REPORT

OF THE

CASE OF CHARLES BROWN,

A FUGITIVE SLAVE,

OWING LABOUR AND SERVICE TO

WM. C. DRURY,

OF WASHINGTON COUNTY, MARYLAND.

DECIDED BY THE RECORDER OF PITTSBURGH,
FEBRUARY 7TH, 1835.

PITTSBURGH:
PRINTED BY ALEXANDER JAYNES, IRWIN'S ROW, MARKET ST.

1835.

NOTE BY THE REPORTER.

Several of the Gentlemen of the Pittsburgh Bar having requested the publication of the case of CHARLES BROWN, an alledged "fugitive" from the State of Maryland, "owing labour and service" to WILLIAM C. DRURY, of Washington County, Maryland, I have complied with their request—desiring it, however, to be understood that the Arguments of Counsel are greatly condensed, the substance only being given. Originally, the Notes were taken by the Recorder, for his own use, without any view to publication—but brief as they necessarily are, they present as full a view of the case as is probably desirable for future reference.

Feb. 11*th*, 1835.

In the Case of Charles Brown, *an alledged Runaway Slave, the property of* William C. Drury, *Merchant, of Hagerstown, Washington County, Maryland.*

In this case the deft., *Charles Brown*, was apprehended by constables *Reed* and *Dunshee*, on a warrant issued by alderman *D. S. Scully, Esq.*, on Saturday, 24th January, 1835, on the oath of *Edward Fitzpatrick*, agent and attorney in fact of *William C. Drury*, and was brought before me, at the office of the said *D. S. Scully, Esq.*, on the evening of the said 24th January, 1835, between the hours of 8 and 9 o'clock, P. M., and it appearing to my satisfaction that the said *Charles Brown*, not having counsel, and being otherwise unprepared for a hearing; and it being, in my opinion, too late an hour to enter upon the hearing of the case, I ordered and directed that the said *Charles Brown* should be committed to the common jail of said county, until Monday morning next, at 10 o'clock, A. M., for further hearing; and that in the meantime he should have full opportunity of consulting counsel: and he was committed accordingly.

Monday, January 26th, 1835, 10 o'clock, A. M. The case of *Charles Brown*, according to adjournment, was again brought before me for examination. Messrs. *M'Candless* and *Hamilton* appeared as counsel for *Brown*, and Messrs. *Kingston* and *Dallas* for the master, *William C. Drury*. Both parties requesting further time for preparation, by consent, I adjourned the further hearing of the case until to-morrow morning, at 10 o'clock, A. M., at the court house in the city of Pittsburgh; and the deft., *Charles Brown*, was accordingly further committed until that time. Each party to be entitled to subpœnas for witnesses, in the usual form, upon proper application to me for that purpose. *Edward Fitzpatrick* to pay for the maintenance of *Brown*, in jail, at the usual rates allowed in such cases.

Tuesday, January 27th, 1835, 10 o'clock, A. M. at the court house, in Pittsburgh, *Charles Brown* was brought before me for further hearing—Messrs. *M'Candless* and *Hamilton* for *Brown*, and Messrs. *Kingston* and *Dallas* for *W. C. Drury*, the alledged master.

Edward Fitzpatrick, sworn on his *voir dire*,—says he is not in

any way interested in this case—that he is not to receive any thing from Mr. *Drury*, or any body else, for his services—not to receive any thing, in any way. Says he has known *Wm. C. Drury* and his family ever since the year 1818—was once in partnership in merchandizing with Mr. *Drury*—no part of the slave labour went towards the establishment. He now resides in Pittsburgh.

Sworn in chief.—In 1818 I lived with *Wm. C. Drury*, as a clerk, at Hagerstown, Maryland. In 1820 he discontinued business, and recommenced again in 1823, and in 1826 took me in partnership, in the store-keeping or mercantile business. The partnership was dissolved in March, 1832. During this time I was frequently at his house in the country. I many times saw this black boy, *Charles Brown*, there. He was a servant about the house, and generally took my horse, and put him away. He was frequently at the store in Hagerstown. He acted as a servant. I know that he is a slave, and Mr. *Drury* said he had raised his mother. In 1818 he was a child of 2 or 3 years old—was then a small child, running about. I knew both his father and mother. He made his escape from Mr. *Drury* in June, 1832. About 5 weeks ago I first saw him in town—he appeared to recognize me. I then wrote to Mr. *Drury*, informing him of the circumstance, and received from him this power of attorney. This is the same boy described in the power of attorney—I have no doubt of it. When I first saw him, I looked earnestly at him; his whole conduct was such as to lead to suspicion—he looked back at me, and then ran away. He always called himself *Charles Brown*. I have no hesitation in saying that this is the same boy described in the power of attorney, and that *he is a slave*, the property of *Wm. C. Drury*, as I have before stated.

Cross examined.—Do you know by what *title* Mr. *Drury* claims this boy as a slave? I know of no other title than that he was born and bred up in the family of Mr. *Drury* ever since he was a child, and that he was always considered as a slave there. When did you receive the power of attorney? [Mr. *Fitzpatrick* here produced a letter from Mr. *Drury* enclosing the power of attorney, dated 19th June, 1832. It appears it was acknowledged in blank, was received by Mr. F. in blank, and the name "*Edward Fitzpatrick*," in the power of attorney, was inserted in that blank by himself. See the letter and power of attorney.]

Michael P. Fitzpatrick, (son of *Edward Fitzpatrick*, aged 14 years next March,) *sworn.*—Says that he knows *Charles Brown*, the black boy now here present—knew him at Hagerstown, Maryland, and at his master's house near thereto. Played with him often, as children, at his master's house. I don't know his age, but think that he is 3 or 4 years older than me. I often saw his father and mother, and grandmother, at Mr. *Drury's*. I saw him first here about three weeks ago, in Alleghenytown. *Cross examined.*—I have no doubt of this being the same boy, *Charles Brown*, that I saw at Mr. *Drury's*. I

have not seen Mr. *Drury* since we left Hagerstown, in October, 1833.

[The letter from Mr. Drury to Mr. Fitzpatrick, enclosing the power of attorney, was read in evidence, as was also the power itself. The letter was received by Mr. F. from Mr. D. by mail.] Excepted to by Mr. *M'Candless* for *Charles Brown*, upon the ground of *interest apparent*, on the part of *Fitzpatrick*, who, as the agent of *Drury*, stands here precisely in the place of *Drury* himself; and it is clear, if the master was here himself, he could not be heard. The power of attorney was executed *in blank*, three years ago, and that blank appears to have been recently filled up by *Fitzpatrick*, the witness himself, with his own name. Is *such* a power of attorney, even although on the face of it properly certified, a legal power, such as the law would require in a case like the present? Is it not the *act of Fitzpatrick himself*, constituting himself the agent of *Drury*—and not of *Drury* constituting *Fitzpatrick* as his agent? Can his testimony with regard to the ownership of the boy be received at all under such circumstances? This is to be considered, not as a case between *master* and *servant*, but as a quasi-criminal proceeding; and as the law is in favour of liberty, it must be *strictly* construed.

The following are copies of the papers admitted in evidence on the hearing, and referred to by the witnesses, and by the counsel on both sides in arguing this case.

Copy of the power of attorney from William C. Drury to Edward Fitzpatrick:

"Know all men by these presents, that I, William C. Drury, of Washington county, and state of Maryland, have made, ordained, authorized, nominated, and appointed, and by these presents do make, ordain, authorize, nominate, constitute, and appoint *Edward Fitzpatrick*,* late of Washington county, and state aforesaid, my true and lawful attorney for me, and in my name, and for my own proper use and benefit, to demand, apprehend, recover, secure, and bring back my negro boy, slave for life, who ran away on Saturday night, the 16th inst., about eighteen years of age, and calls himself Charles Brown, about five feet nine or ten inches high, of a dark complexion, well made, and a good countenance; and to use all legal means for the apprehension and recovery of said slave, and to do all other lawful acts and things whatsoever concerning the premises, as fully and in every respect as I myself might or could do, were I personally pre-

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*This power was sent in blank, and the name of Edward Fitzpatrick was filled up by himself, after he received it through the medium of the post office, enclosed in a letter from Mr. *Drury*, dated Williamsport, 19th January, 1835.

sent. In witness whereof I have hereunto set my hand and seal this 19th day of June, 1832.

W. C. DRURY, [*seal.*"]

Witness,
JNO. MCILHENNY.

Maryland, Washington County, ss.

On this 19th day of June, 1832, personally appears William C. Drury, named in the foregoing letter of attorney, before me, the subscriber, a justice of the peace for the state of Maryland, in and for the county aforesaid, and acknowledged the same to be his act and deed for the purposes therein mentioned. Acknowledged before

JNO. McILHENNY.

Maryland, Washington County, sct.

On this 19th day of June, 1832, personally appears William C. Drury, named in the foregoing letter of attorney, before me the subscriber, a justice of the peace for the state of Maryland, in and for the county aforesaid; and makes oath, on the Holy Evangelists of Almighty God, that his negro boy, named Charles Brown, eloped from him on Saturday night, the 16th inst.; that the said negro boy is about eighteen years of age, about five feet nine or ten inches high, of a dark complexion, well made, and a good countenance, and that he is a slave for life. W. C. DRURY.

Sworn and subscribed before me,
JNO. MCILHENNY.

State of Maryland, Washington County, to wit:

I, Otho D. Williams, clerk of Washington county court, do hereby certify, that John McIlhenny, gentleman, before whom the foregoing acknowledgment and affidavit appear to have been made, and who has thereto subscribed his name, is a justice of the peace of the state of Maryland, in and for the said county, duly commissioned and sworn, and duly authorized and empowered to administer oaths and take the acknowledgments of deeds and other instruments of writing; and to all his acts as such, faith and credit is due, as well in courts of justice as thereout.

Seal of the court of Washington co. court, Maryland.

In testimony whereof, I have hereunto subscribed my name, and fixed my seal of office, this nineteenth day of June, in the year of our Lord one thousand eight hundred and thirty-two.

O. H. WILLIAMS, *Cl'k*,
W. C. C. Md.

State of Maryland, Washington county, to wit:

I, John Buchanan, chief judge of the fifth judicial district of the state of Maryland, composed of the counties of Frederick, Washington, and Allegheny, hereby certify, that Otho H. Williams is clerk of Washington county court; and that the foregoing attestation by him made, is in due form, and by the proper officer. Given under my hand and seal, this 19th day of June, in the year of our Lord one thousand eight hundred and thirty-two.

JNO. BUCHANAN. [*seal.*]

[Copy of a letter from *William C. Drury* to *Edward Fitzpatrick*, dated

" *Williamsport*, 19*th January*, 1835.

Dear Sir:—I was at the post office when the mail arrived this morning, and received your two letters. I immediately went home to get the enclosed power of attorney, which is all complete except to insert the name, which you may put in your own, or any other person's, as you may think proper. If the boy is there, and Michael or yourself can prove him, I wish you to spare no cost or expense to get him. Do not be governed at all by the reward offered in the advertisement,* one of which I will direct *Freaner* to send you—I have none with me. Your's, &c., W. C. DRURY."

" Write to me. Should you put your own name in the power, it will want no alteration, which you had better do, if you think *Michael* will be able to prove him. But should you have any fears of that, you, perhaps, had better get some one else to act—and, in that event, perhaps it will be necessary to make some alteration as to his *residence*. But do nothing of that sort without advice from your counsel. In fact, I do not know whether you dare make any alterations, as it is now executed. Your's, &c., W. C. DRURY."

[* *Copy of the advertisement alluded to.*]

"Stop the thief—50 dollars reward.—Ran away from the subscriber's farm, near Williamsport, on Saturday night last, a negro boy, who calls himself *Charles Brown*, 18 years old, about 5 feet 9 or 10 inches high, not stout, but well proportioned; of a dark complexion, and good countenance. Had on and took with him, one fine blue cloth coat, half worn, white fur hat, do., one pair new drab corderoy pantaloons, one black silk vest, one fine muslin shirt, one or two coarse working do., one light drab home-made cloth short coat, one or two pair of double threaded cotton pantaloons, one pair white cotton drilling, one do. fine shoes, stockings, and other articles not remembered. He rode away a sorrel *mare*, about 15 years old, with a white blaze in the face, both hind feet believed to be white; paces and trots, and when pacing, throws one of her feet a little out, as if stiff in the joint

—an old saddle, much worn, snaffle bridle, with plated bit. The above reward will be paid if taken out of the county, or $25 if taken in the county, and all reasonable charges if brought home.

W. C. DRURY.

"N. B. A liberal reward will be given for any information that may lead to the recovery of the above described runaway, or mare. June 21, 1832. *W. D. Bell, Printer, Hagerstown.*" On the back of the printed copy of this advertisement, was the following letter:

"*Hagerstown, January 20th*, 1835.

"Mr. Edward Fitzpatrick,

"*Dear Sir:*—You will receive this hand-bill through the medium of the post office, from which you will know whether the black boy advertised or described in this be in your neighborhood. If so, any information you may want, you can have by writing to me in Hagerstown. This hand-bill I send you by request of *Col. Wm. C. Drury*, of our county. Your's, &c., &c.,

WILLIAM FREANER."

[The affidavit of *Edward Fitzpatrick*, drawn up by Mr. Dallas, and sworn to before alderman Scully, and the recog. of *E. Fitzpatrick* and *S. Kingston*, each in $200 cond. to pay the expenses of keeping, &c., according to the provisions of the 7th sect. of the act of the 25th of March, 1826, *Purdon* 656, was then offered by Mr. Dallas as counsel for the alledged master, W. C. Drury, and a motion made to adjourn the further hearing of this case until Monday next, 2d Feb., 1835, at 10 o'clock, A. M., at this place.]

State of Pennsylvania, Allegheny County,
City of Pittsburgh, ss.

Before the subscriber, an alderman in and for the said city, personally appeared *Edward Fitzpatrick*, who being duly sworn, saith that he wrote to *Wm. C. Drury*, of Hagerstown, Maryland, the master of *Charles Brown*, by yesterday's (Monday's) mail, requesting and urging him, the said *William C. Drury*, to come on immediately to Pittsburgh, for the purpose of taking possession of his runaway slave, *Charles Brown:*—that deponent has no doubt that *William C. Drury* will, in consequence of said letter, leave Hagerstown by the next stage after the receipt of the said letter:—that the deponent believes that the mail arrives at and leaves Hagerstown from and to the west daily, and accomplishes its journey to this place (Pittsburgh) in two days:—that the said *William C. Drury*, should he receive said letter in the usual course of mail, will leave Hagerstown on Thursday, and be in Pittsburgh on Saturday next.—Deponent further states, that on this morning he wrote a letter to *William C. Drury*, by a private opportunity, (Mr. *Wm. Byrnes*,) who goes directly on to Hagerstown, and promised to deliver it to the said *Wm. C. Drury* on his arrival at Hagerstown.—Deponent further states, that *Wm. C.*

Drury is the principal, under whose power of attorney of the 19th of June, 1832, the deponent has acted, in arresting and confining the said *Charles Brown;* and that the said *William C. Drury* will, as deponent verily believes, be enabled to produce satisfactory documentary proof of his title to the said slave.

EDW. FITZPATRICK.

Sworn and subscribed before me, 27th January, 1835. } D. S. Scully, *Ald.*

Edward Fitzpatrick and *Samuel Kingston*, each tent. in the sum of $200, conditioned that *William C. Drury* shall prosecute his claim to the person and services of *Charles Brown*, the respondent, on Monday next, at 10 o'clock, A. M. Taken and acknowledged before me, in pursuance of the acts of assembly in such cases made and provided.

E. Pentland, *Recorder of Pittsburgh.*

McCandless and *Hamilton* opposed the continuance, on the additional grounds to what had been heretofore taken—that the affidavit does not comply with the terms of the act of assembly—the adjournment must be to enable the party to procure "testimony material to the matter in controversy." Sect. 7th. And further, the absence of Drury is not material, for if he were here, he would not be heard; the proviso of the 6th sect. declaring, "that the oath of the owner or owners, or other persons interested, shall *in no case* be received in evidence before the judge, on hearing of the case." Again, the boy is entitled to a hearing instanter—he is not to be deprived of his liberty in the first instance, and then time given to the master or owner to procure the proof. He should have his proof ready at the time of making the arrest. The affidavit is altogether insufficient—the directions of the act of assembly ought to be strictly pursued. Even in a *civil* case, the party arrested, and in custody, has a right to a rule on the plff. to shew cause of action *instanter*—the deft. is not to be held in custody, and deprived of his liberty, in order to afford the plff. time to prove the nature of his demand, or cause of action. This he should be prepared to do at the time of making the arrest—and if he is not prepared, the defendant is entitled to his discharge, on common bail, at once. No time will be allowed. If the law is so strict in *civil* cases, ought it to be more loose in *criminal* cases? for I do consider this in no other light than as a *quasi-criminal case.*

Mr. Dallas in reply.—This is not a criminal, nor a *quasi*-criminal case—far from it. It is a question of *property*, arising under the 3d sect. of the act of congress of 12th February, 1793. *Story's ed. Laws of U. S., vol.* 1. *p.* 285. *Gordon's Digest, p.* 555: the proceedings under which are regulated by the provisions of the act of assembly of 25th March, 1826. *Purdon's Dig.* 654, 657. This is the first and *primary* hearing—a hearing for the purpose of enquiry. The arrest on Saturday was not in time to allow a hearing, and the

case was properly adjourned till Monday, (yesterday,) and yesterday the case, *by consent of all parties*, was adjourned till to-day. The party is entitled to a continuance under the provisions of the 7th sect. of the act of 25th March, 1826. If the party claiming the property is "not ready for trial"—and the alledged "testimony can be procured in a reasonable time"—these are the specific terms of the act of assembly. The affidavit is sufficient, because the power of attorney being now a *material* part of the case, it is material to the master to show its proper and legal execution. Besides, the suggestions as to the letter and power of attorney came from the Recorder himself, and not from *Brown* or his counsel. This, therefore, is an application to reach the conscience of the judge—to satisfy *his* conscience as to a doubt which he has *himself* raised. In this case he act as a chancellor—and what is the duty of a judge in such a case as this? Will he not allow the party a *reasonable* time to procure *material* testimony, to remove a doubt *on his mind*, suggested by himself, which we did not come prepared to remove, and which we, by no possibility, could have anticipated? This is, too, so far as regards the letter and power of attorney, a *preliminary* question—because if the power of attorney is worth nothing, the case is gone. We say it is good, and I believe it to be good, and in strict compliance with the provisions of the act of congress. But the chancellor *doubts*—and shall it be said for a minute, that in a case like this, a question of *property*—because, we may disguise it as we may, and talk as much about *slavery* and *liberty* as we please—still it is nothing more nor less than a question of *property*—shall it be said, that the claimant shall not have a reasonable opportunity of procuring legal testimony to remove the doubts of the judge as respects the validity of a legal instrument by which that property is claimed? This is an application to the sound discretion of the judge. We have substantially complied with the provisions of the act of assembly—we have filed our affidavit, and given security for the maintenance of the slave—we have done all we are bound to do—and this is an application to the *discretion* of the judge, on a *preliminary* question, just as much as an application is to a judge to hold to bail, on an *affidavit* of a *bona fide* subsisting debt, about the legal execution of which he entertains doubts—which doubts the plff. craves a reasonable time to remove.

By the Recorder.—I consider this as the *first* hearing of the case. The production of the power of attorney, constituting *Fitzpatrick* as the agent and attorney in fact of *W. C. Drury*, is a *preliminary* matter altogether; because, without this power of attorney, or with it, if it be not properly and legally executed, according to law, the application ends, and the respondent must be discharged. The 3d sect. of the act of assembly of the 25th March, 1826, provides that applications like the present must come, in the first instance, from "the person to whom such labour or service is due, his or her duly authorized agent or attorney, constituted in writing." The 4th sect. is still more ex-

plicit; because no warrant shall issue, according to the provisions of the 3d sect., "unless the said agent or attorney shall, *in addition to his own oath or affirmation*, produce the *affidavit of the claimant* of the fugitive, taken before, and certified by the proper authority of the state or territory in which the claimant resides, accompanied by certificates," &c. The power of attorney from *Drury* to *Fitzpatrick* is dated 19th June, 1832, acknowledged same day before *Jno. McIlhenny, Esq.*, accompanied by the affidavit of *Drury*, as to the elopement of *Charles Brown*, describing his person, and declaring him *a slave for life*, sworn to on the same day, 19th of June, 1832; to which is appended the certificate of *Otho H. Williams, Esq.*, clerk of the county court of Washington county, certifying, under the seal of the said court, that the said *Jno. McIlhenny, Esq.*, is a justice of the peace, &c., and the certificate of *Jno. Buchanan*, chief judge of the 5th judicial district of Maryland, comprehending the counties of Washington, Frederick and Allegheny, certifying that the foregoing attestation was in due form of law, also dated 19th June, 1832. This power of attorney was acknowledged, it appears, *in blank;* was recently enclosed by Mr. *Drury* to *Fitzpatrick*, from Hagerstown to this place, and the blank filled by Mr. *Fitzpatrick* with his own name. The suggestion as to this fact came from myself. Since this, the annexed affidavit has been made, as to certain matters, by *Fitzpatrick;* and surety entered for maintenance, &c., according to the provisions of the act of assembly, on which the motion for a continuance is grounded. I think the application, under all the circumstances of the case, a reasonable one, and therefore order and direct the further hearing of this case to be postponed until Monday next, at 10 o'clock, A. M., at this place; and that the said *Charles Brown* be, in the meantime, remanded to the custody of the sheriff and jailor of Allegheny county, to be there properly supported at the expense of the applicant, according to law; and to have the privilege, at all reasonable times, to be visited by his friends and by his counsel; to have subpœnas for such witnesses as he may deem necessary to the proper hearing of his case, and to offer bail, at any time, for his appearance, to answer according to law. There is no privilege, in my opinion, as to the contemplated hearing, grantable to the master, that is not, at the same time, the right of the respondent; and as to the *merits* of the case, a delay for so short a period can do no injury to either party. The object is to do justice—and, although I admit that the law should be construed favorably to liberty, I do not think it necessary that the claimant should be denied the opportunity, contemplated by the very terms of the act of assembly, to prove his claim to the property. It is not my duty, as appears to be insinuated, to strain a point favorable to the respondent. The law, and its interpretation, must not be strained either way. Both parties must be dealt with alike—with the same degree of favour. I feel no bias for either. Let the case be postponed until Monday next, the 2d

of February, at 10 o'clock, A. M., at the court house, and all persons concerned be notified accordingly.

Adjourned hearing—continued from Tuesday last. *Monday, February 2d*, 1835, proceeded to the hearing of this case, at the court house, in Pittsburgh.

Dallas and *Kingston*, counsel for *Drury*, the master, moved for a further postponement of the *final* hearing of this case until Wednesday next, at 10 o'clock, A. M. Opposed by *M'Candless* and *Hamilton*, the counsel of *Charles Brown*, the alledged slave.

Dallas, in support of the motion.—We ask for this continuance on two grounds.—1st. Because we have used all due diligence to procure the *material* testimony alledged at the last hearing to be wanted on our part, and because, since the last adjournment the aspect of the case has been considerably changed, in consequence of our being able to shew that the health of Mr. *Drury* is such as to prevent his using that expedition in travelling, at this inclement season of the year, which a man in robust health might use. 2d. Because we do not think this case now properly before the Recorder, inasmuch as there has been no writ of *Hab. Corp.* taken out, which is rendered absolutely necessary, in all cases like the present, by the provisions of the 7th sect. of the act of 25th of March, 1826.

M'Candless, in opposition to the motion.—We consider this application for a continuance a mere affectation of delay; and after the first continuance the party is not entitled to favour; nor is the state of Mr. *Drury's* health at all *material*. The respondent is deprived of his liberty, and those who wish to deprive him of it, ought, at the moment of arrest, to have been fully prepared to show their authority for so doing. It is the *right* of the deft. to be heard. He is ready, and anxious to be heard now. The testimony of those by whom it is offered to prove Mr. *Drury's* state of health can at best be but *hearsay*, derived from Mr. *Drury* himself, which in fact is no evidence at all. When the first application for a continuance was made, we opposed it, and thought hard of it; and when it was granted it was with an understanding, indeed with the declaration of the Recorder himself, that this should be the time of *final* hearing. The postponement was at their urgent request, after they had discovered, perhaps, some defect in their testimony. As to the necessity of a writ of *Hab. Corp.* and of the inability of the judge to proceed without one, we consider this a strange fancy, indeed. There has been no new commitment—nothing taking the boy out of the hands of the legal authority before which we have already had a partial hearing. He was *remanded* for a hearing till to-day—not *committed*. It is idle, for another reason—the boy is here before us—there is no reason or necessity for a *Hab. Corp.*

and if there was, the application could now be made, granted, allowed, and issued *instanter*, and the hearing, we presume, would proceed, as the taking out of the writ of *Hab. Corp.* would not cost half an hour's delay. We do not think this case comes under the provisions of the 7th sect. of the act of 25th March, 1826; but under the provisions of the four preceding sections. We hope the application will be refused.

Kingston, in reply.—The writ of *Hab. Corp.* is absolutely necessary. There must always be a writ, of some sort, to found the proceedings on; the foundation of the commencement, as it were. How, otherwise, is the record to be made up. These proceedings are to be a matter of record—they must be filed of record—and on this record *a writ of error* may be taken to remove the whole proceedings to a higher tribunal. The application is not an affectation of delay, to gain time to produce further proof. It is a reasonable one, taking all the circumstances of the case into consideration. It is directed to the discretion of the judge, who is bound to look to the rights of the owner, (in order that he may not be illegally deprived of his property,) as well as to the rights of the slave. The owner ought to have a fair and reasonable time and opportunity to prove his property according to the constitution and laws of the country. No unnecessary haste ought to be used to cut him out of his legal rights.

Mr. *Dallas* then offered Edward Fitzpatrick, to prove the use of due diligence on their part since the last adjournment, and other circumstances, which he conscientiously believed would show that he was entitled to a further postponement, and also show that the application was not an affectation of delay.

The Recorder directed him to be sworn, and

Edward Fitzpatrick, *sworn*—On Monday last I wrote to Mr. *Drury*, and put the letter into the post office. On the same day I wrote to him, at Hagerstown, another letter by a private hand, (by Mr. *Wm. Byrne*,) who promised to deliver it as soon as he arrived at Hagerstown. On Tuesday, immediately after the adjournment, I wrote two letters to Mr. *Drury*—one enclosed to the post master at Williamsport, and the other to the post master at Hagerstown; each enclosing one for Mr. *Drury*—both with a request that they might be delivered to Mr. D. as soon as they were received. The date of the last letter I received from Mr. *Drury* is 29th of January, 1835. Mr. *Drury* is a man of delicate constitution, and is now, I believe, in an infirm state of health; and the weather has been very inclement for some days past. I expect Mr. *Drury* every day.—I am confident he would make no unnecessary delay, provided he receives my letters from the post office.

The *Recorder* having expressed some doubts as to the true construction of the 7th sect. of the act of 25th of March, 1826, requiring a writ of *Hab. Corp.* the question was again fully argued by

Messrs. *Dallas* and *Kingston* for, and

Messrs. *M'Candless* and *Hamilton* against, the necessity of a writ of *Hab. Corp.* being issued in this case, *now*, in order to give the Recorder jurisdiction over it, under the provisions of the 7th sect. of the act of assembly of the 25th of March, 1826.

Adjourned till 2 o'clock, P. M.

Tuesday afternoon, Feb. 3d, 1835, 2 o'clock, P. M. The hearing of this case was resumed, and the *Recorder* gave the following opinion:

The application for a further continuance of this case, until Wednesday next, is supported by the affidavit of *Edward Fitzpatrick*, that due diligence, in the ordinary way, has been used by him to procure the attendance of *William C. Drury*—and every possible means, in his power, taken to send information to him, and apprise him of the pendency of this case, by letters sent to himself, personally, by mail, and by private hand, and by others enclosed to the post masters at Williamsport and Hagerstown—stating, also, the delicate constitution and infirm health of Mr. *Drury*, the inclemency of the weather for some days past, &c., and his confident expectation of Mr. *Drury's* speedy arrival, if he receives the letters sent. It is, moreover, objected by the counsel of Mr. *Drury*, that this case is not now regularly before me for hearing, inasmuch, as since the last adjournment, no writ of *Hab. Corp.* has been taken out by *Charles Brown*, which is actually required in order to lay the foundation of the proceedings. The last objection I shall consider in the first place, because it has been ably and earnestly pressed upon my consideration, and is a point of the first importance.

The 7th sect. of the act of assembly provides—"That when the fugitive shall be brought before the judge, agreeably to the provisions of this act, and EITHER party alledge, and prove, to the satisfaction of the said judge, that he or she is not prepared for trial, and have testimony material to the matter in controversy, that can be obtained in a reasonable time, it shall and may be lawful, unless security, satisfactory to the said judge, be given for the appearance of the said fugitive, on a day certain, to commit the said fugitive to the common jail for safe keeping; there to be detained, at the expense of the owner, agent or attorney, for such time as the said judge shall think reasonable and just, and to a day certain, when the said fugitive shall be brought before him by *Habeas Corpus*, in the court house of the proper county, or in term time, at the chamber of the said judge, for final hearing and adjudication. PROVIDED, That if the adjournment of the hearing be requested by the claimant, his agent, or attorney, such adjournment shall not be granted, unless the said claimant, his agent or attorney, shall give security, satisfactory to the judge, to appear and prosecute his claim, on the day to which the hearing shall be adjourned," &c.

Comparing, carefully, this section with the provisions of the 3d, 4th, 5th, and 6th sects. of the act, it would appear, that two several species of cases are specially provided for. First, cases where the fugitive is apprehended by a warrant issued "by any judge, justice of the peace, or alderman," and the party is brought "before a judge of the proper county," forthwith, for hearing—the 6th sect. providing that "the said fugitive from labour or service, when so arrested, shall be brought before a judge as aforesaid, and upon proof, &c., a certificate of removal to be granted." Second, another class of cases, (to which the 7th sect. particularly applies,) when, after the party is arrested and brought before the judge, and before any proceedings are had, there is an allegation by either party, master or fugitive, that he or she is not ready for trial, the case is to be postponed, to a day certain, and the judge is to commit the fugitive to a day certain, "unless security be given, satisfactory to the said judge, for the appearance of the said fugitive, on a day certain," &c.; if the application for an adjournment in such cases is from the master, he also must give security, to the satisfaction of the judge, to appear and prosecute his claim, on the day to which the hearing shall be adjourned. It also provides, that if the judge making such adjournment, and taking the security, as aforesaid, should be absent, sick, or otherwise unable to attend, it shall be the duty of either of the other judges, on notice given, to attend to the said hearing, and to decide thereon." In both these description of cases, the duties of the justice of the peace, or the alderman, ceases after he has issued his warrant.

The 7th sect. evidently contemplates the bringing of the fugitive before one of the *judges of the court of common pleas of the county*. It is only by *implication*, as expressed in the 10th sect. of the act, that I appear to have any jurisdiction in the case. The 10th sect. says—"It shall be the duty of the *judge, or recorder* of any court of record of this commonwealth, when *he grants or issues any certificate or warrant of removal* for any fugitive, to make a record thereof, and file the same," &c. The mayor's court of Pittsburgh being a court of record, and I being recorder thereof, gives me jurisdiction in this case—but, consequently, it must be intended that I should pursue the *same rules* as are laid down in the preceding sections for the conduct of the judges of the court of common pleas on similar occasions. Now, if on the first hearing of the case, *either of the parties* had alledged that they were not prepared for trial, I should have proceeded under the provisions of the 7th sect. and committed the fugitive, unless he gave security; and if the allegation of not being prepared came from the master, have bound him in security to prosecute, &c., *on the day certain* for which the hearing was adjourned. In such case a writ of *Hab. Corp.* would be absolutely necessary—for, as men's lives and business are uncertain, the legislature intended that there should be no delay of justice on account of such casualties—and, therefore, the last provision of the 7th sect. "*Provided*,

that on the hearing last mentioned, if the judge committing the said fugitive, (I presume, after an allegation from *either party* that they were not ready for trial, and that the fugitive had failed to give bail —for he has liberty to give bail for his appearance, as well as his master—and the master had given security to appear and prosecute his claim on the day to which the hearing was adjourned,) if the judge commiting the said fugitive, or taking the security as aforesaid, should be absent, sick, or otherwise unable to attend, it shall be the duty of either of the other judges, on notice given, to attend to the said hearing, and to decide thereon." If I had committed the party, under the circumstances I mention, a writ of ***Hab. Corp.*** would have been necessary—and such ***Hab. Corp.*** might have been allowed, either by myself, or any one of the three judges of the court of common pleas, in case of my absence, sickness, or inability to attend.

What, then, are the circumstances of this case? When the prisoner was arrested, he was properly enough brought before me—but there was no allegation by either party that they were "not prepared for trial." He was brought before me on Saturday, between 8 and 9 o'clock at night—it was a very inconvenient hour—in fact, it was totally impossible for me to enter upon the examination of the case, and do justice to either of the parties, or myself; and the alledged fugitive having no friend or counsel with him, I, as a matter of convenience and accommodation to all parties, committed him to the custody of the sheriff and jailer, for *further examination*, and appointed Monday next thereafter for the hearing, giving directions that his friends and counsel should have the privilege of seeing him in the meantime. Indeed I may add here, although it is not necessary, that I wished the boy to have counsel—and that I spoke to ***Abraham Lewis***, (one of our most orderly and respectable coloured men,) and told him that a decent looking black boy was in jail, and claimed as a slave; that I did not know the circumstances of the case, but I thought it all right he should have counsel, and a fair hearing. He said he had heard of it, and some one would be employed for him. Accordingly on Monday I directed him to be brought up, for the purpose of entering on the hearing. No allegation was then made, by either party, of not being prepared for trial—but by consent of all parties, the hearing was further postponed until the next day, Tuesday, the 27th Jan. at 10 o'clock, at the court house—and the deft. was accordingly remanded. On Tuesday all the parties appeared, and, without any allegation from *either party* of not being prepared for trial, the hearing was *first* regularly entered upon. Several witnesses were examined, when an application was made, on the part of the master, for a continuance, under peculiar circumstances, which I granted, for the reasons which I have already stated and delivered —the continuance was at the request of the master. Saturday was mentioned as the time of his being expected—the adjournment was

till this day; and the respondent was remanded accordingly. So that, in fact, there has been no commitment to *a day certain*, under any of the contingencies provided for in the 7th sect.—but a remanding, under the peculiar circumstances of the case, for a further hearing—and which hearing is now in progress, as I conceive it—and continued, for the convenience of all parties, from time to time, at my discretion. I do not consider, as has been alledged by the master's counsel, that proceedings under a writ of *Hab. Corp.* are the subject of a *writ of error*, to a higher tribunal. If I thought so, for a moment, it would induce me to stop instantly, and recommend the issuing of one immediately, returnable, probably, to-morrow. The terms of the act of congress, giving jurisdiction to "judges and magistrates," in cases like the present, are so general, that the remedy given to the owners of slaves was very often cruelly abused; and hence the intention of the legislature to place certain guards round the conduct of the officer, to prevent the abuse of his authority. The U. S. could say what a Pa. magistrate or judge, in certain cases, *might do*—but as the legislature of Pa. had full power to prescribe the duties of judges and magistrates, acting under their authority, they could say, by the same authority, *what they should not do*. Therefore, although the 3d sect. of the 4th art. of the const. of the U. S., and the act of congress of the 12th of Feb., 1793, are the supreme law of the land, and no act passed by the legislature of Pa., contravening the same, would be constitutional—yet, every state having a right to regulate their own magistracy, and prescribe their duties, the act of assembly of the 25th of March, 1826, is to be considered declaratory of the *manner* in which the constitution and the act of congress is to be enforced by the judges and magistrates of Pa. This proceeding being, therefore, in my opinion, a summary one, intended to administer speedy and impartial justice, between the master and the fugitive, is not the subject of a writ of error; although the proceedings are all to be filed of record, in certain cases. For these reasons I think there is no necessity for a writ of *Hab. Corp.* in this case, to give me jurisdiction over it—there having, at no time, been an actual commitment of the respondent under the original arrest, to a day certain, for a *final* hearing.

As to the other grounds offered in support of the application for a continuance, I can only say, that the full time asked for in the first instance was granted—if it had *then* been for two or three days longer, it is probable the time would *then* have been extended. But whilst no indecent haste should be observed with regard to the rights of the master or owner, yet something is due to the principles of personal liberty, so that they may not be less lightly regarded than they have hitherto been, respecting, as we are bound to do, the rights and property of our fellow citizens of other states. From Mr. *Fitzpatrick's* own statement, there is no *certainty* of Mr. *Drury* being here, or his sending an agent—there is a *probability*, depending upon his receipt of the letters sent to him by Mr. F. But after one postponement, to the full ex-

tent asked for, it would hardly be impartial to grant another, upon a contingency altogether uncertain, both as respects Mr. *Drury's* health, his receipt of the letters sent by the mail, and the state of the weather. Upon both grounds, therefore, the application for a further continuance of the hearing is overruled.—Let the hearing proceed.

Tuesday, February 3d, 1835, 2 o'clock, P. M.

Edward Fitzpatrick called again.—The examination of this witness now, was opposed by *M'Candless*, the counsel of *Brown*, the respondent, on the ground that he had already been examined in chief, and cross examined, and dismissed; and the witness cannot again be called to testify to any *new* facts, or respecting any thing that may have occurred since his former examination. Such a course would be irregular, and contrary to all rule—there would be no end to the examinations of a witness, if such a course was allowed. It would afford the complainants here an opportunity of bolstering up and patching all deficiencies in their testimony, as fast as the defects were discovered.

Dallas, in reply.—The application, in fact, comes from the witness himself. He is desirous of explaining some portions of his former testimony, not properly understood, and which has not been noted by the recorder.

Testimony admitted.

Edward Fitzpatrick sworn.—I was asked by Mr. *M'Candless* how I knew *Charles Brown* was born a slave, as I was not present at his birth. The boy's father, *Isaac Brown,* told me that his son, this boy, *Charles Brown*, was born in Mr. *Drury's* family. *Isaac* said he was born in Mr. *Drury's* family. This is the answer I give to Mr. *M'Candless'* question of how I knew that *Charles* was born in Mr. *Drury's* family. *Isaac*, the father of *Charles*, told me frequently that himself, his wife, and ten or eleven children, were the slaves of Mr. *Drury*. Mr. *D.'s* father is dead; his name was *Enoch Drury;* he died, I think, in 1818, and at his death the slaves became the property of his son. *E. Drury* had another son, (brother of *W. C. Drury*,) who died in 1825, unmarried, and without issue—and *W. C. Drury* is the only living child of *E. Drury*—and he is an unmarried man. His mother, I believe, lives with him.

D. S. Scully, Esq., sworn.—When *Brown* was apprehended, and brought before me, he said his name was *Charles Brown*—that he was born in *Butler* county, Pa. I asked him if he knew any person there; he said he knew one *Galloway* there—that Butler was 10 miles from Pittsburgh. He said he had been at *Buffalo.* He did not know but one *Galloway*, and he lived in Allegheny town. Said he did not know where Glade Mills were. He was not cautioned about saying any thing to injure himself. These questions were put to him in the presence of the *Recorder*, and Mr. *Kingston*, *Fitzpatrick*, and *myself.*

Robert Hague, constable, sworn.—Brown was not cautioned as to his disclosures or confessions, that I heard. No inducement was held out to him to say any thing. He readily, and without hesitation, answered to the name of *Charles Brown.* Did not say much till we came to Sweeny's. Here we met Fitzpatrick, who spoke to him, and asked him, as *Charles Brown,* how he did. He appeared not to recognize *F.* After the boy was brought in, he was asked if he knew the boy. He smiled, and said he believed he had seen him before, but he could not tell where. He smiled, as if he knew the boy.

Andrew D. Dunshee, constable, affirmed.—At the time *Charles Brown* was arrested he attempted to break away. Done all in his power to get off—made great resistance. He asked what he was arrested for, and we told him we would tell him as soon as we could get to where we could find light to show him the warrant. We took him into Sweeny's. Mr. *Edw. Fitzpatrick* spoke to him as *Charles Brown*—he answered, and said that *that* was his name. *F.* asked him if he had not known him in Hagerstown. He denied knowing any thing about Fitzpatrick, and that he ever was in Hagerstown. Some person asked him where he was born, and he said in Butler county. He said he knew the boy—that he had seen him before, at some place or other, but he could not tell where, or rather recollect where.

Power of attorney from *W. C. Drury* to *Edw. Fitzpatrick*, dated 19th Jan., 1832, read in evidence; as also a letter, in which said power was enclosed, from W. C. Drury to Edw. Fitzpatrick, dated at Williamsport, 19th January, 1835. Also a printed advertisement, offering a reward of $50 for *Charles Brown,* &c. [Closed on part of the complainant.]

(*Test. for Charles Brown.*)

Sarah Cooney (yellow woman) sworn.—Says that she has known *Charles Brown* for 5 years last past. She lived at Isaac Whitaker's, about 12 miles up the Monongahela river, and was raised there. *Charles Brown* was hired as a farmer at *Joseph West's.* I removed, after I was married, to Butler county, Middlesex township, and lived there four years, and have been one year back. Went there in the spring, four years ago last 1st of April, and came back this fall. When I came back I saw *Brown* at *Jos. West's,* near Whitaker's. I know him well, because I have seen him so often. He always called himself *Charles Brown. Cross examined.*—He had been there two years, I think, before I saw him. *Jas. Whitaker* told me so. Knew him there two years—four years I was in Butler county—and back since last fall. I do not know where he came from. He worked two years at *West's.* I got back to Mr. *West's* in October last. I now live in Allegheny town. He lives there also. He has been a year or so about there. He was down the river also. He was as large as he is now six years ago. I am certain this is the same boy, and that he always went by the name of *Charles Brown.*

Sarah Coffee (*black*) *sworn.*—I have known *Charles Brown* since May last, four years. Knew him up the Monongahela river, at *Whitaker's:* he lived on one side of the river, and we on the other. He used to come over occasionally to our house. I am married: my husband is here—he's a farmer, and worked on Jeffrey's farm. I am certain this is the same boy; and also certain as to the time I first saw him. I know it, because my little boy was about three weeks old when I first saw him, and he will be four years old next May. *Cross examined.*—Jeffrey's place is two miles below McKeesport; moved here last fall, about seeding time—lived about a year at Jeffrey's—saw *Charles Brown* first at Whitaker's during the time I lived at Jeffrey's.—No—I saw him first when we lived up the Allegheny river, on Dickey's place, two or three years ago. My child was born there—from there we removed to Jeffrey's—and then he came over from Whitaker's to see us. He makes his home at our house—we live now in Allegheny town. I saw him the morning of the day he was taken. Had no conversation with the colored people about him. I was subpœned by the constable, and attended accordingly.

Ferry Ross, (*yellow man*) *sworn.*—I have known Charles Brown about eight years, I think—saw him first at Old Town in Maryland, 15 miles below Fort Cumberland, in Allegheny county, Maryland. When I first knew him he lived at, or was working about, Old Town: when I was there, I saw him often. He always passed there as a free man. I came here about last Christmas, and happened to meet him. He spoke to me, and I recognized him. He was then as big nearly as he is now; that is, as tall, but not quite so stout—he was slimmer. Saw him at Old Town several times; three or four times drank grog with him. He was well thought of there, and well liked—being active, smart, and good natured. Old Town is 5 miles from Cumberland, 27 miles from Flint Spring, and 27 from there to Hagerstown. I know the road well. I was manumitted; purchased my freedom three years ago, and came here last Christmas. He was always called *Charles Brown.*

Dennis Ross, (*yellow man*), *son of Ferry Ross, sworn.*—I have known this boy, *Charles Brown*, six or seven years past. I knew him first in Old Town, Maryland. I am the son of *Ferry Ross.* He, (*Charles Brown,*) always passed there for a freeman. I cannot tell how long he was in Old Town. He was engaged there to work by almost every one that wanted a hand. He was then about as tall as he is now, but not so stout or thick, I think. I am now upwards of 23 years. He was 20, I suppose, when I first knew him, and me 16 or 17.

Edward Lewis, (*black*) *sworn.*—I knew this boy, *Charles Brown*, between four and five years ago. I first saw him at Muttontown, 5 miles from Hagerstown. Saw him next at Greencastle, 11 miles from Chambersburgh, a week or so afterwards. Saw him here, for the first time, last fall. Know him well, as *Charles Brown.* He passed

for a freeman. When I first knew him I was a smart boy, about 20 or so, and he was about my size. I am now about 24 or 25. I served my time with Mr. lawyer *Dunlop*, of Chambersburgh, and was free when I was 21. This is the same *Charles Brown*. I can't be mistaken.

Pero Coffee, (*black*) *sworn*.—I live in Allegheny town. I lived up the Allegheny river about three years ago—came down next March will be a year ago, and moved to a house two miles below McKeesport on the 2d of April last. Moved from there about the last of October last, to Allegheny town. That would make it altogether near four years. I am the husband of *Sarah Coffee*. First knew *Charles Brown* up the Allegheny river. Got acquainted with him again at *Whitaker's*. My child will be four years old next May. I first knew him three years ago, when I lived up the Allegheny, on the land of *Thos. Dickey* and *Arch. Gill*. He said he came over the mountains, but he did not say from where. I took him, when I first knew him, to be about 20 or 21. I may have lived up the Allegheny river almost two years before I first knew him. He was always called *Charles Brown*, and passed for a freeman.

The testimony being closed on both sides—

Mr. *Kingston*, for the master.—This is, in fact, a question of property—a species of property solemnly recognized, as such, by the constitution and laws of the country; as much so as any other species of property, real or personal; and as to the legal possession of which, on a trial for ownership, the same rules of evidence prevails, as prevails in other cases of *meum* and *teum*. See const. of the U. S., 3d sect., 4th art. "fugitive slaves." I may say SLAVES—because, although the words "slaves," and "slavery," are not mentioned in the constitution, yet they are in it, in different terms. It would not suit the genius of the times, perhaps, in a nation which had just thrown off the yoke of slavery herself, and still panting under the efforts of her glorious struggle for *liberty*, to have used the nauseous words, *slaves* or *slavery* —they therefore described them as "persons owing labour or service" —"fugitives from labour or service"—"persons held to service," &c.; a sort of mock-heroic definition, to be sure, but it answers all the purposes of "slaves" and "slavery," just as well as if they had been absolutely used. Well, sir, the constitution and laws of the U. S. is the *graviora lex* —the supreme law of the land—and, as such, is fully recognized by the const. and laws of Penn'a., and in a particular manner by the act of assembly of the 25th of March, 1826, about which we have had so much discussion. The whole principles of these laws have been recognized by the decisions of the highest courts of the U. S., and of this state; and I would specially refer the counsel on the other side to the act of congress itself, of the 12th of Feb., 1793, and 2. *S. & R.* 306; 3 *S. & R.* 4; 5 *S. & R.* 62; 1 *Wash. C. C. Rep.* 500; 2 *Pick. Rep.* 11. Now, whatever notions of liberty we, or either of us, may entertain, (and God knows, no man in the country more re-

grets the black spot of slavery on our national escutcheon than I do,) we must consider that we are acting, under the laws and constitution, in a legal manner, to obtain possession of property to which we have, in the amplest manner, proved our title, by direct and positive testimony, clear of all doubts whatsoever. And you, sir, certainly, acting under oath, will not yield to your abhorrence of the curse of slavery, in deciding a question which comes directly to your conscience, acting under oath; nor strain a point to deprive one of your fellow-citizens, of Maryland, wrongfully of his lawful property. The 2d sect. of the 4th art. of the const. of the U. S. declares, "that the *citizens* of each state shall be entitled to all the privileges and immunities of citizens of the several states." But it is clear, and has been often decided, that even *free negroes*, or *mulattoes*, are not *citizens* of the U. S. within the meaning of the constitution. 1 *Little's Rep.* 75. That, however, is not the question before us at present—but for the true construction of this sect. of the constitution, I refer to 4 *John. Chan. Rep.* 106, a decision by chancellor *Kent*, one of the first jurists of our country. Before the passage of the act of assembly of the 25th of March, 1826, a still more summary mode was given to the master, than is now allowed in Penn'a. In fact, it is fully evident, that proceedings for the recovery of the possession of this species of property were intended by congress, under the constitution of the U. S., to be of the most summary kind; not to be hindered by the law's delay. The act of congress is imperative, and provides *how* the constitutional provision shall be enforced—and delegates certain powers under it to certain judges and magistrates—and their duty under it, according to the rules laid down in the act of assembly, is imperative, and cannot be departed from.

Adjourned till 9 o'clock to-morrow morning.

Wednesday, February 4th, 1834, 9 o'clock, A. M. Hearing proceeded in.

Mr. *Dallas*, for the master, proposes now, and asks leave to offer, the testimony of additional witnesses; *Samuel Sterling*, *William Freaner*, and *Isaac Whitaker*. *Sterling* residing 5 miles below Williamsport, Maryland, and *Freaner* residing at Hagerstown, Md., and *Whitaker*, in Allegheny town. The two first arrived here in the eastern stage, this morning, at 4 o'clock.

The affidavits of *Edward Fitzpatrick* and *Samuel Sterling* were then taken and read—stating that *Sterling* was a material witness, and that the stage was detained at Mountpleasant, in a snow storm, or he and *Freaner* would have been here yesterday, &c., as follows:

State of Pennsylvania, Allegheny County,
City of Pittsburgh, ss.

Edward Fitzpatrick, agent and attorney of *William C. Drury*,

of Washington county, Maryland, being duly sworn, according to law, before the recorder of the said city, saith, that *Samuel Sterling* is a material witness on behalf of the said claimant, *William C. Drury*. That the said *Samuel Sterling* arrived here this morning, at 4 o'clock, in the mail stage, from Williamsport, Maryland, which place he left (as deponent is informed by him, the said *Samuel Sterling*,) on Saturday last, the 31st inst. That, in consequence of the snow storm of Sunday last, said *Sterling* was detained at Mountpleasant, Westmoreland county, Penn'a., and was unable, as the said *Sterling* has informed this deponent, to get to Pittsburgh before the time above stated. Deponent further states, that said *Sterling* is able to prove, beyond all doubt, the right of *William C. Drury* to the labour and service of the fugitive, *Charles Brown*.

EDWARD FITZPATRICK.

Sworn and subscribed before me, this 4th February, 1835.

E. PENTLAND, Recorder of Pittsburgh.

Samuel Sterling being duly sworn, before the Recorder of the city of Pittsburgh, saith that the facts set forth in the foregoing deposition of *Edward Fitzpatrick*, relative to him, this deponent, and to his detention on the road, are true and correct.

SAMUEL STERLING.

Sworn and subscribed before me, this 4th February, 1835.

E. PENTLAND, Recorder of Pittsburgh.

The Recorder called the attention of the counsel on both sides to this enquiry: 1st. Is this proceeding to be considered in the nature of a trial—of a trial at bar, as in a case of *hom. rep.*—as if it were an issue of fact? 2d. Should the usual rules, observed on trials at bar, as to the admission of testimony, &c., be observed in cases like the present? This case has been closed, on both sides; one of the counsel for the master concluded his argument yesterday—and the counsel for the respondent is now ready to proceed with his argument. Is it too late now to admit testimony?

Mr. *Dallas*, for the application, contended for the admission of the testimony—that they had used all due diligence to obtain it; and that the witnesses had been prevented by the act of God from reaching this place in time for examination in the usual way. The snow storm on the mountain had been so great as to totally prohibit the progress of the stage, or the witnesses would have been here in time yesterday morning. Under these circumstances, he had no doubt but that the witnesses ought to be heard.

M'Candless, contra.—The admission of the testimony now, will be not only in violation of all the usual rules of proceedings in civil as well as criminal cases, but in actual violation of the rights of the respondent. Even suppose he is a slave, (which is utterly denied,) he

certainly has some rights in Pennsylvania, being now here under the jurisdiction of her laws, and, in fact, the forms of those laws must be strictly pursued to adjudicate his case. When are we to stop with the admission of evidence? To-day? to-morrow? or next day? Whenever the party finds his testimony deficient in a certain point, he asks the privilege of calling witnesses as to that point. If another defect is discovered, then he is to have another witness called up as to that point, and so on *ad infinitum*. There is to be no stopping place. How are we to rebut this testimony? the discussion will be interminable, besides outraging all the rules of law that I know of, as to investigations of this sort. It is giving to the master, who is rich, and at liberty, an advantage overwhelming against one who is poor and penniless, and in confinement. I insist upon it, that the common law rules of proceedings, as to trials at bar, so far as relates to the admission of testimony, must be observed. The cause of humanity and personal liberty demands that those rules should be strictly and impartially pursued. The testimony now offered comes too late. It cannot be heard without violating the rules of law, and the rights of the respondent.

Mr. *Dallas*, in reply.—The testimony offered is in time—because we have shown, to the satisfaction of the judge, that we have used all *due diligence* to obtain it—and that, but for the act of God, it would have been here in time, in the regular course of the enquiry, and before the testimony had been closed yesterday afternoon. Why should it be now rejected? This is not a trial at bar—but a judicial enquiry, instituted under a particular act of assembly, for a specific purpose, in order to satisfy the conscience of the judge, whether he is, from *all* the testimony, authorized to grant a certificate of removal or not. It lies with him to say what testimony shall be admitted or rejected, and at what stage of the enquiry new evidence shall be admitted. It is not like a case of *hom. rep.* in any of its features. The proceedings, in such cases as the present, are *sui generis*—for a particular class of cases described in the act of assembly, and applicable to no other. The affidavits, as to the facts, are not disputed—they cannot be disputed—they are positive, and not of a doubtful nature. Additional proof may be laid before the judge, I take it, at any time, by either party, before the actual signing of the certificate, or the order of discharge. The usual rules as to proceedings on trials at bar are not to be observed. Here the decision of the judge is final—there can be no motion for a new trial—a new hearing—an appeal, or writ of error—and it would be doing manifest injustice to the claimant to reject the species of testimony offered now, or at any stage of the enquiry. If it were a case at bar, and a verdict was given against us, upon the production of these facts before the court, a new trial would be granted, as a matter of course. Here we can have no relief of the kind—which circumstance, alone, shows conclusively, to my mind, that the testimony ought to be admitted.

Mr. *Hamilton* added a few words in reply, principally enforcing the doctrine and positions of his colleague, Mr. *M'Candless*, and cited some cases from 1 *Penn'a Pract.*

The Recorder said—I do not think that in the enquiry before us we are to be governed by the rules of trials at bar. I consider this as a legal enquiry, to be conducted under the special provisions of the act of assembly, for a particular purpose—to enforce, or rather give legal operation to the provisions of the constitution of the U. S., and the acts of congress relative to this species of property. The party claiming will be held to strict proof—no latitude of construction will be allowed. If he is to be held to *strict legal proof*, to enable him to make out his claim to the "labour and service of the fugitive," it certainly would be wrong, in any stage of the enquiry, to deprive him of the opportunity of presenting such legal proof. Here he has shown that he has used all due diligence; and but for the act of God, the stoppage of the stage by a violent snow storm on the Allegheny mountain, his witnesses now offered would have been here yesterday, before his counsel commenced his address. Under these circumstances, I think it would be unjust to refuse the admission of the testimony. But, as I shall admit it, if there is any allegation on the other side, of the want of time to procure further testimony, to contradict, rebut, or explain, a reasonable time will, of course, be granted.—Let the witnesses be sworn.

Samuel Sterling, *sworn on his voir dire.*—I am not interested in this case: I expect to receive something from Mr. Drury for my services and loss of time in coming out here, at his request.—I have no idea of the amount I am to receive. I don't expect to receive the fourth part of one hundred dollars; no private offer has been made to me of compensation, by Mr. Drury, or any other person for him. I do not know that I shall receive any thing above my pay as a witness and travelling expenses. I came here to identify the boy, at the request of Mr. Drury, who is my neighbour—to accommodate him, he not being able to attend himself. I expect to receive as much if the boy is discharged as if he is remanded. I am not, directly or indirectly, interested in the event of the decision of this case, one way or the other.

Objected to by the respondent's counsel, on account of interest. Objection overruled; and

Samuel Sterling, *sworn in chief.*—Says he lives about five miles below Williamsport, Maryland, and is a neighbour to *Wm. C. Drury.* I have known this boy, *Charles Brown*, for about 8 or 10 years past; 8 at least. I know him to belong to Mr. *Drury*, as his slave. He ran away, or left there two years ago last 8th or 9th of June. I know his parents; they belong to Mr. Drury: the boy lived in Mr. *Drury's* family in 1832. I saw him frequently there, sometimes as much as two or three times a day. I have no doubt about this being the same boy—I have seen him often in company with Mr. *Drury;* he called

Mr. *Drury* master William. His father, mother, brothers and sisters, ten or twelve of them, all live with Mr. *Drury*, and belong to him as slaves. At home he worked on the farm, and was a sort of a mechanic. I can't say whether he went off on foot or on horseback. (Witness reads the printed advertisement.) This is the same boy mentioned in this advertisement. He is, I suppose, now upwards of 20 years old. *Cross examined.*—I know Mr. *Edward Fitzpatrick;* but have not been intimate with him. I own slaves myself. Mr. *Drury* gave me money to come out here, to pay my expenses. I suppose Mr. Drury is 40 years of age. His father died about 14 or 15 years ago. He has no brothers or sisters. His brother died some years ago, but his mother is alive, and lives with him. He is an unmarried man. I have known Mr. Drury personally about ten years; ever since I have lived neighbour to him. I never missed *Charles* from his master's house and farm until he went off altogether, in June, 1832. Don't know whether he went off with a horse, or on foot. I am to get no portion of the reward.

William Freaner, sworn on his voir dire.—I am a constable, and live at Hagerstown, Maryland. I expect to be paid for my services for coming out here, to take the boy back, if he is ordered back. I shall get as much from Mr. *Drury*, I suppose, for my services, if he is discharged as if he is remanded. I received, when starting, $50, and Mr. *Stirling* $100, to pay expenses here, and on the road going and returning. I am not to get any part of the reward. That, I suppose, is to be paid to some person here. [Power of attorney from W. C. Drury to Wm. Freaner, the witness, produced, dated 19th June, 1832. A true copy of the same as that produced by Edward Fitzpatrick.] Upon the oath I have taken, I say I am not directly or indirectly interested in the decision of this case—and that I shall receive the same compensation for my services from Mr. Drury, if the boy is discharged, as if he is remanded.

William Freaner, sworn in chief.—I recognize this black boy; but have no personal acquaintance with him, further than seeing him backward and forward about the store in Hagerstown, when Mr. Drury and Mr. Fitzpatrick were in partnership. I think this is the same boy. I don't know his name. I don't know whether he is a slave or not, or a servant, any further than seeing him about the store, and supposing him to be so; and hearing Mr. Drury and his family always so call him. The fellow knows me well enough, but just now refuses to recognize me.

Cross examined.—Shortly after Charles ran off, in June, 1832, Mr. Drury gave me this power of attorney, and a number of copies of this advertisement, in order that I might endeavour to apprehend him, if he came in my way in the course of business. Mr. Drury is a highly respectable gentleman, of Washington county, Maryland; well known in Hagerstown, Williamsport, and Baltimore. I know Otho H. Williams, the clerk of Washington county court, and judge

Jno. Buchanan, and have seen them both write, and this is their hand-writing; and this is the seal of Washington county court, Maryland. The power of attorney from Mr. Drury to Mr. Fitzpatrick is exactly like the one from Mr. Drury to me, except that my name is filled in the blank by Mr. Drury himself—and the name of Edward Fitzpatrick is filled in his own hand-writing. I have known Mr. Edward Fitzpatrick for several years past, before he removed from Hagerstown. He is a respectable man, and much liked there. I never heard any thing against him.

Isaac Whitaker sworn.—I know nothing about this boy, Charles Brown, except that he worked on the farm at my uncle Aaron Whitaker's. I went to work at Cochran's mill, according to my account book, on the 8th of May, 1832. About this time I saw him going backwards and forwards to the house of some black people that lived on the other side of the river. I saw him passing along as we were working at the mill. He worked for Mr. West, I think, before this, for some time. Mr. West told me so, and so he did himself. He worked for West to the amount of a rifle gun. I saw the gun; it was worth about $15. The hire of such a man as Charles per week, in our neighbourhood, is at about from 7 to 9 dollars per month, and found. I never heard him say where he came from, but always took him to be a freeman. Joseph West told me he believed he was free.

Testimony closed on both sides.

Mr. *Hamilton*, for the deft.—The 3d sect. of the act of the 25th of March, 1826, (*Purdon's Dig.* 655,) must be taken in connexion with the 4th sect. It is necessary, when we wish to give a legal construction to the initiatory clause—"when a person held to labour or service, &c. the person to whom such labour or service is due," &c., that we know, in the first place, how and by what title such person is held, and by what means, and by what authority such service is due, and claimed as a matter of right—and this is plainly the intention of the legislature: because the 4th sect. says, "that the warrant authorized by the 3d sect. shall not issue on the oath of the agent, &c., unless the said agent or attorney shall, in addition to his own oath, produce the affidavit of the claimant of the fugitive, taken before, and certified, &c., which affidavit shall state the said *claimant's title to the service* of such fugitive, and also the name, age, and description of the person of such fugitive."—This act is in favour of liberty—and must be strictly construed. The master must be held strictly to a compliance with all its provisions. Now, what are the facts of this case? What evidence of title has the master set forth in his affidavit annexed to the power of attorney sent by him to Fitzpatrick? The testimony discloses the fact, that the father of *William C. Drury*, the present claimant, was the owner of a family of slaves, ten or twelve in number, of which this boy, *Charles Brown*, was one: that he died some 14 or 15 years ago, leaving two sons and a widow—one of the

sons, Isaac, (I believe the father's name was *Enoch*,) it appears, died several years after the father, unmarried, and without issue: that the widow, and mother of *Drury* is still alive, living with her son. It is not stated whether the father died intestate, or that he made a will; or how, or in what manner he disposed of his real and personal estate. We are, therefore, left entirely in the dark as to this matter, and in a state of uncertainty as to "the title to the service and labour" of this fugitive, as claimed by Mr. *Drury*, if he be a slave and a fugitive, which we deny. But it is said, that under these circumstances, the presumption is, that the son is the heir of his father—and the slaves having lived in the family of Mr. Drury ever since the death of his father, they are now his property. We say no. *Presumption* here will not do. In a case like this, all presumptions are to be favourable to the boy—and a presumption of title will not do. The affidavit must state the *claimant's title*. It does not do so. We have no evidence of how the father disposed of his estate—the strong presumption is, that he would not (even if he made a will,) bequeath the whole to his son *W. C. Drury*, to the exclusion of his widow and his other son. It is not stated whether *Isaac* (the brother of W. C. Drury,) died intestate or not. We are asked to *presume* he did—and we are asked to *presume* that the widow was cut off by her husband penniless; and that the whole estate of the father went to *Wm. C. Drury*. This is an absurd presumption, to be sure—but so it is—a presumption against all reason and common sense. If the father died intestate, we know that Wm. C. Drury is not exclusively entitled to "the labour and services" of this boy, by the laws of Maryland; unless he has acquired the title since the death of his father. Therefore, we say the claimant to this boy has shewn no title; and the claimant must satisfy the judge, by legal proof of his title, before he can stir a step further. In Maryland a parol gift of a slave is not good—it must be reduced to writing, and placed on record. 4 *Cranch's Rep.* 400, *per C. J. Marshall*. Any man may swear that he is entitled to "the service and labour" of another—but we are not bound to believe him, unless in his oath he sets forth his title to such labour and service. In Maryland the registry of slaves is as imperative a part of the duty of the owner, as is the recording of a deed for real estate in Pennsylvania. And this is for the protection of freemen. There are hundreds, yes, thousands of free negroes in Maryland—and this act of registry is to protect them in the peaceable enjoyment of their liberty and civil rights. The doctrine contended for here, would jeopardize the liberty of every free negro in Maryland. If a man is to be handed over as a slave to any one who is hardy enough to swear that he is entitled to his "labour and service," what security have we for personal liberty? This is the reason why the claimant must set forth *his title* to the labour and service of such negro. Without documentary proof, or a title set forth on oath, *Wm. C. Drury* has no legal claim here. He has produced none; nor set forth any in his

affidavit. The presumption, in place of being in his favour, shall be against him—because the law being in favour of liberty, shall be strictly construed.

But we have evidence of the declaration of the father and mother of the boy, (we are told), who told Mr. Fitzpatrick "that he was a slave." This sort of evidence is illegal and improper, and ought not to have been admitted. Hearsay evidence is no evidence at all, and should not have been admitted. Again, the boy lived with Mr. Drury, and called him "*Master* WILLIAM,"—a distinction which, if it shows any thing, shows that he had some other master, and that he was always considered as a *slave* there. Now, if Mr. William C. Drury had, on oath, set out his title to the labour and services of this boy, *Charles Brown*, it is possible that such testimony as this might have been legally admissible, to support the *title* thus set out—but not otherwise, upon any principle of law that I know of. We are told this is an anomalous proceeding, under the act of congress, and an act of assembly. So it is. But that is no reason why the ordinary rules of evidence should be broken down, and trodden under foot. Neither the testimony of Fitzpatrick, Sterling, or Freaner, help to bolster up the alledged title of W. C. Drury to the services of this boy, *Charles Brown*. It is all *hearsay*. No one has proved that he ever heard *Charles Brown* acknowledge that he was the slave of Wm. C. Drury. The hearsay evidence of others is worth nothing. Presumption won't do. There must be *strict legal proof*. For the reasons of this see the preamble to the act of the 1st of March, 1780; 1 *Dallas*, 838; 1 *Smith*, 492; *Purdon*, 648—and see also 7 *Cranch*, 290, and 5 *Term Rep.* 121. I shall leave my colleague to comment on the evidence produced by us to negative the claim of Wm. C. Drury to this boy's services—all of which, in my opinion, goes to prove that he has, for many years, passed as a freeman, without being claimed by any one. The whole testimony is decidedly in the boy's favour.

Now, as to the sufficiency of *this power of attorney*. It was acknowledged *in blank* on the 19th of June, 1832, sent by Mr. Wm. C. Drury by mail to E. Fitzpatrick a few days since, and the *blank filled by him with his own name*. A blank deed is no deed at all. See 3 *Yeates*, 392; 4 *Term Rep.* 320; 2 *Henry Black*, 141; 4 *Cranch*, 160; 4 *Binn*, 1; 10 *S. & R.*, *Babb v. Clemson*. All these authorities go to show that the acknowledgment of a deed in blank is void. The whole run of authorities, from the earliest times, are so. It would be absurd, indeed, if it were otherwise—and would open a door for the admission of every species of fraud. No *title* having been set forth or proved, what becomes then of the master's claim? It vanishes, like "the baseless fabric of a vision." There is no *legal claim*—no legal agent, and the boy ought to be discharged. As to the agency, it is clear there is none. The proceedings are void from the beginning. See 1 *Livermore on Agency*, pp. 36 & 67;

7 *Cranch*, 295; 9 *Johnston's Rep.* 67.—After Mr. Hamilton had concluded his argument,

The hearing was then adjourned till to-morrow morning, at 9 o'clock, A. M.

Wednesday, February 4th, 1835.

The hearing being about to be resumed, in consequence of the sitting of the district court, and the assembling of two public conventions, the court house was fully occupied—and this hearing being to be had in the court house, and in no other place, the same was adjourned over until Thursday morning next, at 9 o'clock, A. M.

Thursday, February 5th, 1835. Hearing resumed.

Mr. *M'Candless, for the deft.*—In earnestly pressing this case on your attention, I am actuated by a consciousness that it involves points of law well worthy of our most serious consideration; and I pray for it that examination and deliberation which its importance demands. It is of lasting importance to the respondent. To him it is of all-absorbing interest, next only to that of a question of life or death—it is, whether he shall remain free, enjoying all the blessings, rights, and privileges of a freeman, or be returned to a never-ending state of bondage, with his chains riveted upon him closer than ever, and the lash of the slave-driver more cruelly inflicted than he himself is capable of fancying now; whilst his eye is extended, and his heart beating, anxious for your decision of his case. That that decision will be a fair and impartial one, governed by the laws, and the dictates of humanity, I doubt not—and that the law, as well as the principles of humanity and civil liberty are in his favour, I have as little doubt. We ask for justice, administered in the spirit of Pennsylvaniá humanity, and not according to the law of the soul-drivers of the south.

Slavery once existed in Pennsylvania; but the principles of the revolution embued our fathers with a hatred against tyranny and oppression, of every sort and degree—and they had no sooner thrown off their own shackles, than they felt it their bounden duty, having accomplished their own emancipation, to strike the fetters from the slave—conscious that the language of the immortal Declaration of Independence, "that all men are born free and equal," should not, as regarded the patriots of Pennsylvania, be a libel on their revolutionary principles, and upon their moral integrity, as well as a stain upon the Declaration of Independence itself.

All laws, respecting the liberty of the person, are to be strictly construed in favour of liberty and civil rights. In the language of our own supreme court, in 1 *Watt's Rep.* 156, he who claims, under the constitution and laws of the country, "to hold the person of an-

other in servitude," shall be held to the strictest proof of his *title* so to do. No favour shall be shown—no leaning towards the possibility or probability of the soundness of his *claim* or *title*—but to positive and direct legal evidence of such title, clear of all doubts, or *suspicions of any kind.*

It is most cheerfully admitted—indeed, when have we undertaken to deny?—that the constitution of the United States, and the acts of congress made in pursuance thereof, are the supreme law of the land. But where acts of congress confer on the judges and magistrates of Pennsylvania the exercise of a particular jurisdiction, the legislature of Pennsylvania have the power to declare how, and in what manner, those services shall be discharged. In other words, they have, unquestionably, the power and authority to regulate the course which shall be pursued by their own magistrates and judges when they are called upon to act, in their official capacities, under the acts of congress. The act of congress of the 12th of February, 1793, is the one which gives jurisdiction of cases like the present to the judges and magistrates of Pennsylvania. But the act of assembly of the 25th of March, 1826, is the one which regulates their conduct, and prescribes their duties, under severe penalties, when they are properly called on to enforce the provisions of the act of congress. Whatever may be said, I still think that this case can be considered in no other light than as one of a *quasi*-criminal character—and that the law, and all the rules of the law applicable to it, must be construed in the strictest manner in favour of liberty. The very relationship which is pretended here, that of *master* and *slave*, calls loudly for that strictness of construction.—The master, (if he be the master in this case, which is denied by us, in every way,) rich and powerful—the *slave* poor, naked, and in bondage, without the means of employing counsel, ignorant of his rights, and dependant on the charity of others to defend himself; ought he not to be heard with rather a prejudice in his favour?

In examining this question, I shall commence with an enquiry as to whether the power of attorney, here exhibited, from William C. Drury, the alledged master, to Edward Fitzpatrick, is a legal and valid power or not—such a one as is contemplated by the true spirit and meaning of the act of the 25th of March, 1826. In other words, is Fitzpatrick the *agent and attorney* of Drury, *according to law, or not?* It appears that this power was acknowledged, *in blank*, on the 19th of June, 1832, and was only received here a few days since, in a letter, by Fitzpatrick, from Drury, who filled the *blank with his own name*, and commenced the proceedings against this black boy, before alderman Scully, in his capacity of agent and attorney in fact for Drury, under the provisions of the act of the 25th of March, 1826. Is such a power of attorney, so acknowledged, in blank, nearly three years ago, a proper instrument to deprive the respondent of his liberty, and return him back to a state of perpetual bondage,

particularly when, as we have conclusively shown, the claimant has not set forth any *title* to the "labour and service" of the respondent? A deed acknowledged in *blank* is void to all intents and purposes, and no filling of it up after its acknowledgment can make it good. The whole run of authorities are to this effect, but I particularly refer to 10 *Coke's Rep.* p. 92, b. 15; *John's Rep.* 193; 7 *Cowan's Rep.* 71; 3 *Yeates*, 392; 4 *Term Rep.* 320; 2 *Hen. Black*, 141; 14 *S. & R.;* 4 *Cranch*, 160, and 4 *Binn.* 1. All these go to show that the acknowledgment of a deed in blank is void, and of no effect; and a power of attorney is a deed, under seal, to all intents and purposes; and if altered, or interlined, in any particular or material place or places, it is most clearly deprived of its original sanctity as an official instrument.

Besides, the party making it may be dead, as well as the justice, the clerk of the court, and the judge of the district; and according to all the rules of evidence the agent is incompetent to prove his own authority, or to testify, in a case like this, in the claimant's place. 1 *Livermore on Agency*, 36, 37, and 67. A general agency, to be sure, may be constituted by parol, or by a simple letter, without seal, or acknowledgment of any kind; but this is a special agency, required under a particular act of assembly, and must be in writing, under seal, and acknowledged, as all deeds are required to be acknowledged, previous to being recorded by the proper officer. The power to appoint such a special agent should be by deed also; and an agent who undertakes to act for another, with respect to real estate, without a suitable power of attorney, accompanied by all the usual formalities, will find all his acts void. This point was solemnly decided here, at the last term of the supreme court, in the case of *Porter's heirs, v. Stewart, et al.*, in which Mr. Brackenridge acted as agent, and undertook to lease the property, without being duly constituted as an agent or attorney by deed. The law has always been so, and it is too clear to admit of any dispute or doubt.

Again, the production of a *second* power of attorney here, from Mr. Drury to Mr. Freaner, is a revocation of the *first* power, to Fitzpatrick, under which we are now acting, and renders such first power entirely null and void. Are the declarations of Freaner and Sterling evidence, being no more than the parol declaration of Drury himself to them, as to *his title* to the labour and services of the respondent? Both Freaner and Sterling, as well as Fitzpatrick, are interested witnesses, and their testimony should not have been admitted —because it is specially provided, in the last clause of the 6th sect. of the act of 25th of March, 1826, "That the oath of the owner or owners, or *other persons interested*, shall in no wise be received in evidence before the judge, on the hearing of the case." The sort of interest acknowledged by all three of these witnesses assuredly goes to their credibility, if not to their competency; and in a case of so much doubt as the present, with respect to the *identity* of the alledged

slave, the respondent, their testimony ought not to be relied on. I allude particularly to the testimony of Mr. Whitaker, and of Lewis, the black man, from Chambersburgh, and of the two Rosses, father and son, lately from Old Town, Maryland, who are respectable coloured men, and are totally disinterested. If their testimony is to be credited, this respondent is certainly not the same Charles Brown that Mr. Drury describes in his affidavit and the power of attorney now before us. There may be, for aught we know, a hundred black men, freemen too, of the name of Charles Brown—precisely as there are hundreds of free white men of the name of John Smith, or any other name as common, and without a particular addition.

So much, sir, with regard to the *identity* of the respondent, which has not been clearly made out by the claimant, his counsel, or his witnesses: nor has he shown by one particle of testimony that he is, according to the laws of Maryland, entitled to the labour and services of the respondent. Surely it will not be pretended by the counsel on the other side, that it is not necessary for the alledged master to show, by some sort of proof, that the fugitive is his property, and that he is entitled by the laws of his own state to hold him in bondage. In Maryland, by its laws, in case of a disputed title to the labour and services of a slave, the master must prove his title in the same manner that he would be compelled to prove his title to any other species of personal property. 2 *Gill & Johns. Rep.* 330—2; 1 *Harris & Gill's Rep.* 259. The *onus probandi* is upon the claimant; and he must show, by testimony the most unequivocal, that he has a title to the labour and services of the fugitive. He has exhibited no deed, registry, bill of sale, or other documentary evidence of title; nothing, absolutely nothing, but the unsupported tale of Mr. Edward Fitzpatrick; who, forgetting the soil from whence he came, and the noble and generous feelings which stimulate the native of Ireland to acts of benevolence and humanity, has fallen from his high estate, down to an association with the inflicter of the slave lash and bastinado. Although he avers that he has no interest, directly or indirectly, in the result of this investigation, other than friendship for Mr. Drury, yet his anxiety to testify, and the intense solicitude manifested by him during the progress of the trial, stamp him with the impress of the owner, and are of themselves sufficient to render him incompetent, or at least seriously to affect his credibility. Is it upon testimony like this that you would rivet manacles upon the limbs of this unfortunate being, and consign him to the house of bondage? I think not. You are a Pennsylvania judge, administering Pennsylvania law, in the spirit of Pennsylvania freedom.

The learned gentleman who is to reply has referred me to a case in 7 *Cranch*, decided by chief justice Marshall, to show the disposition evinced by the highest tribunal of the country relative to what the opposite counsel are pleased to term this description of *property*. For the opinions of that illustrious patriot and jurist, I am proud to entertain the most profound respect; and I have no doubt, that long after

this union and its government shall have mouldered into ruins, that its jurisprudence, as expounded by the matchless intellect of that learned and venerable judge, will remain an imperishable monument of its wisdom and greatness. But the case referred to is not analogous to this: it was not the case of a *fugitive*, nor governed by the same rules of law, but arising under the peculiar statutes of a slave state. *There*, all blacks are presumed to be slaves, until proved free. *Here*, the doctrine is the very reverse. The moment a slave touches the soil of Pennsylvania he is free, until he is proved to be a bondman.

Failing both in parol testimony and documentary evidence to prove title to this alledged fugitive, they resort to his own declarations. The injustice, not to say impropriety, of this mode of proceeding, will appear to your honor at the first glance. In many of their positions they profess to be governed by the *lex loci*—the law of Maryland. In that state, no black is permitted to give evidence in a court of justice, in any case whatever; yet, to answer their purposes, they divest him of his alledged character as a slave, put upon him the robes of a freeman, place him in the situation of a competent witness, and take his testimony as the corner stone of their pretended title to himself! Still they insist he is a slave, and subject to all the deprivations incident to slavery. Is this consistency? Is it common justice?

Not having shown, according to the laws of Maryland, that Wm. C. Drury is entitled to the labour and services of this respondent, under the act of congress, and our act of assembly, he must be discharged from custody. All reasonable presumption is against the pretended ownership of Mr. Drury; his testimony is incompetent; his own oath is not to be received in the hearing; and his documents are void, and of no binding effect; and the whole opinion of the Supreme Court of Pennsylvania, as delivered by judge Rogers, in 1 *Watt's Rep.* 156, goes to show, that it is the settled policy of our laws, that all their provisions should be strictly pursued in favour of liberty; and that those who claim to hold their fellow beings in bondage shall be held to strict proof of their right so to do.

In concluding this argument, permit me to say, that your duty is one of great responsibility. This case cannot be reviewed before a superior jurisdiction: your decision is conclusive. We ask not that feeling shall enter into your deliberations; let the scales of justice be equally poised, and the law, as it exists in Pennsylvania, be the basis of your final determination. You are removed from the noxious exhalations emanating from slave states, and your opinion cannot be warped by prejudice when sitting in solemn judgment upon the liberty of a fellow being. We cannot doubt the result in your dispensation of the law. You will send him forth free, like the naked truth of his own cause, without a single bond to impede his flight.

Mr. *Dallas*, in reply to Mr. *M'Candless*, and in conclusion for the master, *Wm. C. Drury*, said, that the zeal, earnestness, and ability with which the last counsel, who had preceded him, had pressed

this case on the consideration of the Recorder, would induce him to go more into detail, in the examination of the doctrine put forth, than he would otherwise have thought it his duty to do—and he did not despair of being able to convince the Recorder, as well as the learned counsel himself, that the several positions assumed by him, were most clearly fallacious, and without any reasonable foundation in law or in fact.

As to the law of the case, Mr. *Dallas* said, it was clear that the act of congress, of the 12th of February, 1793, passed in pursuance of the provisions of the 3d clause of the 4th article of the constitution of the U. States, (*Ingersoll's Dig. p.* 336,) was to govern the case: because the constitution of the U. States, and all laws passed in pursuance thereof, were the paramount law of the land, and could not be controlled by any act or acts of the Pennsylvania legislature. This constitutional provision, as well as the act of congress, passed nearly forty-two years ago, have both received a construction by our own supreme court, and by some of the highest tribunals of the country, and it is now too late to impugn their decisions. Mr. *Dallas* referred to the cases in 2 *S. & R.* 306; 3 *S. & R.* 4; 5 *S. & R.* 62; 1 *Wash. C. C. Rep.* 500, and 2 *Pick. Mass. Rep.* 11. All these decisions went most clearly to enforce the rights of masters to their slave property, when escaping from their custody. The framers of the constitution could not have used stronger language than they have done on this subject:—"No person held to service or labour, 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 labour, but shall be delivered up, on the claim of the party to whom such service or labour may be due."

When we come carefully to examine this constitutional provision, and the act of congress of the 12th of February, 1793, passed in pursuance thereof, and bear in mind that "the citizens of each state, (according to the provisions of the first clause of the said 2d sect. of the 4th article of the const. of the U. States,) are entitled to all the privileges and immunities of citizens of the several states," we cannot fail of being convinced that no impediment can properly be thrown in the way of the master of a fugitive slave, to recover his property, in a summary and speedy manner, by any act of a state legislature, at variance in its provisions with the constitution of the U. States and the acts of congress on this subject. See 4th *Johns. Chan. Rep.* 430. And so far has this doctrine been carried, that in a neighbouring state it has been solemnly decided, that even free negroes and mulattoes are not *citizens* within the true meaning of the constitution of the U. States. 1 *Litt. Rep.* 333. So that it is, indeed, rather a doubtful case, whether the manumitted negroes and mulattoes, who have been examined here, in favour of the respondent, are entitled to be heard or not.—But I do not press this point on the attention of the Recorder, because I think I shall be able clearly to show, that those

witnesses are utterly unworthy of belief, from the gross contradictions and inconsistencies in their testimony.

If we take up the act of congress of the 12th of February, 1793, without reference to our act of assembly of the 25th of March, 1826, we do not see that any *written* power of attorney is necessary from the claimant at all—and under it his agent may as well be constituted by parol, as any other agent may be, by a third person, with regard to personal property and private dealings of any kind. 1 *Livermore on Agency*, 36. If the act of congress does not require it, how, I would ask, can an act of assembly be brought in to control the master of the fugitive slave, or his agent or attorney? For all the purposes of public justice, the agent or attorney may be as well constituted by parol, by a simple letter or authority, as by deed—because the power of attorney contemplated to be produced in writing, by the agent or attorney, to the judge or alderman issuing his warrant, according to the special directions of the 3d sect. of the act of the 25th of March, 1826, having satisfied that particular purpose, is of no further use. It is only to authorize the issuing of the warrant of apprehension, in the first instance, that such power is at all required; and no such power, with all the solemnities of a deed for real estate about it, is contemplated by either the constitution of the U. States, or the act of congress, the supreme law of the land, as applicable to all cases like the present. See 7 *Cranch's Rep.* 295.

This is a question with regard to *personal property*, in which it is of no more use to constitute an agent or attorney by deed, for all the purposes of public justice, than it is to constitute an agent by deed to recover a horse, a cow, or any other species of personal property, capable of being identified by the owner residing in another state or territory. All the cases cited by the counsel for the respondent, on this subject, particularly those from 2 *Gill & Johns.* 330, and 1 *Harris & Gill*, 259, relate to the transfer of *real* estate, and not to *personal* property. And so was the case of *Porter's heirs*, decided at the last session of our supreme court, under our statute of frauds and perjuries, of the 21st of March, 1772, (almost 20 years before the formation of the present constitution of Pennsylvania,)providing that parol leases of lands, &c., for a longer term than three years shall be void and fraudulent. Mr. Brackenridge had no power from the heirs of Porter to make the leases in this case, and they were, of course, void—he could not prove his authority, and the case was very properly decided against the lessees. 1 *Dallas*, 640; 2 *Bioren*, 65; 1 *Smith*, 389; *Purdon's Dig.* 681. And as to the true construction of this act of assembly, and all similar acts, see 2 *Caines' Rep.* 61, and 14 *S. & R.* 305.

It is clear, from all the cases cited by the respondent's counsel, that in Maryland no bill of sale or deed is necessary to the legal transfer of this particular species of personal property. None has been, nor do I believe any can be shown. In all cases like the pre-

sent, the judge or Recorder hearing the case will not be astute in finding unnecessary objections to the legality of the claimant's title to the labour and services of his fugitive slave. If there were no deed or power of attorney at all, I should consider the deed of Mr. Drury to Mr. Edward Fitzpatrick, of the 19th of January, 1835, as sufficiently constituting him his agent, in writing, according to the true intent and meaning of the act of assembly. As to the extreme nicety of distinction between the words "duly constituted," and "duly and legally" constituted, I do not consider it at all necessary to the justice of the case, or to its final decision by the Recorder. The word *duly* has an express and definite meaning, well understood, as properly, fitly, suitably, &c. See *Webster's Dict.* for its true meaning—among which is certainly not the word *legally*. But the power of attorney and the letter must be taken together, and when so taken, all doubt on the subject must vanish, as to the connection of the agency, and the validity of the power of attorney, and the affidavit of title accompanying it. As to the competency and credibility of the agent, it is too late to enquire into that now—the objection was made, both to the competency and credibility of the witness, at the proper time, by the respondent's counsel, and was overruled by the Recorder, for the reasons stated by him. Why, then, shall we be called on to re-argue this part of the case?

One apparently strange conceit has been advanced, that the power of attorney from Drury to Freaner is a revocation of the power from Drury to Fitzpatrick, although such power has never been offered in evidence, nor does Mr. Freaner pretend to act under it. I presume that I need hardly take up the time of the Recorder to answer this objection. It is no revocation, nor is it any part of the case before us.

Now, with regard to the *title* of Mr. Drury to the "labour and services" of this fugitive, it is alledged that the *title* is not properly set forth. Mr. Drury, in his affidavit, states that the respondent is "*his* slave for life." What other species of *title* is necessary to be set forth? The circumstances of Mr. Drury's family, and family connections, have been dwelt upon, just as if it was actually necessary that Mr. Drury should produce a *deed* for this boy, executed with all the formalities of a deed for his farm, or any other real estate. The absurdity of this proposition is evident on the face of it. No such species of title is necessary. And when the boy is sent back to his master, he may, if he pleases, and believes that he is a freeman and entitled to his liberty, commence his suit of *hom. rep.* against Mr. Drury; but not in this state. That point has been decided over and over again.

Adjourned till 3 o'clock, P. M.

Thursday afternoon, 3 o'clock, P. M. The hearing of this case was further proceeded in, and Mr. *Dallas* concluded his argument as follows:—

Having disposed of all the legal questions arising in this case, it remains only to revert to the facts as they appear in evidence, by the testimony on both sides. And here we may once again revert with advantage to the case cited from 7 *Cranch's Rep.* 290, 2*d vol of Peters' Condensed Reports of the Supreme Court of the United States*, 496, as decided by chief justice Marshall. No person carefully and impartially disposed to seek after truth, and arrive at a correct conclusion, can compare the clear, satisfactory, decided, and uncontradicted, as well as unimpeached testimony of Fitzpatrick, his son, and Sterling and Freaner, can doubt for a moment of the *identity* of this boy, Charles Brown, or that he is the slave of Mr. Drury. The testimony of the witnesses on the part of the respondent is entirely contradictory, and at variance with every thing like the appearance of truth. All the coloured people who have been examined contradict each other materially. In truth, no two of them agree in any important fact; and we are fully justified in rejecting their testimony altogether. Our case is plain, clear, and without a shadow of doubt; and whatever our private feelings may be with regard to slavery, we can have very little doubt but that Mr. Drury is, under the constitution and laws of the United States, as well as of this state, entitled to the possession of his property, and that it would be grossly unjust to deprive him of it.

After Mr. *Dallas* had concluded his argument, the *Recorder* having been requested to reduce his opinion to writing, by both parties, the further hearing of this case was adjourned until Saturday, the 7th of Feb. 1835, at three o'clock, P. M.

Saturday, Feb. 7th, 1835, at 3 o'clock, P. M. the further hearing of this case was resumed; when the *Recorder* delivered the following *Opinion:—*

Opinion of the Recorder, in the case of Charles Brown.

It is acknowledged, on all hands, that this is an important case, deserving of careful examination and deliberation. Considering it so, in every point of view, I have carefully weighed the arguments of the learned counsel, who have argued the case, with so much zeal and ability on both sides, and have given to it that attention which its importance to me appears to demand.

The foundation of the claim of William C. Drury to the labour and services of this black boy, Charles Brown, is based upon the 3d clause of the 2d section of the 4th article of the constitution of the United States, which provides, that "no *person* held to labour or 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 labour, but shall be delivered up, on the claim of the party, to whom such service or labour may be due." This provision

of the constitution of the United States is enforced by the 3d section of the act of congress, passed on the 12th of February, 1793; which enacts, "that when a person held to labour in any of the United States, or in either of the territories on the north west or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territories, the person to whom such labour or service is due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labour, and to take him or her before any judge of the circuit or district courts of the U. States, residing or being within the state, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made; and, *upon proof, to the satisfaction of the said judge or magistrate, either by oral testimony or affidavit, taken before or certified by a magistrate of any such state or territory*, that the person so seized or arrested, doth, under the laws of the state or territory from whence he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be a sufficient warrant for removing the said fugitive from labour, to the state or territory from which he or she fled."

The constitution of the United States, and the laws enacted in pursuance thereof, being the supreme law of the land, the first enquiry appears to me to be, as to the enactments which the legislature of Pennsylvania has, from time to time passed, to regulate the duties of her judges and magistrates, as to the enforcement of those provisions in Pennsylvania.

From all my enquiries I learn, that it was the uniform practice, prior to the passage of the act of the 27th of March, 1820, entitled "an act to prevent kidnapping," 7 *Smith*, 285; *Purdon*, 652; for the master, his agent or attornies, to seize or arrest the alledged fugitive, and to carry him or her forthwith before the nearest judge or magistrate for examination; and if he or they satisfied such judge or magistrate, by *oral* testimony or *affidavit*, as prescribed in the act of congress, that they were entitled to the services and labour of the fugitive, to grant the necessary certificate to such master, his agent or attorney, which was *conclusive* against the slave. This practice was liable to great abuse.—It constituted a sort of secret tribunal that cut the fugitive off from all chance of having his case properly examined. He might be a freeman, and yet the judge or magistrate might be induced, by the *exparte* representations of those having him in custody, to believe he was a slave—and he was forthwith remanded to the land of bondage, without the privilege of a public hearing. To my own knowledge, great abuses were perpetrated under this course of practice—some of which were publicly exposed, indeed, when it was too late, and when the unfortunate victims of this black spot upon our national escutcheon were far beyond the reach of relief. Still, however, the *practice*, bad as it was, was in due conformity with the provisions

of the law of congress; there being no act of assembly in force, at that time, on the subject. To remedy these abuses, however, the act of the 27th of March, 1820, was passed.

The *practice*, prior to the passage of this act, was certainly too loose, liable to great abuse, and well calculated to rouse the feelings of the humane citizens of a non slave-holding state. But, as is too often common, in such cases, the legislature, in place of remedying the defects of the practice, by the passage of suitable provisions to restrain it within the bounds of law and common sense, in such a way as to do public justice at once to the *master* and the *slave*, went to the opposite extreme, and "at one fell swoop" *took away the jurisdiction of Pennsylvania magistrates over the subject altogether.* This they had certainly the power to do—the act of congress, or the constitution of the United States, was no restraint or restriction upon them. They had full power, at any time, to enlarge or diminish the jurisdiction of the judges and justices of Pennsylvania, in such manner as they thought proper; and they did exercise it on this subject, to the extent I have mentioned, by the provisions of the 3d sect. of the act of the 27th of March, 1820. 7 *Smith*, 285; *Purdon*, 652. That the legislature must have felt indignant at the abuse of power, by the magistrates and judges under their control is evident throughout the provisions of this act. The 3d section, however, alone concerns this subject, and it enacts, that "No alderman or justice of the peace of this commonwealth shall have jurisdiction, or take cognizance of the case of any fugitive from labour from any of the United States, or territories, under a certain act of congress, passed on the 12th day of February, 1793, entitled, "An act respecting fugitives from justice, and persons escaping from their masters;" nor shall any alderman or justice of the peace of this commonwealth issue or grant any certificate or warrant of removal of any such fugitive from labour as aforesaid, upon the application, affidavit, or testimony of any person or persons whatsoever, under the said act of congress, or under any other law, authority, or act or acts of the congress of the United States; and if any alderman or justice of the peace of this commonwealth shall contravene the provisions of this act, shall take cognizance or jurisdiction of the case of any such fugitive as aforesaid, or shall grant or issue any certificate or warrant of removal as aforesaid, then, and in either case, he shall be deemed guilty of a misdemeanor in office, and shall, on conviction thereof, be sentenced to pay, at the discretion of the court, any sum, not less than five hundred dollars, nor exceeding one thousand dollars, the one half to be paid to the party prosecuting for the same, and the other half to the use of this commonwealth."

This enactment threw such difficulty in the way of the slave holders of the adjoining state of Maryland as amounted almost, in fact, to an act of emancipation itself. The slave walked over the line, and the master was obliged, if he apprehended him, to do so without a

warrant; and this, of itself, appeared to be illegal in Pennsylvania, although the act of congress contemplated such a course. The judges were often absent, and could not be procured to attend; in short, the difficulties towards the masters of fugitive slaves, escaping from Maryland into Pennsylvania, became, as they conceived, so great a grievance, as to induce them to apply to the legislature for relief. They did so in January, 1826, and the legislature of Maryland considered the subject of so much importance to their fellow citizens, that they appointed a joint committee of their body, consisting of three of their most distinguished citizens, (Ezekiel F. Chambers, late a senator of the United States, and now one of the judges of the highest court in Maryland, Robert H. Goldsborough, now a member of the senate of the United States, and Archibald Lee, a gentleman of distinguished reputation,) to proceed to Harrisburgh, "to confer with the legislature of Pennsylvania upon the measures best calculated to remedy the grievance so sensibly felt by the people of Maryland," and which governor Kent assures governor Shultz "is of very serious magnitude, and general concern to all holders of slaves."

On the 2d of February, 1826, the legislative committee of Maryland attended at Harrisburgh, and the proceedings of the legislature of that state were communicated by governor Shultz to the legislature of Pennsylvania, by special message—and a joint committee of both houses was appointed to confer on this subject with the Maryland committee. The result of that conference was the passage of the act of the 25th of March, 1826, under which we are now acting. It restores the jurisdiction of the *aldermen and justices of the peace*, so far as to enable them to issue *a warrant for the apprehension* of any fugitive, upon the oath or affirmation of the claimant of the fugitive, his or her duly authorized agent or attorney, constituted as such, *in writing*. But after the issuing of such warrant the jurisdiction of the alderman or justice is at an end. The form of the warrant is given at large—and the act, as well as the warrant, directs, that when the fugitive is arrested, he shall be brought by the arresting officer "before a judge of the court of common pleas, or of the district court, as the case may be, of the proper county, or the recorder of a city, so that the truth of the matter may be enquired into," &c.

I am thus particular in noticing this part of the act, because it has been seriously contended on the present occasion, that the proceedings with regard to the arrest of this black boy, Charles Brown, are void, *ab initio*. What are the facts, then, as they appear before us? On the 24th of January, 1835, Edward Fitzpatrick appeared before Dennis S. Scully, Esq., one of the aldermen in and for the city of Pittsburgh, and exhibited to him a power of attorney from Wm. C. Drury, constituting him his agent and attorney, to apprehend and secure his black boy, Charles Brown, a runaway, and a slave for life; and at the same time made the following affidavit:—

"*State of Pennsylvania, Allegheny County,*
"*City of Pittsburgh, ss:*—

"Before me, an alderman in and for the said city, personally appears Edward Fitzpatrick, who, on his solemn oath, saith, that the negro boy named Charles Brown, who eloped from William C. Drury, of Washington County, in the state of Maryland, and particularly described in the affidavit or deposition of the said William C. Drury, bearing date the 19th day of June, 1832, is now, to the best of his knowledge and belief, in the city of Pittsburgh, aforesaid. That he was personally acquainted with the said negro, Charles Brown, and knows him to be a slave, as stated in the affidavit or deposition aforesaid. EDWARD FITZPATRICK.

Sworn and subscribed before me, this 24th January, 1835.
D. S. SCULLY, Alderman."

Upon the exhibition of the power of attorney referred to, (to which is attached the deposition of Wm. C. Drury, alluded to,) duly certified according to law, the alderman issued the following warrant:—

"*State of Pennsylvania, Allegheny County,*
"*City of Pittsburgh, ss:*—

"The commonwealth of Pennsylvania to the sheriff of Allegheny county, or any constable of the said city, Greeting:—Whereas, it appears by the oath of Edward Fitzpatrick, that a negro boy, who calls himself Charles Brown, is held to labour and service to William C. Drury, of Washington county, and state of Maryland; and that the said negro, Charles Brown, hath escaped from the labour and service of the said William C. Drury: You are therefore commanded to arrest and seize the body of the said negro, called Charles Brown, if he be found in your county, or in the city aforesaid, and bring him forthwith before a judge of the court of common pleas of the county of Allegheny, or the recorder of the said city, so that the truth of the matter may be enquired into, and the said negro boy, called Charles Brown, be dealt with as the constitution of the United States, and the laws of this commonwealth direct. In witness whereof, I, an alderman in and for the said city, do hereunto set my hand and affix my seal, at Pittsburgh, this 24th day of January, A. D. 1835.

D. S. SCULLY, *Ald.* [*seal.*"]

Upon this warrant, this negro boy, who calls himself Charles Brown, was arrested on Saturday the 24th of January, 1835, by constables Reed and Dunshee, and brought before me, between 8 and 9 o'clock, P. M. He underwent a slight examination, in the presence of Mr. Fitzpatrick, the agent or attorney of Wm. C. Drury; but as I conceived it impracticable, at that late hour, to enter upon the hearing, he was by me committed to jail for further examination, until Monday morning following, at 10 o'clock, A. M., as follows:—

" *State of Pennsylvania, Allegheny County,*
" *City of Pittsburgh, ss:—*

The commonwealth of Pennsylvania to A. D. Dunshee and J. Reed, constables, and to the keeper of the common jail in the said city:—These are to command you, the said constables, forthwith to carry and deliver into the custody of the said keeper of said jail, the body of Charles Brown, charged before me, the Recorder of the said city, as an absconding slave from Wm. C. Drury, of Washington county, state of Maryland, on the oaths of the said William C. Drury and of Edward Fitzpatrick, his agent and attorney, who identifies him as the slave of the said Drury: and you, the said keeper, are hereby required to receive the said Charles Brown, so claimed as a slave, into your custody, in said jail, and him safely keep, until discharged or released by due course of law; and to be there kept for further examination. Witness my hand and seal, this 24th day of January, A. D. 1835. E. PENTLAND,

Recorder of Pittsburgh."

Now, a careful examination of the provisions of the 3d, 4th, and 5th sects. of the act of the 25th of March, 1826, will show, that so far, at least, they have been strictly pursued. The proceedings are, however, asserted to be void from the commencement, on two grounds; 1st, because the blank in the power of attorney was filled by Fitzpatrick himself, but a few days since, (in which he is described as late of Washington county, state of Maryland, whereas he has been, for a considerable time past, a citizen of Pittsburgh;) and 2d, because the owner or claimant, Drury, hath not, in his affidavit, set forth *his title* to the labour and service of the fugitive, as is positively required by the provisions of the 5th sect. of the act of assembly.

As these objections have been pressed upon my consideration in the most earnest, zealous, and eloquent manner; and in such a manner, too, as to convince me that the counsel have implicit confidence in the ground which they have taken, I have carefully considered and examined them, with all the lights I have been enabled to obtain, in so short a space of time, on the subject. Then we shall proceed to enquire—

1st. Is Edward Fitzpatrick, under the power of attorney here produced, the "*duly* authorized agent or attorney of Wm. C. Drury, constituted in writing," according to the true intent and meaning of the 3d sect. of the act of the 25th of March, 1826?

A careful examination and comparison of the 3d and 4th sects. of the act of assembly, will clearly show, in my opinion, that the legislature did not intend that the power of attorney to the agent of the claimant, should possess all the solemnities and formalities of a deed, under seal, with a formal acknowledgment before a judge or justice, with the certificate of a prothonotary or clerk, and the attestation of the presiding judge of the court in which the clerk acts, &c. It appears to me to be sufficient, that such agent be "*duly constituted, as*

such, in writing," without any other of the formalities contended for. But it is said, and pressed with great earnestness, and, indeed, ingenuity and learning, that *duly* means "legally, and according to law;" and that, therefore, the usual formalities attendant upon the execution and delivery of a deed, under seal, must be observed to render the power operative in law. It is true, that in various acts of assembly, and in many of the forms used in our courts, we have the word "duly" used, apparently, in such a sense; yet, accompanied as the power of attorney is, in this case, with the letter of Drury, in his own hand writing, directed to Fitzpatrick, I am inclined to the opinion that it is sufficient, and fully complies with the requisitions of the act of assembly. It does not require a formal acknowledgment before a justice of the peace, nor any official identification of such acknowledgment. It is sufficient, if the hand-writing of the party signing, &c., is proved or acknowledged, to bring it within the true meaning of the term *duly*, as used in the act—which, I think, must mean neither more nor less than that given to it by our best lexicographers—as "fitly, properly, regularly," &c. Generally speaking, an authority to make contracts, to buy or sell, or to transact any particular business, may be granted by any mode which manifests the intention of the party—and the consent of the principal may be given *verbally* in the presence of the parties, or by letter or message. 1 *Liv. on Agency*, 36. This is the law as to agency, with respect to personal property of all descriptions—and here, however harsh and grating it may be to our feelings, as Pennsylvanians, we are bound to consider this as a claim to personal property—as a claim, on the part of the master, for the possession of his personal property, under the provisions of the constitution and laws of the United States, by which its possession and recovery is guaranteed to him. The only difference between any other species of agency, and the one required here, is, that the authorized agent or attorney of the claimant must be "constituted as such, *in writing*."

This decision would save me the trouble of examining the other point, as to this power of attorney, viz. that because it was acknowledged in blank, it is, therefore, null and void. But I have no desire to avoid giving an opinion on that point also, and intend to do so; because it was so strongly urged on the argument, that, I must confess, I was, at one time, inclined strongly to the opinion advocated by the boy's counsel, considering the power a deed, and the authorities cited as decisive of the case. It is true, that most of the *old* authorities go to declare void all blank acknowledgments, as in 10 *Coke*, 92 *b.*, particularly as to deeds for real estate. No authorities were cited by either party in the case of *Moore, et. al.* vs. *Bickham and West*. 4 *Binney*, 1. There the deed had been acknowledged, and a blank left for the consideration money, and the duly constituted agent of the plaintiffs below, swore that he was duly authorized by *Bickham* and *West* to fill it up. The deed was tendered, however, *without the blank*

being filled, (and the acknowledgment embracing that of two married women,) was refused by the purchaser and an ejectment brought for the land. Judge Cooper, who tried the cause in the court below, considered the acknowledgment of the deed before the blank was filled as a mere technical objection, not touching the merits of the question, as it was a matter of no consequence, whether the consideration was five pounds or five hundred pounds, as the real consideration need not be inserted. But, on error, the chief justice, Tilghman, decided that the purchaser was not bound to accept the deed where there was a blank left for the consideration money, notwithstanding that the grantors, after their acknowledgment of the deed, by them, had authorized their agent to fill the blank. No alteration, says the chief justice, of the most trifling kind, can be made in a deed after acknowledgment—because, an altered deed is not the same as that certified—the act of the magistrate is independent of the parties, and no consent of their's can warrant them in falsifying it. And to this point are all the cases cited. 15 *Johns.* 293; 7 *Cowan* 71; and others. There is some difference in the cases, however. In that cited, the blank was not filled before the deed was tendered—here, the deed, or power of attorney, was filled before its exhibition—which, to be sure, according to the doctrine of the chief justice, would make no difference, if a power of attorney, to constitute an agent, is required to go through the same formalities and solemnities as a deed to pass real estate. The more modern doctrine is at variance with the older authorities: and I consider the law of this case to be governed by the case of *Wiley, et. al.* vs. *Moore, et. al.* 17 *S. & R.* 438; a case which was not cited on the argument by the counsel on either side; but which I have had occasion to examine since the last adjournment. Here was a case, I think, much stronger than this. It was where two obligors wrote their names, and affixed their seals, to *a blank sheet of paper*, and left it with a judge of the court, with instructions to fill it up as a bond, conditioned to take the benefit of the insolvent laws, which was accordingly done. On the plea of *non est factum*, judge Shaler, who tried the cause in the court below, charged the jury upon the principles laid down by the chief justice in the case cited from 4 *Binn.* 1. On error, the judgment was reversed, and judge Rogers, who delivered the opinion of the supreme court, says, that the ancient principle, *Shep. Touch.* 54; *Perk. Sect.* 118, and *Co. Lit.* 171, "that if a man seal and deliver an empty piece of paper or parchment, albeit, he do therein withal give commandment, that an obligation or other matter shall be written in it, and this be done accordingly, yet this is no deed," has been overruled in the more modern cases. The point came before the court of king's bench, in *Texira* vs. *Evans*, cited and relied on, in *Master* vs. *Miller*, 1 *Anstruth*, 229. The case occurred before lord Mansfield, and was this: Evans wanted to borrow £400, or so much of it as his credit was able to raise; for this purpose he executed a bond, with blanks for the name and sum,

and sent an agent to raise money on the bond; Texira lent £200 on it, and the agent accordingly filled up the blanks with the sum and Texira's name, and delivered the bond to him. On *non est factum* pleaded, lord Mansfield held it to be a good deed. And the same point, I find, has been ruled in our supreme court in *Seigfried* vs. *Levan*, 6 *S. & R.* 309. That was a case, too, of a bond delivered in blank; and on the plea of *non est factum*, a similar objection was made to the deed as in the former cases cited; but it was admitted in evidence, and finally a verdict was given for the plaintiff. On error, the judgment was reversed by the supreme court, but not on this point. The question was not directly decided, as it arose on the admissibility of the evidence; yet it may be collected from the case, that the opinion of the court was in conformity to the case of *Texira* vs. *Evans*. Judge Duncan, confessedly one of the ablest and soundest lawyers that ever occupied a seat on our supreme court bench, in delivering the opinion of the court, enters into an elaborate review of the authorities, (although the case of *Texira* vs. *Evans* appears to have escaped his attention,) and says, "I would consider him, (that is, Peter Levan, the person who filled up the blanks in the bond,) as the agent of the defendants; at least, I would leave it to the jury; and if he is so considered, then he delivered the bond to the plaintiff, having authority so to do, and it would be their deed." In the course of the argument, in the case of *Wiley, et. al.* vs. *Moore, et. al.* judge Rogers was referred by the defendants in error, to the case of *Harrison* vs. *Tiernans*, in 4. *Rand.* in which it was held, "that a bail bond which was returned to the clerk's office, but which specifies no sum to be paid by the obligor to the obligee, is a mere nullity." The reason which is assigned is perfectly satisfactory—"that a bond is a deed, whereby the obligor obliges himself to pay a certain sum of money to another at a day appointed; that the obligation to pay money is of the essence of the bond, and is, in fact, the only stipulation which the bond contains. "The distinction, says judge Rogers, taken between a bill of exchange and a bond, is unnecessary to the decision of the main point, and is not borne out to its fullest extent by authority. It is in opposition to the case of *Texira* vs. *Evans*, and *Seigfried* vs. *Levan;* and, however respectable as a *dictum*, it is not sufficient to overrule adjudged cases. The decision by our supreme court of the case of *Wiley, et. al.* vs. *Moore, et. al.* I consider as settling the question conclusively here; and that the filling up of the blank in the power of attorney from Drury to Fitzpatrick, with his own name, by the written directions of Drury, rendered the instrument a legal and proper one for all the purposes for which it was intended. There is, certainly, no greater sanctity in a power of attorney than in a bond or obligation for the payment of money. As to the production of the second power of attorney from Drury to Freanor, I do not consider it in evidence here—it was not so offered—and even if it was, being of the same date, tenor, and effect, it would have had

no effect here. A man may have as many agents as he pleases for the same purpose—if they all act, he is bound by their acts—but this power was for a special purpose—the second power was never acted on, and is, of course, no revocation of the first; and it would be a useless waste of time to cite authorities on this subject. Lastly—as to whether the agent is a competent witness to prove his own authority? I have no doubt of it, on general principles, otherwise the interests of third persons would be in continual jeopardy, and no one would trust or deal with the agent or attorney of another. The books are full of authorities on this point. But see, 2 *Livermore on Agency*, 238, 244, and the cases there referred to.

I believe I have now disposed of all the objections raised by the respondent's counsel as to the validity of this power of attorney. I have been more elaborate than was, perhaps, necessary. But this arose from the fact, that at one stage of the argument I was almost decidedly of opinion with the respondent's counsel. The ingenuity and earnestness of his argument, together with my recollection of the old cases on the subject, led me into that train of reasoning—and my doubts, I must confess, were not removed until a full examination of the subject, since the adjournment, convinced me of the error. I can scarcely believe there can be a doubt on this subject. At least, I am now satisfied of the correctness of this decision. Having got rid of the power of attorney, and of every thing connected with it, the next subject of enquiry appears to be this:—

2dly. Has the claimant properly and sufficiently *stated his title* to the labour and services of Charles Brown, the respondent, in conformity with the provisions of the act of the 25th of March, 1826?

The 4th sect. of the act of the 25th of March, 1826, is in these words: "No judge, justice of the peace, or alderman, shall issue a warrant on the application of any agent or attorney, as provided in the said 3d sect., unless the said agent or attorney shall, in addition to his own oath or affirmation, produce the *affidavit of the claimant of the fugitive*, taken before and certified by a justice of the peace, or other magistrate, authorized to administer oaths, in the state or territory in which such claimant shall reside, and accompanied by the certificate of the authority of such justice, or other magistrate, to administer oaths, signed by the clerk or prothonotary, and authenticated by the seal of a court of record in such state or territory; which affidavit shall state *the said claimant's title to the service of such fugitive*, and also the *name*, *age*, and *description* of the *person* of such fugitive."

The affidavit produced here, (and which is attached to the power of attorney,) is as follows:—

"*State of Maryland*,
"*Washington County*, *ss:*—

"On this 19th day of June, 1832, personally appears William C.

Drury, named in the foregoing letter of attorney, before me, the subscriber, a justice of the peace for the state of Maryland, in and for the county aforesaid, and makes oath, on the Holy Evangelists of Almighty God, that *his negro boy*, named Charles Brown, eloped from him on Saturday night, the 16th inst.; that the said negro boy is about eighteen years of age, about five feet nine or ten inches high, of a dark complexion, well made, and of a good countenance, *and that he is a slave for life.* "W. C. DRURY."

"Sworn and subscribed before me,
"JNO. M'ILHENNY, J. P."

This affidavit was accompanied by the certificate of Otho H. Williams, clerk of Washington county court, under the seal of the court, of the authority of the justice, and attested by the hon. John Buchanan, chief judge of the 5th Maryland judicial district—all in due form of law, and to which no exception has been taken.

The enquiry appears to be, what is the correct and legal meaning of the word TITLE, as used in the 4th section of the act? Must the claimant set forth, on oath, how, when, and by what manner, by purchase, descent, or otherwise, he became entitled to the "labour and services" of the fugitive? Or is it sufficient that he set forth, on oath, that the fugitive is *his servant* for a term of years, or *his slave* for life?

It is contended, on the part of the respondent, that the claimant must "state *his title* to the services of the fugitive," in such a manner as clearly to show that he is the exclusive owner of *the slave, in his own right*, and by what *sort of title* he claims to hold him in servitude. That the mere swearing, by an individual, that he claims another to be HIS SLAVE is entirely insufficient, because it is swearing to a fact in which he is directly interested—that *interest* being a strong inducement, under particular circumstances, for the commission of perjury—and that if the individual swears falsely in another state, he cannot be prosecuted for *perjury* in this state. That the oath taken *in Maryland* is an *exparte* one, as relates to the laws of that state, and consequently could not, even if false, amount to perjury there; there being no issue depending to which it would be *material*. Therefore it is necessary that the claimant should substantially set forth *his title at large*, in order to enable us to judge of its *nature*, as well as its *validity*. And this has been, I must say, most ably and ingeniously argued by the counsel for the respondent. There does, at the first blush, seem to be something horrible in allowing an individual to swear that another human being *is his slave for life;* and to allow *that oath* to be sufficient to carry the person, *without any other proof*, into a state of bondage. But whatever may be our own notions and feelings on this subject; however our feelings as men, and members of a community in which we are not cursed with the foul blot of slavery; we must not, in our official capacity, when called on to act in

cases like the present, forget that, according to the constitution and laws of the United States, *slaves are personal property;* and at all times and places liable to be reclaimed by their owners, as such.

The peculiar circumstances of *this case*, as disclosed in evidence, have been strongly dwelt on by the counsel for the respondent, in support of his argument, as to the *nature of the title* to the "labour and service" of the slave, necessary to be set forth by the claimant in the affidavit required to be made and certified by the 3d sect. of the act of assembly of the 25th of March, 1826.

It appears in evidence, that Enoch Drury, the father of Wm. C. Drury, was possessed of a family of slaves, consisting of a man, named Isaac Brown, his wife, and ten or eleven children—that they all lived with him, on his farm, in the neighbourhood of Williamsport, Washington county, Maryland; that he died in 1818, about 16 or 17 years ago, after the birth of the respondent, leaving two sons, William C. Drury, the claimant, and Isaac Drury, his brother, and a widow; that Isaac died in 1825, unmarried, and without issue; and that the widow, the mother of Wm. C. Drury, is still alive, and lives at the old mansion house, with her son, Wm. C. Drury.

It is contended, by the respondent's counsel, that this evidence, so far from showing a direct and *exclusive ownership* in the claimant, goes to render that fact extremely doubtful: that it was, under such circumstances, incumbent on the claimant, according to the spirit and true meaning of the act of assembly, to have set forth *his title at large:* that there is no evidence whether old Mr. Drury died intestate, or made a will, or what disposition he made of his real and personal estate: if he made a will, the fair *presumption* is, that he did not bequeath the *whole* of his estate to his son Wm. C. Drury, to the exclusion of his other son, and his widow: if he died intestate, the slaves would be included in the inventory of his personal property, and could be disposed of by his administrators for the payment of his debts: that all these circumstances go to show, that the *absolute and exclusive title* of the claimant to the "labour and service" of this boy is a matter of *doubt;* and that, under the peculiar circumstances of the case, as all *presumptions* ought to be in favour of liberty, the presumption here should be, that Wm. C. Drury is NOT the *exclusive owner of the boy*, as a slave, otherwise he would have more particularly set forth his *full title* to his "labour and service," as he is bound to do by the special provisions of the act of the 25th of March, 1826.

There is great plausibility, special pleading, and ingenuity, in this argument. But we must not lose sight of the fact, that as this is, according to the laws of *Maryland*, as well as the constitution and laws of the *United States*, a specific claim to a certain species of *personal property;* and that long and undisputed possession of such property is *prima facia* evidence itself of ownership. The *oath* of the party, stating that the respondent is *his negro boy, and a slave for life*,

appears to me to be a sufficient setting forth of *title*, under the provisions of the 3d sect. of the act, to throw the *onus probandi* on the respondent, to show that he is not the property of William C. Drury, but a freeman, or the property of some other person. And in order to afford him an opportunity of doing so, the law has made ample provision: and, in fact, it was to afford him this opportunity that the act of assembly provides that the hearing of his case shall not be by an alderman or justice, but by a judge or recorder — that it shall not be *in secret*, at the office of a justice or alderman, but *publicly*, and in the court house of the proper county. And, moreover, he is not to be hurried on to a trial or hearing, at the pleasure of the master: he is to be allowed full and ample time to prepare his defence, and collect his proof, so that no undue advantage shall be taken of him *by the mere oath* of the person claiming his "labour and service."

The 4th sect. of the act of assembly provides—"That when the fugitive shall be brought before the judge, agreeably to the provisions of this act, and *either party* (thus putting the *master* and *slave*, very properly, upon the same footing) alledge, and prove, to the satisfaction of the judge, that *he or she is not prepared for trial*, and have testimony *material to the matter in controversy*, that can be obtained in a *reasonable* time, it shall and may be lawful, unless security satisfactory to the said judge be given for the appearance of the said fugitive, *on a day certain*, to commit the said fugitive to the common jail, for safe keeping, there to be detained, *at the expense of the owner, agent, or attorney*, for such time as the said judge shall think reasonable and just, and *to a day certain*, when the said fugitive shall be brought before him by *Habeas Corpus*, in the court house of the proper county, or, in term time, at the chamber of the said judge, for *final* hearing and adjudication: *Provided*, That if the adjournment of the hearing be requested by the *claimant, his agent, or attorney*, such adjournment shall not be granted, unless the said claimant, his agent, or attorney, shall give security, satisfactory to the judge, to appear and prosecute his claim, on the day to which the hearing shall be adjourned."

I have examined the language used by the court of Maryland, in the cases cited from 2 *Gill & Johns.* 330, and 1 *Harris & Gill*, 259, as also the language of chief justice Marshall, in the case cited from 7 *Cranch*, 295. All these cases go to show, that SLAVES are *personal property*, and liable to be sold, *as other personal property*, by the owners themselves, or by sheriffs and constables, for the payment of debts. It has not been shown here, what, if any formalities, are required in the sale and transfer of negroes in Maryland and Virginia. It may be, that some particular form or mode is necessary—and it may be, that owners are compelled by law to *register* their slaves. But, even if it is so, it is totally immaterial here, in my opinion. I go upon the broad ground, that *slaves are personal property*,

and provable by their owners, as such, as other personal property is liable to be proved, according to law.

In discussing this question we may revert to the fact, that our act of assembly appears to have been passed for the express purpose of enabling the *owners of such personal property*, when lost, to regain legal possession of it, upon complying with certain forms, and producing certain proofs. The act itself is entitled "an act, to *give effect to the provisions of the constitution of the U. States, relative to fugitives from labour.*" The act of congress of the 12th of February, 1793, was passed in pursuance of the provisions of the constitution of the United States, and is intended to give to the claimants of fugitive slaves a summary remedy for their apprehension and restoration. That summary remedy the legislature have declared shall be pursued, in Pennsylvania, *under certain restrictions*—and so strong are those restrictions, that it is next to impossible, in a populous and free state like ours, for any individual, high or low, to drag another into bondage, contrary to law, and without evidence of ownership, and a public hearing as to his title to the "labour and service" of the person claimed.

If this boy, Charles Brown, had alledged, at the commencement of this enquiry, that he was not ready for trial, and had satisfied me, by his own oath, (for I certainly should have felt bound to take *his* oath, here, just as I would have taken his *master's*, had he been personally present,) that he was not ready for trial, and had *material* testimony, which he could procure in a *reasonable time*, he certainly would have been allowed ample time to make good his allegations, if possible. And I should, if it had been desired, felt bound to issue a commission to take testimony for him, in order to enable him to contradict the oath of his master, setting forth *his title to him as a slave.* As it is, it appears to me that the oath of Mr. Drury, stating that "Charles Brown *is* HIS NEGRO BOY," and *is* "HIS SLAVE FOR LIFE," is a sufficient setting forth of "*the claimant's title* to the service of the fugitive," according to the true intent and meaning of the 3d sect. of the act of assembly of the 25th of March, 1826. And I think there can be no doubt on this subject, when we reflect for a moment on what is the object of the law, in compelling the claimant to *make such oath.* It is not that the oath of the claimant shall be *conclusive* against the fugitive. No such thing:—It is required to be produced, certified by a clerk, under the seal of a court, and attested by a judge, &c., in order to authorize the judge, or magistrate, in the first instance, to issue a *warrant of apprehension.* It is the very *foundation* of the proceedings—for if *such oath* is not produced, no warrant can issue, no matter how many agents the claimant may have present, and no matter how well prepared they may come to *prove* and *identify* the fugitive. They cannot attempt to touch his person without *first* exhibiting this oath. It is the foundation, or ground-work of the initiatory proceedings; and having answered that purpose, by author-

izing the judge or magistrate to issue his warrant, it is *functus officio*, and we are done with it; because the 6th sect. of the act provides, that "the *oath* of the owner or owners, or other person or persons *interested*, shall, *in no case*, be received in evidence, *on the hearing of the case*." On the hearing, the claimant must produce some better evidence of his *right* and *title* to the "labour and service" of the fugitive than his own oath. He must produce the testimony of *disinterested witnesses*, to show conclusively that he is so entitled. It is then, and then only, that he will be held to "strict proof," in the terms laid down by judge Rogers, in the case cited from 1 *Watts*, 156.

3dly. Having thus disposed of the second branch of the enquiry, we come to the third and last—that is, the proof offered by the claimant of HIS TITLE to the "labour and service" of the fugitive, and of his *identity*, in being the SAME NEGRO BOY, (the same Charles Brown,) that ran away from him, on the 16th of June, 1832, as is described in his affidavit, and the advertisement now offered in evidence.

In order to establish his *right* and *title* to the "labour and service" of this boy, four witnesses have been produced on the part of the claimant, viz. Edward Fitzpatrick, Michael P. Fitzpatrick, his son, Samuel Sterling, and William Freanor. The testimony of these witnesses, it is said, should not be received or relied on, because they are evidently *interested*, more or less, although they have all sworn that they "are not, directly or indirectly, interested in the final decision of the case, one way or the other." We are not to *presume interest* in a witness, who denies its existence, on oath.—We must *prove it*.—And there is no occasion for citing authorities for this plain rule of evidence, of every day's practice. One of these witnesses is the duly constituted agent and attorney of Wm. C. Drury; two of the others are his neighbours and acquaintances; one of them is a public officer of Washington county, Maryland, and the other is the son of the agent, who it is not pretended is interested, but merely that he might, by possibility, be unduly biassed and prejudiced by the views and conversations of his father, had with him, since the commencement of this case.

Two of the witnesses, viz. Sterling and Freanor, have stated that they expect to be "compensated" *for their trouble and loss of time*, in leaving home to attend here, as witnesses for Mr. Drury, to prove the identity of the boy—but that they do not expect any reward beyond that—and are not interested in the amount of the reward offered by Mr. Drury for the boy's apprehension, and do not expect to receive any portion of it. Fitzpatrick and his son, both of whom reside here, do not, they say, expect to receive any thing. Edward Fitzpatrick states that he is the personal friend and acquaintance of Wm. C. Drury, and was formerly in partnership with him in a store in Hagerstown, Maryland, and that he is acting as his friend as well as his agent, and does not expect to receive any compensation what-

ever. The *interest* of these witnesses, therefore, *if any*, must be slight indeed; but should not exclude their testimony, even if it might cast a slight shade upon their *credibility*. The interest, to disqualify, must be some *legal*, *certain*, and *immediate interest*, however minute, in the *result* of the cause, or in the record, as an instrument of evidence, acquired without fraud—and it must be a present, certain, vested interest, and not uncertain, or contingent. This is the accepted doctrine now, and is fully explained in 2 *Starkie on Evidence*, 742, and supported by all the English and American cases there cited, and they are numerous. Indeed the doctrine, as I understand it, is undoubted, and unquestionable. The *interest* of the witnesses here, if any, is so remote, and of such an uncertain and contingent nature, as, in my opinion, not to disqualify, or even to impair their credibility.

If these witnesses are to be believed, then there can be very little doubt on the subject. Mr. Sterling, who lives neighbour to Mr. Drury, states that he has known this boy, Charles Brown, for eight or ten years past; that he cannot be mistaken about him; that he was in the habit of seeing him almost daily, and sometimes two or three times a day—that he knows him to belong to Wm. C. Drury, as HIS SLAVE, and that he ran away two years ago last June—that he knows the boy's parents, who live with Mr. Drury, and are his slaves. As to his *identity*, he is positive, without hesitation, having known him so long, and seen him so frequently—and that he has seen him and his master frequently together, and that he always called Mr. Drury "Master William,"—that he worked on the farm of Mr. Drury, and was a sort of mechanic. Mr. Freanor says he knows the boy well enough to identify him, having seen him about Mr. Drury's store, in Hagerstown; but he does not know whether he is a slave or not. Mr. Fitzpatrick says that he has known him, *as the slave* of Mr. Drury, ever since the year 1818—that is almost 17 years ago, when he was a mere child—up to 1832 or 1833, when he removed to this place; that he was frequently at Mr. Drury's house, near Williamsport, Maryland, and almost always saw him there; that he lived in Mr. Drury's house, and acted in the capacity of a servant; that he took his horse, and put him away, as other servants usually do. Mr. Fitzpatrick also states that he knows the *father* and *mother* of the boy—his father's name is Isaac Brown; and he often told him that himself, and his wife, and all his children, *were the slaves* of William C. Drury. He is so positive, he says, that he cannot be mistaken as to this being the *same boy*, having known him so long, from a child of two or three years old, up to 1832, and having had such frequent opportunities of seeing and conversing with him. He further states, that when he first saw him in the streets of this city, about five or six weeks ago, he recognized him immediately; and that when Charles saw him looking at him, he turned round, and ran off. Young Fitzpatrick, aged about 14 or 15 years, the son of Edward Fitzpatrick,

a smart and intelligent lad for his age, testifies that he knows Charles Brown, the black boy now present, well—that he is three or four years older than him, and that he played with him, when they were children, at his master's house, near Williamsport, Maryland—that he knew him in Hagerstown, as well as at his master's house in the country—that he has often seen his father and mother, and his grandmother, at Mr. Drury's—that he first saw him here, in Allegheny town, about three weeks ago, and has no doubt whatever of his being the same boy—that Charles recognized him when he was first apprehended, but that he has not seen Mr. Drury since he left Hagerstown, in 1833.

In addition to this testimony, as to the *identity* of the respondent, we have that of the alderman, before whom he was brought on the 24th of January last, and of Hague and Dunshee, two of the officers who arrested him on the warrant issued by Mr. Scully. He made all the resistance he was capable of to get off when arrested; and when questioned respecting himself, he said his name was Charles Brown, that he was born in Butler county, the adjoining county to this—that the town of Butler was 10 miles from Pittsburgh; and he only gave the name of one individual, of the name of Galloway, who he said he knew there. He refused to recognize the elder Fitzpatrick—but when asked if he knew the boy, he smiled, and said he had seen him before, but could not tell where.

In opposition to this testimony on the part of the master, there has been examined Sarah Cooney, Sarah Coffee, Ferry Ross, Dennis Ross, Edward Lewis, and Pero Coffee, all free coloured people, now residing in this city, or in its immediate neighbourhood. But I am sorry to say that there is such an utter discrepancy in their testimony as to induce me almost to discredit them altogether. The Rosses MAY have seen him at Old Town, Maryland, 15 miles from Fort Cumberland, eight or nine years ago; but as he is only about 20 or 21 years of age, it is next to impossible that he should have been as tall then as he is now. Young Ross says *he* is himself upwards of 22 years of age now, and he supposes Charles was 16 or 17 years of age when he first saw him, six or seven years ago; and that he was then as tall as he is now, but not quite so stout. Lewis MAY have seen him at Mutton town, and at Greencastle, four or five years ago—but the description is certainly at variance with the facts of the case, and the appearance of the boy before us. I pass over the testimony of the other witnesses; for indeed it is so vague, uncertain, and contradictory, as scarcely to be worthy of attention. An examination of it, in the most careful manner, will show that it is totally irreconcilable. I do not attribute this to bad motives on the part of the witnesses—they are ignorant and illiterate, and, perhaps, examined for the first time in a court of justice, and incapable of properly distinguishing dates, months, and years. It is clear, that in a court of justice, on the trial of a cause, either civil or criminal, such evidence

would scarcely weigh a feather against the positive, direct, uncontradicted, and unimpeached evidence of such witnesses as Fitzpatrick and his son, and Sterling and Freanor. The positive weight of the testimony is decidedly in favour of the claim of the master.

I have thus, I believe, noticed all the points raised in this case. I have given it a most attentive, careful, and impartial examination—as well to satisfy my own conscience, as because the importance of the case, and the exertions of the counsel, seemed to demand it. Whilst, as a man, all my prejudices are strong against the curse of slavery, and all its concomitant evils, I am bound by my oath of office to support the constitution of the United States, and the constitution of Pennsylvania, not to let my feelings as a man interfere with my duties as a judge. In considering this case, if any partiality remained on my mind, it was certainly in favour of this unfortunate negro boy. I could not very dispassionately, I confess, look upon the circumstance of my being in duty compelled to order him back to a state of bondage and servitude for life. As my pen glided along the paper, by degrees coming to the conclusion I have, I could not help calling to mind the exclamation of one of the best of poets, and the most amiable as well as afflicted of men—that

> "I would not have a slave to till my ground,
> To carry me, to fan me while I sleep,
> And tremble when I wake, for all the wealth
> That sinews bought and sold have ever earned."

Between *feeling* and *duty*, however, there is no medium; and therefore, in obedience to that duty, I am constrained to grant a certificate to the duly authorized agent of William C. Drury, to remove this "fugitive from labour and service" to the state of Maryland, to be delivered to his master, according to the provisions of the act of assembly in such cases made and provided. During my eleven years of official duty, as Recorder of the city of Pittsburgh, this is the *first* instance in which I have officially been called on to remand a human being into bondage, and I trust in God it will be the last. It is some satisfaction to the boy to know that my decision against him here is not conclusive. He will be taken back to the place from whence he escaped, and may there take the proper steps to prove his freedom, if he is entitled to it. The case will not be hid in secret; it will be published to the world; and I will myself take especial care that it shall be known, in order that he may not be deprived of the opportunity of being released from bondage, if he is in truth and in law entitled to such release. The warrant for his removal is granted as follows: and all the proceedings will be filed of record in the office of the clerk of the court of quarter sessions of Allegheny county, according to law.

(*Copy of the Warrant of Removal.*)

State of Pennsylvania,
Allegheny County, City of Pittsburgh, sct.

The Commonwealth of Pennsylvania to ***Edward Fitzpatrick***, the agent and attorney of ***William C. Drury***, of Washington county, and state of Maryland, Greeting:—

Whereas it has been proved to my satisfaction that ***Charles Brown***, a black man, aged about 20 or 21 years, about five feet nine or ten inches high, of a dark complexion, well made, and of a good countenance, is a *fugitive slave* from the state of Maryland, aforesaid, "owing labour and service" to the said ***William C. Drury***, residing near Williamsport, in Washington county, and state of Maryland, aforesaid: These are, therefore, to authorize you, the said ***Edward Fitzpatrick***, agent and attorney of the said ***William C. Drury***, to receive and take possession of the person of the said ***Charles Brown***, and deliver him safely into the custody of the said ***William C. Drury***, and to the custody of no other person or persons whatsoever: and for so doing this shall be your sufficient warrant.

Witness my hand, and the public and corporate seal of the said city of Pittsburgh, this 7th day of February, A. D. 1835.

E. PENTLAND,
Recorder of Pittsburgh.

ERRATA.

Page 10, line 13 from the top, for "act," read *acts.*
„ 21, „ 26 „ for "teum," read *tuum.*
„ 22, „ 14 „ for "Litt. Rep. 75," read **333.**
„ 37, „ 4 „ for "deed," read *letter.*
„ „ „ 15 „ for "connection," read *correctness.*
„ 38, „ 10 „ for "can," read *and.*
„ „ „ 37 „ dele the words "to me."
„ 39, „ 13 „ for "or," read *and.*
„ „ „ 25 „ for "those," read *these.*
„ 46, last line, for "was," read *had been offered.*