting opinions of different state legislation might invest the whole subject. Is it not fair to presume that the owners of slaves, rather than to pass through such an ordeal, would abandon in despair the objects of their pursuit? I think it is, and that legislation by the different state governments would indirectly lead to a total abolition of slavery. Believing, as I do, that the members of the convention anticipated similar results, I cannot arrive at the conclusion that it was ever designed that the state legislatures should exercise any control over the subject; but, on the contrary, that congress should possess exclusive jurisdiction as to the mode of reclaiming fugitive slaves, and that the very nature of the power conferred by the constitution requires, that congress should so exercise it. If these positions are correct, it necessarily follows that the law of this state must yield to the omnipotence of the law of congress.

It was contended on the argument of this cause, with great zeal and earnestness, that under the law of the United States a free man might be dragged from his family and home into captivity. This is supposing an extreme case, as I believe it is not pretended that any such ever has occurred, or that any complaint of that character has ever been made; at all events, I cannot regard it as a very potent argument. The same position might as well be taken in the case of a fugitive from justice. It might be assumed that he was an innocent man, and was entitled to be tried by a jury of the state where he was arrested, to ascertain whether he had violated the laws of the state from which he fled; whereas the fact is, the executive of this state would feel bound to deliver up the most exalted individual in this state (however well satisfied he might be of his innocence), if a requisition was made upon him by the executive of another state. At best, this species of argument is begging the question; for if the law of congress is constitutional, however unjust the law may be, or however severe in its consequences, the defect must be remedied upon the spot of its origin. It must be left to congress to establish a more salutary rule.

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