To: Laura Blanchard

From: Theresa Altieri

Re: Pennsylvania Abolition Society Research Assignment

Date: March 1, 2012

The eight items in this collection appear to have been pulled from the David Redick Manuscript Archive, also being sold by Michael Brown (mbamericana.com/david-redick-archive). Redick was a Pennsylvania lawyer, surveyor, and politician who was actively involved in abolitionist activities. He was a member and officer of the Washington Society for the Relief of Free Negroes and Others (Washington Society). Most of the documents in this collection relate to the joint activities of the Washington Society and the PAS.

I spent a total of 17 hours working on this research project. Some of the individual items were grouped together because they related to a common topic or would be located in similar records.

Items 1, 2, and 3 relate to the case of John Davis, the slave of David Davis. According to Pennsylvania's Gradual Emancipation Act of 1780, Pennsylvania slave owners needed to register their slaves before November 1, 1780, otherwise their slaves would become free. At this time, David was living in Washington County where the exact location of the Pennsylvania-Virginia border was uncertain. In the disputed territory, slave owners were given until January 1, 1783 to register their slaves. David did not register his slave John. In 1788, David rented John to work in Virginia to a Mr. Miller. Members of the PAS traveled to Virginia and took John back to Pennsylvania in order to secure his freedom. In response, Mr. Miller hired three Virginians, Francis McGuire, Baldwin Parsons, and Absolom Wells, to travel to Pennsylvania and bring John back to Virginia. John was captured and forced back into slavery.

Both the Washington Society and the PAS became involved in the case. In the end, Virginia's government refused to extradite the three men to Pennsylvania for persecution and John remained in slavery. This case influenced Congress' decision to pass the 1793 Fugitive Slave Law. For more information on the case, see Attachment 1, "The Kidnapping of John David and the Adoption of the Fugitive Slave Law of 1793" by Paul Finkelman (*The Journal of Southern History*, 56 (1990): 397 – 422).

Item 1: This item has multiple parts. First, it quotes a "manuscript memorial" of a meeting where a letter from Alexander Addison to David Redick, both lawyers in Washington, Pennsylvania and members of the Washington Society, dated 6th Mo. 4th, 1788, was read. Second, it quotes a letter from the PAS Acting Committee to the Supreme Executive Council. Third, it includes a series of depositions dated 1789 – 1790 which relate the facts of the John Davis case and the legal efforts of Addison and Redick.

Assessment: The only part of this item that was found in the collection was the quote from the "manuscript memorial". It is an exact quote from the Acting Committee Minutes (XR 572:4, Acting Committee Minutes, 1784 – 1788, 157). The original letter dated 6th Mo. 4th, 1788 could not be found in the letter books or loose correspondence (XR 572:11). The second and third parts of this item could not be located in the Acting Committee Minutes (XR 572:4), Letter books (XR 572:11), Loose

Correspondence, incoming, 1784 – 1795 (XR 572:11), or Loose Correspondence, outgoing (XR 572:15). I also searched for the text of this letter in the General Meeting Minutes (XR 572:1, Minute Book, 1787 – 1800) because the minutes sometimes contained copies of letters. The only information I could find was that the minutes of the Acting Committee were read and approved throughout 1788 (XR 572:1).

Item 2: Retained copy of manuscript memorial to Thomas Mifflin, Governor of Pennsylvania, from the PAS regarding the case of John Davis. Brown presumed this was David Redick's copy.

Assessment: This text of this letter can be found in two places. First, it can be found in the PAS minute book for the meeting dated 4th Month 30th 1791 (XR 572: 1, Minute Book, 1787 – 1800, pg. 154 – 157). It can also be found in *American State Papers: Class X. Miscellaneous,* Vol. I (Washington, 1834), 38 – 43, which includes other important legal details of the case (see Attachment 2).

Item 3: Manuscript letter from PAS to the Washington Society for the Relief of Free Negroes and Others, June 23, 1791. The letter is a response to a letter received by PAS from the Washington Society on December 6, 1790.

Assessment: The text of the letter dated December 6, 1790 from the Washington Society was found (XR 572: 11, Letter book, 1789 – 1794, 72 – 78, see Attachment 3). Although the letter dated June 23, 1791 was not in this letter book, there were other letters and references to the case of John Davis and the relationship between PAS and the Washington Society. In General Meeting Minute Book, 1787 – 1800, the minutes labeled "From a meeting 11th Month 30th, 1791", describe how a letter was read from the Washington Society "complaining of ye inattention of this society to the lease of John Davis" (XR 572: 1, pgs. 154 – 157; Please note that there were three pages labeled "154", so there are actually 6 pages in this entry). There was no date of the letter from the Washington Society; however it was probably referring to the letter from December 6, 1790. The minutes in this entry also described how the PAS would appoint a committee to respond to the letter from the Washington Society. There were also minutes in this entry from a "Special Meeting 5th Month 30th, 1791", at which the PAS prepared an answer about the lease of John Davis that came from the Acting Committee Minutes (these minutes could not be found). The PAS also prepared a memorial to Governor Thomas Mifflin asking for assistance and signed by the Vice President of the PAS, William Rogers (This is Item 2).

Reels Searched:

XR 572:1	General Meeting: Minute Book, 1787 – 1800
XR 572:4	Acting Committee: Minute Book, 1784 – 1788
XR 572:11	Committee of Correspondence: Letter book, 1789 – 1794
	Loose Correspondence, incoming: 1784 – 1795
XR 572:15	Loose Correspondence, outgoing: 1786 – 1795

I also consulted some items from the Cox-Parrish-Wharton Papers, Collection 154 at HSP. There was one letter from David Redick but no other information relating to these items.

Box 14, Folder 44: Letter from David Redick to the President of the Pennsylvania Abolition Society, March 15, 1798 regarding to assist other free blacks who were "unlawfully held in slavery."

Box 14, Folders 22 – 26: Also contained papers and correspondence from the PAS, but not regarding the case of John Davis.

Item 4: Circular seeking information for a census "of the Blacks, both bond and free", in the State of Pennsylvania, "in compliance with a requisition of the Convention of Delegates from the several Abolition Societies throughout the United States". Dated 5th Month 30th, 1796.

Assessment: The "Convention of Delegates" that the circular is referring to is the annual American Convention for Promoting the Abolition of Slavery, at which abolition societies throughout the United States convened to share ideas and news. According to the PAS finding aid, the American Convention published official records. The PAS collection includes some records from the American Conventions of 1794 – 1798, 1800 – 1801, 1803 – 1805, 1809, 1812, 1815 and 1826 (XR 572: 28).

This particular circular was not in the PAS records. However, in the PAS minutes from 1796 (XR 572: 1), dated 4th Month 11th, 1796, there is a note regarding the attempt to prepare "A statement of the condition of the Blacks, both bond and free, in your state, with respect to the property of the free, and the employment and moral conduct of all." This note most likely refers to this circular which was published the following month. I was unable to locate the results of this particular census in the PAS minutes (XR 572: 1) or in the 1797 American Convention records (XR 572:28).

However, I was able to locate some information about other censuses. At the American Convention of 1796, held January 1 – 7, the PAS reported its findings from a census the previous year. They reported that in Philadelphia, there were 381 families, 1294 persons, and 99 homes with an average value of $200. They also reported "the greater numbers of these Free Blacks conduct themselves with reputation and enjoy the comforts arising from industry" (XR 572:28).

Reels Searched:

XR 572:1 Minute Book, 1787 – 1800

XR 572:28 American Convention of 1796

American Convention of 1797

Item 5: Letter from Jona Davis to David Redick, dated 8th June 1798, regarding "The Negro Wench Kate with her two children whom you [Redick] bound to Mrs. Prather."

Assessment: The description of Item 6 has more information about Janet Prather, Kate, and her two children. I was unable to locate any information about Jona Davis or this letter. If Jona Davis was a

member of the Washington Society and not the PAS, it makes sense that this letter would not be in the PAS correspondence records.

Reels Searched:

XR 572:11 Committee of Correspondence: Letter book, 1794 – 1809

XR 572:12 Loose Correspondence, incoming: 1796 – 1819

XR 572: 15 Loose Correspondence, outgoing

Item 6: Manuscript bond of Janet Prathers to James Pemberton, the president of PAS, for 1000 pounds, dated April 26, 1796. Brown quotes from the bond, "The condition of this obligation is such that if the above bound Janet Prather shall will and honestly give bonds with ample and sufficient Security living in the State of Pennsylvania to David Redick Esq. member of the Abolition Society within three months from the date hereof, for the fulfillment and complete execution of this indenture given her by a negro woman Kate on herself and two of her children…"

Item 7: Manuscript Receipt of Peggy Kuntz, dated July 15, 1800, lists items she received when she was manumitted.

Item 8: Manuscript Receipt of Peggy Kuntz and John Kuntz, dated April 15, 1800, notes she received 12 dollars for "the residue of [her] freedom" and her brothers freedom.

Assessment: These three items were grouped together because they were likely to be found in the same types of records. Manuscript receipts and other documents relating to manumissions and indentures can be found in two different collections at HSP. Prior to the PAS records being microfilmed, the Genealogical Society of Pennsylvania microfilmed approximately 5,000 indenture and manumission certificates (circa 1765 – 1865). These records (XR 491:1 – 10) were either completely handwritten or were filled-in form letters that detailed the conditions of manumission or indenture. Slaves and servants signed these documents with their "mark", which typically looked like an "X". Manumission and indenture records can also be found in PAS Series IV: Manumissions, Indentures, and other Legal Papers. This series includes manumission books and indenture books, which contain the same types of documents as the Genealogical Society of Pennsylvania records. In the PAS Series IV description, there was also a note to check the minutes of the Acting Committee and the Committee of Guardians who were responsible for tracking manumissions and indentures.

I could not locate the records for any of the individuals mentioned in items 6, 7, or 8 in the manumission or indenture books, or in the minutes of the Acting Committee or the Committee of Guardians. I did find a reference to a Francis Kuntz who freed his slave Felix (XR 491:6).

Reels Searched:

XR 491:1 PAS Indentures A - P

XR 491:2 PAS Indentures P – Z

XR 491:6	PAS Manumissions etc. Slave Holders Names Ja - Ma
XR 491:8	PAS Manumissions etc. Slave Holders Names Payntee – Sav
XR 572:20	Index to Manumission Book D., 1795 – 1801
	Manumission Book D, 1795 – 1801 pt. 1
XR 572:21	Manumission Book D, 1795 – 1801 pt. 2
	Manumission Book E, 1792 – 1806
	Manumission Book F, 1790 – 1819
XR 572:22	Indenture Book D
XR 572:4	Acting Committee Minute Book, pt. 1, pp. 1 – 186, 1798 – 1802
XR 572:6	Committee of Guardians Minute Book, 1797 – 1802
XR 572:9	Acting Committee: Loose Minutes, 1791, 1794, 1796 – 1798, 1811 – 1819, 1825 – 1826, 1837, and undated materials

The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793

By PAUL FINKELMAN

IN 1791 GOVERNOR THOMAS MIFFLIN OF PENNSYLVANIA REQUESTED THE extradition of three Virginians who were accused of kidnapping a black named John, or John Davis, and taking him from Pennsylvania to Virginia, where he was enslaved. Governor Beverley Randolph of Virginia ultimately refused to extradite the three men, claiming that John was really a fugitive slave who had escaped into Pennsylvania. Mifflin then turned to President George Washington, who asked Congress to adopt legislation on both interstate extradition and fugitive slave rendition. The result was the adoption, in February 1793, of a four-part statute dealing with both questions, which is commonly known as the Fugitive Slave Law of 1793. This article explores the origins and legislative history of that act.

Late in the Constitutional Convention, Pierce Butler and Charles Pinckney of South Carolina proposed that a fugitive slave clause be added to the article requiring the interstate extradition of fugitives from justice. James Wilson of Pennsylvania objected to the juxtaposition because "this would oblige the Executive of the State to do it, at the public expence." Butler discreetly "withdrew his proposition in order that some particular provision might be made apart from this article." A day later the convention, without debate or formal vote, adopted the fugitive slave provision as a separate article of the draft constitution.[1] Eventually the two clauses emerged as

[1] The only other response to Pinckney and Butler's proposal was Roger Sherman's sarcastic observation that he "saw no more propriety in the public seizing and surrendering a slave or servant, than a horse." Max Farrand, ed., *The Records of the Federal Convention of 1787* (4 vols.; New Haven, 1911–1937), II, 443 (quotations in text and note), 453–54. The history of this clause is discussed in Paul Finkelman, "Slavery and the Constitutional Convention: Making a Covenant With Death," in Richard Beeman, Stephen Botein, and Edward C. Carter, II, eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill and London, 1987), 219–24. See also William M. Wiecek,

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succeeding paragraphs in Article IV, Section 2 of the Constitution.[2]

The paucity of debate over the fugitive slave clause is remarkable because by the end of August 1787, when the convention adopted the clause, slavery had emerged as one of the major stumbling blocks to a stronger union. While it was morally offensive to a number of northern delegates, some southerners defended slavery with an analysis that anticipated the "positive good" arguments of the antebellum period. Nevertheless, unlike the debates over the slave trade, the three-fifths clause, the taxation of exports, and the regulation of commerce, the proposal for a fugitive slave clause generated no serious opposition.[3] The delegates to the Constitutional Convention may have been simply too exhausted for further strenuous debate. It is more likely, however, that the northern delegates failed to appreciate the legal problems and moral dilemmas that the rendition of fugitive slaves would pose. In 1787 even those northern states that were in the process of gradual abolition, such as Pennsylvania, recognized the need to return runaway slaves to their owners.[4]

Both the fugitives from justice clause and the fugitive slave clause dealt with a similar problem—the return to one state of persons found in another. Implicit in both clauses was an expectation of interstate cooperation. The criminal extradition clause appeared to guarantee a pro forma process between governors. The fugitive slave clause suggested a similar process between a slaveowner and local authorities. The slim records of the Philadelphia Convention indicate that most of the Framers assumed, incorrectly as it turned out, that state and local authorities would cooperate in the extradition of fugitives from justice and the rendition of fugitive slaves.

The subsequent history of the two clauses shows that the Framers miscalculated. The Virginia-Pennsylvania controversy of 1788–1791 quickly put the nation on notice that the interstate cooperation necessary for a smooth implementation of these clauses had failed to materialize. This controversy, over the kidnapping of John Davis, is particularly important because it led to the adoption of the 1793 act dealing

"The Witch at the Christening: Slavery and the Constitution's Origins," in Leonard W. Levy and Dennis J. Mahoney, eds., *The Framing and Ratification of the Constitution* (New York and London, 1987), 167–84.

[2] The fugitive slave clause reads: "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 Claim of the Party to whom such Service or Labour may be due."

[3] See Finkelman, "Slavery and the Constitutional Convention," 219–24.

[4] "An Act for the Gradual Abolition of Slavery," Act of March 1, 1780, *Laws of the Commonwealth of Pennsylvania* (4 vols.; Philadelphia, 1810), I, 492–93. Section 9 of this law provided for the return of fugitive slaves. The gradual abolition acts of Rhode Island and Connecticut, both passed in 1784, had similar provisions.

with both fugitives from justice and fugitive slaves.[5]

The Davis case had important implications for the rendition of fugitive slaves because the three fugitives from justice that Pennsylvania sought were charged with kidnapping a free black. The problem of kidnapping free blacks quickly emerged as a mirror image of the problem of fugitive slaves. Just as southern states demanded the right to retrieve runaway slaves, northern states demanded the right to protect their free black residents from being kidnapped and sold into servitude in the South. The rights of personal liberty and the claims of personal property caused sectional strife from 1787 until the Civil War.[6]

The history of the adoption of the 1793 law illustrates the importance of slavery to national politics in the 1790s.[7] This history also demonstrates that in this early period southerners were quick to perceive a threat to slavery and just as quick to organize to protect that institution. Northerners were unwilling to endorse slavery, and the institution disturbed many of them. But in legislative battles from 1791 to 1793 northern senators and congressmen were less willing, or less

[5] "An Act respecting fugitives from justice, and persons escaping from the service of their masters," Act of February 12, 1793, in *The Public Statutes at Large of the United States . . .*, I (1845), 302 (hereinafter cited as Act of 1793). William R. Leslie, "A Study in the Origins of Interstate Rendition: The Big Beaver Creek Murders," *American Historical Review*, LVII (October 1951), 63–76, argues that the 1793 law resulted from a conflict between Pennsylvania and Virginia over the rendition of the four men charged with killing peaceful Delaware Indians. Coincidentally, some of those wanted for the Indian killings were also involved in the kidnapping of the free black John Davis. However, as this article demonstrates, the 1793 law regulating both the extradition of fugitives from justice and the rendition of fugitive slaves was a result of Governor Thomas Mifflin's seeking the return of the three Virginians for kidnapping John Davis, who the Virginians claimed was a fugitive slave. Critical to this analysis is the fact that on August 24, 1791, Governor Mifflin praised Governor Beverley Randolph for his cooperation in seeking the arrest of the men charged with killing the Delaware Indians. Yet this was over a month after Governor Mifflin had written to President George Washington complaining about Virginia's noncompliance in the extradition of the men who kidnapped John Davis. This chronology shows that the connection of this case, and the 1793 law, to the Big Beaver Creek murders is coincidental. Thomas Mifflin, "To the Assembly concerning the State of the Commonwealth," August 24, 1791, in George Edward Read, ed., *Pennsylvania Archives: Fourth Series*, Vol. IV (Harrisburg, 1900), 178–81.

[6] There were numerous well-known antebellum conflicts over the return of both fugitives from justice and fugitive slaves. On fugitive slave rendition see especially Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780–1861* (Baltimore, 1974). See also Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven, Conn., and London, 1975). On conflicts over the interstate rendition of fugitives from justice see Paul Finkelman, "States' Rights, North and South in Antebellum America," in Kermit L. Hall and James W. Ely, Jr., eds., *An Uncertain Tradition: Constitutionalism and the History of the South* (Athens, Ga., and London, 1989), 125–58; and Paul Finkelman, "The Protection of Black Rights in Seward's New York," *Civil War History*, XXXIV (September 1988), 211–34.

[7] For a discussion of this problem in the first Congress see Joseph C. Burke, "The Proslavery Argument in the First Congress," *Duquesne Review*, XIV (1969), 3–15, and Howard A. Ohline, "Slavery, Economics, and Congressional Politics, 1790," *Journal of Southern History*, XLVI (August 1980), 335–60. See generally Donald L. Robinson, *Slavery in the Structure of American Politics, 1765–1820* (New York, 1971).

able, to protect free blacks and fugitives seeking refuge in the emerging free states. The northern lawmakers also failed to protect their white constituents who aided fugitive slaves for humanitarian reasons, hired fugitive slaves for purely business reasons, or protected runaways on the assumption that they were actually free people. Furthermore, northerners in Congress appear to have failed to appreciate the dangers that slavehunting posed to both free blacks and antislavery whites. In 1793 northerners in Congress who opposed slavery voted in favor of an extradition law that included provisions for the return of fugitive slaves. They voted this way, no doubt, on the assumption that good faith enforcement of the law would lead to a more harmonious union. This assumption of course proved to be quite wrong. The immediate catalyst for the 1793 law—the conflict between Pennsylvania and Virginia—should have put the northern members of Congress on notice that cooperation and interstate harmony were unlikely when southerners felt their slave property was even slightly endangered.

The conflict between Pennsylvania and Virginia emerged from Pennsylvania's program to end all slavery in that commonwealth and the confusion caused by uncertainty as to the location of state boundaries in the wake of the Revolution.[8] Immediately at issue was the status of John Davis and the three Virginians accused of kidnapping him. The conflict was complicated by Virginia officials' proslavery views, which were already quite evident in the early 1790s.[9] This conflict eventually led to the passage in 1793 of a federal law regulating both the extradition of fugitives from justice and the rendition of fugitive slaves.

John Davis gained his freedom under Pennsylvania's Gradual Emancipation Act of 1780. That law declared that all children born of slaves in Pennsylvania after March 1, 1780, were free at birth, subject to a period of indenture.[10] The law allowed masters to retain any slaves they owned in Pennsylvania on March 1, 1780, provided they registered each slave with a court clerk before November 1, 1780. The registration fee was two dollars per slave, and any slave not

[8] On the controversy over the boundary between Virginia and Pennsylvania see Peter S. Onuf, *The Origins of the Federal Republic: Jurisdictional Controversies in the United States, 1775–1787* (Philadelphia, 1983), 49–66. Uncertainty over these boundaries began in the colonial period.

[9] On the general support for slavery in Virginia in the early national period see Robert McColley, *Slavery and Jeffersonian Virginia* (Urbana, 1964), 182–89.

[10] The indenture period was designed to allow masters time to educate the children of their slaves and to teach them a trade. It also enabled the master to recoup most or all of the cost of raising the children of their slaves. Robert William Fogel and Stanley L. Engerman, "Philanthropy at Bargain Prices: Notes on the Economics of Gradual Emancipation," *Journal of Legal Studies*, III (June 1974), 377–401.

registered by that date immediately became free.[11]

The 1780 law put all slaveowners in Pennsylvania on notice that they needed to register their slaves. It also left some slaveowners in a quandary. Throughout the 1770s the exact location of the Pennsylvania-Virginia border remained uncertain. Inhabitants of what became Westmoreland and Washington counties lived in an area claimed by Pennsylvania under its charter but dominated by Virginia. Some people in the area no doubt actually believed they lived in Virginia. Others certainly expected that in the end they would come under Virginia's jurisdiction. As late as 1783 Virginians living in the area "cherished the hope that a final determination would return them to Virginia." Still others believed that western Pennsylvania would be turned into a separate state, especially after Congress's resolutions of September and October 1780 indicated the national legislature's "intention to form new states in its prospective national domain . . . ."[12] The combination of the political and jurisdictional confusion and the "cherished" hopes of some settlers made many slaveowners in the area unwilling to register their slaves under Pennsylvania law. Registration not only cost money but also implied an acceptance of Pennsylvania's jurisdiction over them, when in fact they still either maintained their allegiance to Virginia or wanted to create their own state.[13]

Slaveowners who did not register their slaves risked losing them if in fact it turned out that they lived in Pennsylvania. Nevertheless, many slaveowners in western Pennsylvania did not register their slaves under the 1780 law, even though on August 31, 1779, commissioners from the two states finally agreed on the exact location of the border and on September 23, 1780, the Pennsylvania legislature adopted a resolution accepting the work of the commissioners. This agreement, however, was not finally ratified by both state legislatures until April 1, 1784.[14]

[11] "An Act for the Gradual Abolition of Slavery," Act of March 1, 1780, *Laws of the Commonwealth of Pennsylvania*, I, 492–93. The drafting and adoption of this act are discussed in Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago and London, 1967), 124–37. The law is put in a larger context in William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760–1848* (Ithaca, N. Y., and London, 1977), and David Brion Davis, *The Problem of Slavery in the Age of Revolution* (Ithaca, N. Y., and London, 1975). See also A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process, The Colonial Period* (New York, 1978), 299–310.

[12] Onuf, *Origins of the Federal Republic*, 49–60 (quotations on p. 60).

[13] Acceptance of Pennsylvania's jurisdiction, which registration implied, threatened many land titles in the area, which were based on Virginia claims. Thus in 1780 some slaveowners in the area faced the dilemma that they could only protect their slave property by jeopardizing their land claims.

[14] "Virginia Claims to Land in Western Pennsylvania," in William Henry Egle, ed., *Pennsylvania Archives: Third Series*, Vol. III (Harrisburg, 1894), 485–504. See Onuf, *Origins*

In 1782, two years before final action on this agreement, Pennsylvania provided some relief for slaveowners in the two western counties. The 1782 law allowed slaveowners in the disputed territory until January 1, 1783, to register their slaves, provided they proved that they had owned those slaves, in Pennsylvania, on September 23, 1780.[15] This statute showed Pennsylvania's desire to woo the loyalty of the western settlers. It may also have been a response to Virginia's demand of July 23, 1780, that Pennsylvania respect "the private property and rights of all persons, acquired under, founded on, or recognized by the laws of either" state. In any event, whatever its impetus, most slaveowners in the area probably welcomed Pennsylvania's 1782 law and registered their slaves under it.[16]

One owner who did not take advantage of this law was Mr. Davis, who had moved from Maryland to what he thought was Virginia or what he hoped would become Virginia, but what in fact turned out to be Pennsylvania. In 1782 Davis failed to register his slave John. In 1788 Davis took John to Virginia, where he rented John to Mr. Miller. A group of John's neighbors, allegedly members of the Pennsylvania Abolition Society,[17] found John in Virginia and brought him back to Pennsylvania. Miller, fearful that Davis would hold him liable for the value of the slave, hired three Virginians, Francis McGuire, Baldwin Parsons, and Absolom Wells, to recover John. In May 1788 they went to Pennsylvania, found John, and forcibly brought him back to Virginia. Davis subsequently sold John to a planter who lived along the Potomac River in eastern Virginia. In November 1788 the court of oyer and terminer in Washington County, Pennsylvania, indicted the three Virginians for kidnapping. This precipitated the first interstate conflict over the rendition of fugitives from justice.[18]

Early in 1790 members of the Washington County branch of the Pennsylvania Abolition Society asked the parent society in Philadelphia

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of the Federal Republic, 57–59.

[15] "An act to Redress Certain Grievances, Within the Counties of Westmoreland and Washington," Act of April 13, 1782. *Laws of the Commonwealth of Pennsylvania*, I, 496. For a discussion of the judicial construction of this law see Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill, 1981), 60–62.

[16] June 23, 1780, *Journal of the House of Delegates*, 1780 session, 60–61, quoted and cited in Onuf, *Origins of the Federal Republic*, 60–61 and *n*70.

[17] Its formal name was the Pennsylvania Society for Promoting the Abolition of Slavery, the Relief of Free Negroes Unlawfully Held in Bondage, and for Improving the Condition of the African Race.

[18] Wm. Mimachan and Benj. Biggs to the Governor [Beverley Randolph], November 20, 1791, in William R. Palmer and Sherwin McRae, eds., *Calendar of Virginia State Papers . . .*, Vol. V (Richmond, 1885), 396–98; Mifflin, "To the Assembly Concerning the State of the Commonwealth."

for help in recovering John. The Philadelphia society had little advice, except to suggest that John abscond from his new owner and return to Pennsylvania. The Washington County group found this suggestion dangerous, because if the escape was unsuccessful it would lead to "an aggravated repetition of his past sufferings," and after a failed escape John's new owner "might have hurried him beyond our reach forever." Instead, the Washington County society hired a Virginia attorney named White, a nephew of Congressman Alexander White, to recover John. This tactic proved unsuccessful, and John remained a slave in Virginia.[19]

By this time the three kidnappers, McGuire, Parsons, and Wells, had been under indictment for over two years but remained at large in Virginia. In December 1790 the Washington County society again sought the aid of their more prestigious brethren in Philadelphia, this time to help secure the extradition of the three kidnappers. In May 1791 the Philadelphia society petitioned Governor Thomas Mifflin of Pennsylvania, telling him that "a crime of deeper die" could not be found in the Pennsylvania "criminal code . . . than that of taking off a freeman and carrying off with intent to sell him, and actually selling him as a slave . . . ."[20]

In June, Governor Mifflin sent Virginia's governor, Beverley Randolph, copies of the indictments and a cordial note, requesting the extradition of the three Virginians, "agreeably to the provisions contained in the second section of the fourth article of the constitution of the United States." Mifflin also asked Randolph to "extend your interference on this occasion as far as it may be expedient to restore the negro to his freedom." In this last matter Mifflin relied on Randolph's "regard for justice and humanity."[21]

Instead of responding directly to Mifflin's request, Governor Randolph turned the matter over to James Innes, Virginia's attorney general.[22] Innes objected to the extradition procedure for a variety

[19] Alex. Addison to [the Committee of Correspondence of] the Pennsylvania Society for promoting the Abolition of Slavery, the Relief of Free Negroes unlawfully Held in Bondage, and for the Improvement of the Condition of the African Race [hereinafter to be called the Pennsylvania Abolition Society], December 6, 1790, Committee of Correspondence, Letterbook, Vol. 1, page 72, Papers of the Pennsylvania Abolition Society (Historical Society of Pennsylvania, Philadelphia; hereinafter cited as PAS Papers), microfilm reel 11.

[20] *Ibid.*; Pennsylvania Abolition Society, General Meeting Minutebook, Vol. 1, page 154, minutes of May 30, 1791, PAS Papers, microfilm reel 11; "To Thomas Mifflin, Governor of Pennsylvania: The Memorial of the Pennsylvania Society for Promoting the abolition of slavery . . . , " in *American State Papers: Class X. Miscellaneous*, Vol. I (Washington, 1834), 39.

[21] Governor Thomas Mifflin to Governor Beverley Randolph, June 4, 1791, in *American State Papers: Class X. Miscellaneous*, I, 40.

[22] Beverley Randolph to Innes, June 14, 1791, *Calendar of Virginia State Papers*, V, 326–28. This contrasts with Randolph's willingness, a month earlier, to issue a proclamation for

of technical and procedural reasons. He argued that because the indictments accused the three men of kidnapping "*violently*, and not *feloniously*," the alleged crimes could not be considered felonies but were merely "*other crimes*" under the extradition clause of the Constitution. Innes further argued that the kidnapping of a free black, under Virginia law, amounted only "to a trespass . . . as between the parties" and "but to a breach of the Peace" between the state and the defendants. Having explained how Virginia law treated the kidnapping of free blacks, he then asserted, incorrectly, that the laws of Pennsylvania on this subject were the same as those of Virginia. This led Innes to the bizarre conclusion that in cases involving minor crimes extradition was only possible when there was "an exclusive Jurisdiction in the State making the demand." Innes advised Governor Randolph that if the three kidnappers were tried in Pennsylvania and found guilty of the crime of trespass or breach of the peace "and their personal presence should be necessary for their punishment, it will be then time enough to make a demand of them."[23]

Innes's position was that the alleged kidnappers had committed only a minor offense over which either Virginia or Pennsylvania had jurisdiction. Therefore, Virginia need not extradite the men unless they were actually convicted of the offense. But while arguing for Virginia's jurisdiction over the alleged kidnappers, Innes did not suggest that the state of Virginia was under any obligation to arrest them and bring them to trial. He did, however, make it clear that if Virginia actually prosecuted them, the charge would not be kidnapping or any other felony. Rather, they would be tried for the minor crime of "trespass."

The weakness of these arguments and conclusions must have been apparent, even to Innes. Thus he offered a second set of arguments. Innes conceded that all constitutional "requisites [had] been satisfied" and that Pennsylvania had "an exclusive Jurisdiction over" the crimes. Still he opposed extradition. Innes argued that "every free man in Virginia is entitled to the unmolested enjoyment of his liberty, unless" deprived of it by federal law, the Constitution, or Virginia law. Since the kidnappers had not run afoul of any of these sources of law, Innes believed that Virginia authorities had no legal right to arrest

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the arrest of two Virginians for the murder of four Indians in Pennsylvania. Randolph later rescinded the proclamation, and this became the second instance in which Virginia refused to comply with a Pennsylvania extradition requisition. "Proclamation of Governor Beverley Randolph," May 3, 1791, and "In Council," January 3, 1792, both *ibid.*, 298–99, 421–22. The relationship between these two incidents is discussed in Leslie, "A Study in the Origins of Interstate Rendition." See references in note 5 above.

[23] Beverley Randolph to Innes, June 14, 1791, and Innes to Beverley Randolph, undated, in *Calendar of Virginia State Papers*, V, 326–28 (first and second quotations on p. 326; third through sixth quotations on p. 327).

the men. Since they could not be arrested in Virginia, they obviously could not be returned to Pennsylvania.[24]

In July, Governor Randolph sent Mifflin his formal refusal to order the arrest and extradition of the three fugitives from justice along with a copy of Innes's report.[25] Mifflin responded by sending copies of the indictments and his correspondence with Randolph, including the Innes opinion, to President George Washington. Mifflin argued that Innes's analysis of the criminal extradition clause of the Constitution was "inaccurate." He told Washington that the three Virginians were charged with serious offenses, which upon conviction could lead to heavy fines and up to twelve months confinement at hard labor. This was hardly a mere "trespass," as Innes had asserted. Mifflin asked Washington to consider the entire problem and to seek "the interposition of the Federal Legislature" so as to "obviate all doubt and embarrassment upon a constitutional question so delicate and important." Washington forwarded the communications to Secretary of State Thomas Jefferson, who in turn gave them to United States Attorney General Edmund Randolph.[26]

After reviewing all the papers sent by Governor Mifflin, Attorney General Randolph concluded that fault for the conflict lay with both governors. The attorney general thought that Mifflin's extradition requisition was defective in two ways. First, Mifflin had failed to provide an authenticated copy of the laws that the fugitives allegedly had violated. Second, Mifflin had neglected to provide some basis for the conclusion that the three men had actually fled from Pennsylvania into Virginia. Randolph noted that one of the three men, Absolom Wells, was in fact under arrest and in custody in Pennsylvania.[27]

On the other side of the question, Attorney General Randolph had little sympathy for Innes's arguments. Randolph thought it "notorious, that the crime is cognizable in Pennsylvania only." Virginia had no jurisdiction over the issue. The Constitution directed that an offender be tried "in the State where crimes shall have been committed," which in this case was Pennsylvania. Nor did Randolph

[24] Innes to Randolph, undated, *ibid.* (quotations on p. 327).

[25] Governor Randolph to Mifflin, June 20, 1791, and July 8, 1791, *ibid.*, 329, 340–41.

[26] Mifflin to President Washington, July 18, 1791; Attorney General Edmund Randolph to Washington, July 20, 1791, both in *American State Papers: Class X. Miscellaneous*, I, 38–39, 41–43 (quotations on p. 39). According to his biographer, Attorney General Randolph was not related to Governor Beverley Randolph. John J. Reardon, *Edmund Randolph: A Biography* (New York and London, 1974), 514.

[27] Edmund Randolph to Washington, July 20, 1791, in *American State Papers: Class X. Miscellaneous*, I, 41–42. A few weeks later, on August 2, Governor Mifflin informed President Washington that Wells was in fact in custody but that the other two men remained at large. Mifflin to President Washington, August 2, 1791, and certification of Edward Burd [Prothonotary of the Pennsylvania Supreme Court], November 10, 1788, *ibid.*, 43.

have any patience for the suggestion that the state of Virginia lacked the authority to arrest the offenders. Indeed, to preserve interstate peace and harmony Randolph considered it the duty of the governor to act. The only alternative was for one state to invade another searching for criminals.[28]

Attorney General Randolph concluded his analysis by noting "that it would have been more precise in the Governor of Pennsylvania" to send his counterpart "an authenticated copy of the law declaring the offence" and "that it was essential that he should transmit sufficient evidence" of the alleged criminals "having fled from . . . justice" in Pennsylvania and into Virginia. Without that evidence the governor of Virginia was correct in not delivering the fugitives. But "with it" Virginia's governor "ought not to refuse."[29]

Randolph then gave Washington some political advice. Randolph noted that Governor Mifflin was "anxious that this matter should be laid before Congress . . . ." Randolph did not think this was advisable "at this stage of the business." He noted that "a single letter has gone from the Governor of Pennsylvania to the Governor of Virginia." Furthermore, although the Virginia governor had refused to comply with the request, this "proceeded from a deficiency of proof . . . ." The attorney general urged Washington to give the Pennsylvania governor time to supply full proof. Only if the governor of Virginia still denied the request should the president intervene. To do so at this point "would establish a precedent" for federal intervention "in every embryo dispute between States . . . ."[30]

Partially following Randolph's advice, Washington sent copies of the attorney general's analysis to both governors. The governors continued to correspond, and Governor Mifflin indicated his willingness to follow Attorney General Randolph's suggestion for a more complete extradition request and, as he reported to the Pennsylvania legislature, "took measures for a scrupulous adherence to the forms which were expected . . . ."[31]

[28] *Ibid.*, 42.

[29] *Ibid.*

[30] *Ibid.*, 42–43.

[31] Mifflin to Washington, August 2, 1791, *ibid.*, 43; Mifflin, "To the Assembly concerning the State of the Commonwealth," 180. Randolph's biographer states that Washington fully followed the attorney general's advice and that Mifflin, in turn, accepted Randolph's suggestions. Reardon, *Edmund Randolph*, 202. This is true only to the extent that Washington passed Randolph's suggestions on to the two governors and to the extent that Mifflin continued to negotiate with Governor Randolph. However, Washington clearly ignored Attorney General Randolph's advice about not asking Congress to become involved in the controversy. Washington turned the entire matter over to Congress shortly after the new session opened in October 1791. President Washington to "Gentlemen of the Senate and of the House of Representatives," October 27, 1791, in *American State Papers: Class X. Miscellaneous*, I, 38.

Despite Mifflin's implementation of Attorney General Randolph's suggestions and his conciliatory stance with Governor Randolph, aid from the Virginia executive was not forthcoming. Virginia's governor soon came under pressure from citizens in the western part of the state to refuse to extradite McGuire and Parsons. These petitions accused members of the Pennsylvania Abolition Society of stealing slaves in Virginia and of seizing the slaves of Virginians traveling west. The state legislators from McGuire's county told Governor Randolph that John was in fact a slave who had been "seduced" into Pennsylvania and that when McGuire, Parsons, and Wells heard about this they were "roused by a just indignation against such nefarious practices" and "went out and brought the negro back."[32]

In January 1792 Governor Mifflin reported to the Pennsylvania legislature that Virginia still refused to return the fugitives from justice. Instead, the Virginia governor complained that Pennsylvanians were "seducing and harboring the slaves of the Virginians." Mifflin promised to investigate this question while continuing the correspondence in the hope—a futile hope, as it turned out—that the kidnappers might be returned for trial.[33]

While the governors of Pennsylvania and Virginia sparred inconclusively, President Washington decided to act. On October 27, 1791, Washington sent Congress copies of his correspondence with Governor Mifflin and of Attorney General Randolph's report. On October 31 the House appointed a three-man committee—Theodore Sedgwick and Shearjashub Bourne, both of Massachusetts, and Alexander White of Virginia—"to prepare and bring in a bill or bills, providing the means" for the extradition of fugitives from justice. The committee was also charged with the responsibility of "providing the mode by which" fugitive slaves might be returned to their owners. Thus from the onset extradition and rendition were tied together. On November 15 Sedgwick reported "a bill respecting fugitives from justice and from the service of masters."[34]

Extradition and rendition seem to have been linked for two reasons.

[32] Wm. Mimachan and Benj. Biggs to the Governor, November 20, 1791, in *Calendar of Virginia State Papers*, V, 397 (quotations); see also John Waller and Horatio Hall to the Governor, November 20, 1791, *ibid.*, 402–3.

[33] Thomas Mifflin, "To the Assembly concerning . . . the surrender of fugitives . . . ," January 25, 1792, in *Pennsylvania Archives: Fourth Series*, Vol. IV, 218–21 (quotation on p. 221).

[34] President Washington to "Gentlemen of the Senate and of the House of Representatives," 38; *Journal of the House of Representatives*, IV, 2 Cong., 1 Sess., 15, 17 (first and second quotations), 30 (third quotation) (House debates of October 28, October 31, and November 15, 1791); *Annals of Congress*, 2 Cong., 1 Sess., 18 (Senate debate of October 27, 1791), and 147, 148 (House debate of October 28, 1791).

Most immediately, the controversy between Virginia and Pennsylvania involved both issues. Virginia asserted that John was a runaway slave and thus his return was a vindication of the fugitive slave clause; Pennsylvania, on the other hand, claimed that John Davis had become free under the Pennsylvania Gradual Abolition Act and had then been kidnapped and that those who took him to Virginia should be extradited to face prosecution. From the beginning Congress was forced to face both issues in tandem. A second reason for the linkage of the two issues no doubt stems from their juxtaposition in the Constitution. The Philadelphia Convention had seen them as related problems, and so did Congress. Both dealt with a similar procedural question and with the important constitutional issue of interstate comity. Not surprisingly, Congress simultaneously dealt with both issues.

The proposed House bill treated fugitive slaves and fugitives from justice in much the same way. In the case of a fugitive from justice the governor in one state communicated his request for an extradition to the governor of another state. When seeking a fugitive slave the claimant was required to apply for an arrest warrant to the governor of the state where the fugitive was found. In both cases the governor of the state where the alleged fugitive was hiding would issue warrants "to all sheriffs, their deputies, and other officers" empowered to "execute warrants in criminal prosecutions" in the state, "commanding" them to arrest the fugitive. The fugitive would then be delivered to officers of the state making the claim or, in the case of slaves, to the claimant. The House bill contained no requirement for a hearing or other proceeding before a judge or magistrate. In the case of a fugitive from justice the state authorities making the claim returned the alleged criminal to the state where he was wanted, and he would be tried. In the case of a slave, the claimant simply took the alleged fugitive back to the slave state he or she supposedly came from. Any officer failing to act on either type of warrant or anyone interfering with the rendition process was subject to fines, which were to be "recovered by indictment" in federal courts.[35]

Significantly, the House bill treated the rendition of both fugitives from justice and fugitives slaves as quasi-criminal matters. Thus the bill obligated northern states to pay their officers to hunt fugitive slaves. This is ironic because at the Constitutional Convention a major reason for not tying rendition to extradition in the same clause was northern opposition to the costs imposed on the free states.[36]

[35] U. S. House of Representatives, 2 Cong., 1 Sess., *A Bill respecting Fugitives from Justice and from the Service of Masters*, printed broadside (New-York Historical Society, New York; hereinafter cited as House Bill of 1791). This appears to be the only extant copy of the bill. None is known to exist in the National Archives.

[36] Farrand, ed., *Records of the Federal Convention*, II, 443, 453. For a discussion of this see Finkelman, "Slavery and the Constitutional Convention," 219–24.

Under this bill, both rendition procedures were summary and did not allow the person seized as a fugitive to make any defense before extradition. This procedure raised due process questions for fugitives from justice and much weightier questions of the same sort for blacks claimed as runaway slaves.

The drafters of this bill no doubt assumed that requests for fugitives from justice would be based on probable cause, arrest warrants, or actual indictments. The bill required that the request be "by an instrument in writing, authenticated by the signature of the Governor or other first executive officer and by the seal of such state."[37] Furthermore, the House members must have assumed that once returned, a fugitive from justice would face a trial where he would be afforded an opportunity to prove his innocence.

This procedure contrasts sharply with the provisions for returning fugitive slaves. The bill required that fugitive slaves be seized at the request of the claimant, based on "the depositions of two or more credible persons, that the person so claimed doth owe, under the laws of the state from which he fled, service or labor to the person claiming" the slave. The proposed bill did not say who could witness the depositions or if they had to be taken under oath.[38] This was a far cry from the standards of evidence necessary to obtain an arrest warrant or a grand jury indictment, which presumably a governor would want before he committed his signature to an extradition request. Warrants and indictments were issued only after probable cause had been presented to judges or members of grand juries, all of whom were uninterested third parties. Under the proposed bill alleged fugitive slaves could be seized on the basis of depositions from private claimants with obvious pecuniary interests in the outcome. Even more important, the lawmakers had no reason to expect that alleged fugitive slaves would receive any hearing or trial once they were returned

[37] House Bill of 1791, paragraph one.

[38] *Ibid.*, paragraph two (quotation). Paragraph one of the 1791 bill, which deals with the extradition of fugitives from justice, is explicit about such matters as requiring an extradition requisition "in writing, authenticated by the signature of the Governor" and "by the seal of such state." Similarly, the bill required that the govenor arresting the fugitive issue a warrant "under his hand and the seal of the same state . . . ." In the description of the "deposition" necessary to arrest a fugitive slave such details are omitted. Thus it is not clear if the drafters of this bill intended to require a sworn deposition, taken before a judge. It seems that if they had meant this they would have spelled out these requirements. The drafters of the bill probably did not intend a deposition in chancery, which is the precursor of the modern interrogatory, in which the witness is questioned under oath by attorneys for either or both sides of the case. It obviously would have been impossible for an alleged fugitive to send an attorney to a southern state to depose a person who might offer evidence against him. Thus the meaning of "deposition" in this bill is unclear. An early treatise on American law (although one written many years after this law was debated) noted that depositions were "not favored by the law." Francis Hilliard, *The Elements of Law* . . . (Boston and New York, 1835), 308.

to a slave state. These procedures invited abuse by kidnappers.

This bill also raised questions about the nature of federalism in the new republic. The bill placed the entire authority for fugitive slave rendition in the hands of governors and sheriffs, and yet if these officers failed to act on a deposition or interfered with rendition, they faced harsh monetary penalties enforced in the federal courts. Slaveowners seeking fugitives were to turn first to state officials for aid. But if they failed to act, slaveowners had recourse to the national government. Most state and local officials would probably have cooperated with the law,[39] but under pressure from the early abolition societies, it is quite possible that some would have either ignored the law or resisted it, thus setting the stage for state-federal conflicts at a time when the national government was weak. The bill, as drafted, may also have been unconstitutional because it required state officials to act. It is not clear if the Congress had the power to require actions by state officials. In 1842, in *Prigg* v. *Pennsylvania*, the United States Supreme Court would in fact rule that Congress could not compel state officials to enforce a federal law.[40]

Whether constitutional or not, the bill never came to a final vote. The bill was introduced on November 15, 1791, read twice, and scheduled for a third reading. Despite this energetic start, the bill was never considered again.[41] Why the House ceased consideration of the issue at this point is uncertain. It may be, as William R. Leslie argued, "that Congress thought it more fitting for the upper chamber to draft bills pertaining to interstate relations since the upper chamber represented states as states." Thus the House may have ceased action on the bill in deference to the Senate.[42] But it is also likely that once congressmen studied the bill they found it was severely flawed since it threatened the federalism of the new nation, the liberty of free northern blacks, and the pocketbooks of northerners who interfered with the rendition of a fugitive. Many fugitive slaves had lived so long in the North that their white neighbors might have defended them on the assumption that they were free. Under this proposed law such action could have resulted in a costly fine.

The following March the Senate appointed George Cabot of

[39] Even in the late antebellum period, when tensions were much greater and opposition to slavery much stronger, probably a majority of northerners complied with the Fugitive Slave Law of 1850. Although I think his thesis of northern support for the 1850 law is overstated, Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill, 1968), vii–viii, does demonstrate that many northerners willingly enforced the law.

[40] House Bill of 1791; *Prigg* v. *Pennsylvania*, 16 Peters (41 U.S.) 539 (1842).

[41] *Journal of the House of Representatives*, IV, 2 Cong., 1 Sess., 30, 32–34 (debates of November 15, 18, 1791).

[42] Leslie, "A Study in the Origins of Interstate Rendition," 73*n*.

Massachusetts, Roger Sherman of Connecticut, and Ralph Izard of South Carolina "to consider the expediency of . . . a bill respecting fugitives from justice and from the service of masters." This committee had not reported back to the Senate by the time the session ended in May.[43]

On November 22, 1792, at the beginning of the next session of Congress, the Senate appointed a new three-man committee, chaired by Cabot, to consider criminal extradition and fugitive slave rendition. During much of the next two months the Senate considered a number of proposals on this issue that, for the sake of clarity, will be designated Senate Bill 1, Senate Bill 2, Senate Bill 3, and the Final Senate Bill. On December 20 the Cabot committee reported a bill that was debated until December 28, when it was recommitted. This was Senate Bill 1.[44] On January 3, 1793, the Cabot committee, which had been expanded to five members, reported a series of amendments that completely rewrote Senate Bill 1. This amended bill will be designated Senate Bill 2.[45] On January 14 the Senate amended Senate Bill 2 with a series of deletions and additions that resulted in Senate Bill 3.[46] On January 18 the Senate passed a combination of Senate bills 2 and 3 along with amendments made between January 15 and January 17. This will be designated as the Final Senate Bill. The House made only minor changes, which the Senate accepted. President Washington signed the bill on February 12, 1793.

An analysis of the legislative odyssey from Senate Bill 1 to the Final Senate Bill shows the alternatives the Senate considered. The fugitive slave provision of the various bills created great conflict in

[43] *Journal of the Senate*, IV, 2 Cong., 1 Sess., 170 (debate of March 30, 1792); *Annals of Cong.*, 2 Cong., 1 Sess., 115 (quotation).

[44] U. S. Senate, 2 Cong., 2 Sess., "Bill respecting fugitives from Justice and persons escaping from the service of their masters, Dec. 20, 1792," handwritten draft in file Sen. 2A-D1, Bills and Resolutions, 1789–1968, Records of the United States Senate, Record Group 46 (National Archives and Records Service, Washington; hereinafter cited as RG 46). The same file also contains a three-page version of the bill, which was printed by John Fenno, and is hereinafter cited as Senate Bill 1. The Senate Journal does not indicate when this printing was ordered.

[45] U. S. Senate, 2 Cong., 2 Sess., "Amendments Reported by the Committee on the Bill respecting fugitives from justice and persons escaping from the service of their masters," *ibid.* There is no known printed version of this bill, which is hereinafter cited as Senate Bill 2.

[46] U. S. Senate, 2 Cong., 2 Sess., "Amendments reported on the report of the Committee respecting fugitives from Justice and Persons escaping from the service of their masters, January 14, 1793," *ibid.* (hereinafter cited as Senate Bill 3). These amendments, along with the text of Senate Bill 2, were printed by John Fenno as *The Report of the Committee on the Bill Respecting Fugitives from Justice and Persons Escaping from the Service of their Masters, as Proposed and Amended* ([Philadelphia, 1793]). The only printed version of this I have found is marked up with the amendments that were added between January 15 and 17. A handwritten notation on this heavily marked-up printed bill reads: "The Bill passed the Senate, January 18th 1793." This version is found in file Sen. 2A-D1, RG 46, and is hereinafter cited as Printed and Amended Senate Bill 3.

the Senate. The record suggests that the southerners in the Senate generally had the upper hand. With the exception of one clause introduced in Senate Bill 2 and deleted in the Final Senate Bill, all of the bills favored slaveowners at the expense of northern whites, free blacks, and fugitive slaves. The law that emerged from these debates ultimately offered little protection for the North and at the same time satisfied most of the slaveowners in the Congress. From the beginning of the session southerners dominated the committee responsible for drafting the bill. While northerners ultimately succeeded in eliminating some of the most proslavery features of Senate Bill 1 and Senate Bill 2, the Final Bill nevertheless was a southern victory.

This victory began on November 22, 1792, with the appointment of a committee consisting of George Cabot of Massachusetts and two slaveowners, George Read of Delaware and Samuel Johnston of North Carolina. While Cabot chaired the committee, Johnston seems to have been its dominant force. On December 20 Johnston reported Senate Bill 1, and on December 21 the Senate began a second reading of the bill, which consisted of three sections. The first two dealt with fugitives from justice, the last with fugitive slaves. Senate Bill 1 was awkwardly drafted and poorly written. More important, it threatened the emerging balance between the states and the national government.

In many ways Senate Bill 1 posed a direct threat to the power of the states. The bill authorized governors to call on all citizens of a state to help capture a fugitive from justice and provided fines and jail terms for citizens who refused to aid in the capture of fugitives. Senate Bill 1 would also have required state officials to aid in the rendition of fugitive slaves.

The threat Senate Bill 1 posed to the states was minor in comparison to its threat to free blacks, fugitive slaves, and their white supporters. In many ways this bill was more threatening and less fair than the House bill of the previous year. Senate Bill 1 permitted the return of a fugitive slave based on the deposition of one "credible person." As with the House Bill of 1791, there was no requirement that this deposition be sworn before any court or public official. Moreover, a single deposition, even if sworn, established such a low evidentiary threshold that it would have set the stage for the kidnapping of free blacks.

Senate Bill 1 required state and local law enforcement officials to arrest fugitive slaves and turn them over to claimants on the basis of this single deposition. Law enforcement officers who refused to cooperate were subject to fines, and citizens who harbored fugitive slaves or obstructed their return could also be fined. Senate Bill 1

called for a specific sum of money—to be determined by the Congress—to be forfeited to the claimant "for every day the person owing such labour or service shall be harboured or concealed." Beyond that, the claimant retained the right to sue those who helped his slaves. Under Senate Bill 1 such suits could be brought in either the state or the federal courts.[47] Depending on how much the daily penalty turned out to be and how the terms "harboured" and "concealed" were defined, the law might have meant bankruptcy for northerners who simply hired runaway slaves.

Opposition to Senate Bill 1 grew until December 28, when the Senate defeated a motion to postpone all consideration of the question until the next session of Congress. Instead, the Senate returned Senate Bill 1 to an expanded committee that included Roger Sherman of Connecticut and Virginia's John Taylor of Caroline. Southerners, voting as a block, made sure that the committee continued to be dominated by slaveowners.[48]

On January 3 this newly constituted committee presented a series of amendments that effectively created a new bill—Senate Bill 2. These new proposals were read and ordered to "be printed for the use of the Senate." Senate Bill 2 also contained three sections, but only one focused on fugitives from justice; the other two dealt with fugitive slaves.[49]

Senate Bill 2 reflected a compromise between slaveowners seeking to protect their property and northerners seeking to protect the rights of blacks. The bill protected free blacks in three ways: First, Senate Bill 2 required that anyone seized as a fugitive slave be brought before a judge or magistrate before being removed from the state, thereby preventing some kidnappings by requiring a judicial proceeding before removal. Second, Senate Bill 2 made two changes in the evidentiary requirement necessary to remove a fugitive slave. Under the House Bill of 1791 and under Senate Bill 1 either one or two depositions were sufficient to require that a magistrate order the seizure of an alleged fugitive slave. Senate Bill 2 required "proof to the satisfaction" of the judge or magistrate hearing the case. This proof had

[47] Senate Bill 1.

[48] *Journal of the Senate*, V, 2 Cong., 2 Sess., 16, 24–26 (debates of November 22, 1792; and December 20, 21, 24, 26, 27, 28, 1792). All members of the committee were chosen by ballot. In the vote to choose the original committee members and the vote to expand the committee, southern senators appear to have been more unified than their northern colleagues about whom they wanted on the committee. Both Johnston of North Carolina and Taylor of Virginia received the most votes in the balloting for the committee spots. This suggests that the southerners in the Senate understood that the issue here was vital to their section's needs. U. S. Senate, 2 Cong., 2 Sess., "Lists of the Yeas and Nays," 2 Cong., 2 Sess., File 2A-J1, RG 46.

[49] *Journal of the Senate*, V, 2 Cong., 2 Sess., 28 (debate of January 3, 1793); Senate Bill 2.

to be sworn, either in the form of "oral testimony or affidavit taken before and certified by a magistrate." Finally, Senate Bill 2 provided that no judge could grant a certificate of removal if the alleged fugitive was "a native of, or hath resided in the state or territory wherein he or she shall be so arrested for a term of _____ years immediately previous to such arrest, and shall moreover show probable cause that he or she is entitled to Freedom." Instead, the claimant and the alleged fugitive were to "be left to contest their rights under the laws of the state where such arrest shall be made." This language established a type of "statute of limitations" on fugitive slave rendition for whatever number of years had been inserted in the blank in the phrase "term of _____ years." This provision created a presumption of freedom for blacks who were born in free states or who had lived in them for many years. This presumption could not be rebutted by deposition, affidavit, or even oral testimony. It could be overturned only through a trial in the state where the alleged fugitive was claimed. This provision protected some free blacks from being kidnapped and would have also prevented the rendition of some fugitives.[50] In parts of New England and Pennsylvania it would have been impossible to win custody of a black under the "laws of the state where" the fugitive was found. Some judges and many jurors would have sided with alleged fugitives.[51] Equally important, this provision helped preserve federalism by giving the states exclusive jurisdiction over the status of blacks who had lived within their territory for a sufficient length of time.[52]

Slaveowners, however, also stood to gain some new benefits from Senate Bill 2. Owners or their agents were empowered to seize fugitive slaves on their own, without first going before a magistrate to obtain a warrant or waiting for a local law enforcement official to act. This right of self-help, which was also in the final version of the law, enabled masters to seize their runaway slaves on their own. Senate Bill 2 required slaveowners to bring the captured fugitive before a magistrate in order to obtain a certificate of removal. However, the revised bill allowed claimants to prove ownership using "oral testimony." Thus a master could seize a slave while in "hot pursuit" without first obtaining depositions or affidavits. The test for removal

[50] Senate Bill 2.

[51] Robinson, *Slavery in the Structure of American Politics*, 286.

[52] In general American law (at least until the Dred Scott decision in 1857) gave the states complete autonomy over the status of their residents. Thus this provision would have been consistent with most American law. However, the entire purpose of the fugitive slave provision was to nullify the common law and prevent localities from altering the status of slaves who escaped to their jurisdiction. This provision would have, in effect, nullified at least part of the Constitution's Fugitive Slave Clause.

was "proof to the satisfaction of the judge or magistrate." This open-ended requirement could have worked to the benefit of slaveowners in many cases. Also useful to slaveowners was a provision that allowed the seizure and arrest of a fugitive slave in absence of the claimant. Under Senate Bill 2 local law enforcement officials could be required to arrest a fugitive slave and then to notify the owner of the capture. As with Senate Bill 1, Senate Bill 2 allowed monetary damages against law enforcement officials for noncooperation and provided for fines or imprisonment when private citizens interfered with the rendition of fugitive slaves.[53]

The Senate debated Senate Bill 2 on and off from January 3 until January 13. During this debate the amount of the fine for helping fugitive slaves was fixed at five hundred dollars. However, not much progress was made toward final passage of the bill. Instead, senators raised objections to some parts of the bill and offered various amendments to improve it. South Carolina's Senator Pierce Butler—the man who had first proposed the fugitive slave clause at the Constitutional Convention—unsuccessfully proposed amendments that would have aided masters seeking runaways.[54]

On January 14 another series of amendments was proposed. Senate Bill 3 consists of these amendments combined with what remained from Senate Bill 2. Senate Bill 3 was debated for the next three days. On January 14 and 16 the Senate journal reported that there had been "progress," while on January 15 the journal only noted that there had been "debate." During the three days of debate the Senate accepted a number of these newest amendments.[55]

In the debates over Senate Bill 3 the Senate expanded the definition of what constituted a breach of the law. Senate Bill 2 limited the penalty—which was set at five hundred dollars—to those who might "knowingly and wilfully obstruct" the return of a fugitive slave. Senate Bill 3 changed this language to "knowingly and willingly obstruct." Sometime between January 14 and January 17 the Senate added new language, penalizing anyone who would "obstruct or hinder" a "claimant his Agent or attorney" in "seizing and arresting" an alleged fugitive.[56] This was clearly a last-minute victory for slaveowners. The word "hinder" implied that the penalty might be recovered from someone who did little more than delay a rendition in order to find

[53] Senate Bill 2.

[54] Printed and Amended Senate Bill 3; U. S. Senate, 2 Cong., 2 Sess., "Mr. Butlers motion fugitives from Justice &c.," Sen. 2A-B1, RG 46.

[55] Printed and Amended Senate Bill 3. *Journal of the Senate*, V, 2 Cong., 2 Sess., 33–34 (debates of January 14–16, 1793).

[56] *Ibid.* (debates of January 14–17, 1793).

evidence that helped the alleged fugitive. The use of the word suggests that the Senate wanted to create a rendition process that would be quick and streamlined.

This change, which benefited slaveowners, was at least partially offset by the removal of clauses from the proposed bill[57] requiring local law enforcement officials to seize fugitive slaves at the direction of masters or their agents or, in the absence of an owner or agent, to arrest and incarcerate them until their owner arrived. These clauses would have turned northerners into slave catchers, which was intolerable to a society that was gradually dismantling slavery altogether.[58] With these deletions a slaveowner would be required to capture a runaway slave on his own and then bring the slave before a judge or magistrate for a certificate of removal. Removing northern law enforcement officials from the rendition process was seen as a victory for opponents of slavery.

Northerners were no doubt happy to see their role in enforcement removed from the bill, but this change was also a blessing to slaveowners who then were not dependent on northerners for aid in the rendition process. Slaveowners could use this right of self-help to seize their slaves and take them back to the South. Eventually, the U. S. Supreme Court approved this sort of fugitive slave rendition as long as it was done without a breach of the peace.[59] Unscrupulous slave catchers could more easily remove free blacks if the slave catchers did not have to rely on northern cooperation. There is no indication that this concerned members of the House and Senate, even though the bill before Congress originated because of such a problem.

The final debates on Senate Bill 3 led to two other changes beneficial to the South. The Senate deleted a provision mandating that civil suits for damages against those who interfered with the return of fugitive slaves be brought "in any court of the United States." At this time very few federal courts existed, and this provision limited the ability of slaveowners to sue people who harbored or rescued their slaves.[60] The removal of this provision allowed slaveowners to

[57] Similar clauses were also in the previous version of the bill, Senate Bill 2.

[58] On the end of slavery in the North see generally Zilversmit, *First Emancipation*. By 1792 New York and New Jersey were the only northern states that had not either abolished slavery outright or adopted gradual emancipation statutes; New York passed its law in 1799 and New Jersey in 1804. *Ibid.*, 175–200.

[59] The Court held this in *Prigg* v. *Pennsylvania*.

[60] Printed and Amended Senate Bill 3. An alternative would have been to create more federal courts and judgeships, but this was not a realistic possibility at the time, and no one in the Senate contemplated this solution. Ultimately slaveowners found northern courts inhospitable to their claims, and they were forced to rely on the federal courts. This is just one of many reasons that southerners eventually found the 1793 law unsatisfactory. Paul Finkelman, "*Prigg* v. *Pennsylvania* and Northern State Courts: Anti-Slavery Use of a Pro-Slavery Decision," *Civil War History*, XXV (March 1979), 5–35.

choose the most convenient forum—federal or state—for suing those who aided their runaway slaves.

The most important victory for slaveowners in the final shaping of the law was the deletion of the clause that denied certificates of removal for alleged fugitives who had lived for a long time or who had been born in the state where they were captured. The deletion of this clause meant that no alleged fugitive could interpose a claim that he or she was born free or had been emancipated and then obtain a trial on his or her substantive right to freedom in the place where he or she lived. In order to remove a black from a free state—even one born in that state—the claimant had only to meet the minimal evidentiary requirements of the law.

There was an eleventh hour attempt to roll back one proslavery change in the bill. On January 17 an unnamed senator proposed that the five-hundred-dollar penalty for those who aided fugitive slaves be deleted "for the purpose of inserting a less sum." The Senate defeated this proposal and in an unrecorded vote passed the entire measure and sent it on to the House.[61]

The House received the Senate bill on Friday, January 18. On January 21 the House gave the bill two readings and ordered that one hundred copies of it be printed. The House scheduled a third reading for January 30, but the bill did not come up until February 4, when in a committee of the whole, the House made a minor change in the wording of the first section, which dealt with fugitives from justice. Andrew Moore of Virginia then proposed a substantial increase in fines for people who helped fugitive slaves. According to the *Pennsylvania Journal*, "this motion occasioned some debate" in the House before it was defeated. The next day the House passed the bill by a vote of forty-eight to seven. Five of the negative votes came from northerners. The two southern opponents, John Francis Mercer of Maryland and Josiah Parker of Virginia, had been active Anti-Federalists during the ratification struggle, and they probably opposed the centralizing tendencies of the bill. Six northerners, some of whom opposed slavery in subsequent congressional debates, failed to vote on the bill.[62] However, a few northerners who actively opposed slavery, such as Elias Boudinot and Jonathan Dayton of New Jersey, voted in favor of the bill, probably because they thought it was an

[61] *Journal of the Senate*, V, 2 Cong., 2 Sess., 35 (February 22, 1793).

[62] *Journal of the House of Representatives*, V, 2 Cong., 2 Sess., 87–88, 104, 105, 106, 113, 116, 121 (debates of January 21, February 4, 5, 8, 9, 14, 1793); *Annals of Cong.*, 2 Cong., 2 Sess., 862 (House debate of January 21, 1793); Philadelphia *Pennsylvania Gazette*, January 30 and February 13, 1793; Philadelphia *Pennsylvania Journal and Weekly Advertiser*, January 30 and February 13, 1793 (quotation); Philadelphia *Gazette of the United States*, February 6, 1793.

adequate compromise between the two sections.[63] The bill was immediately returned to the Senate, which concurred in the House version later that day. The next day, February 8, the speaker of the house and the vice president in the Senate signed the bill and sent it to the president. On February 12 President Washington signed the bill into law.[64]

Because the records of Congress for this period are scant, it is impossible to reconstruct fully the debates. It is clear, however, that the Fugitive Slave Law did not sail smoothly through the Congress. The debates in the Senate were particularly bitter. The deletion of virtually all of Senate Bill 1 and many of the provisions of Senate Bills 2 and 3 indicates the divisions within the Senate. The report in the *Journal of the Senate* that "progress" was made on January 14 and 16 suggests that progress had been slow up to that point.

The last-minute effort in the Senate to lower the penalty for those who aided fugitive slaves also suggests the sectional aspects of the debate. Some northern senators were obviously unhappy with a law that might financially destroy their ethically motivated constituents. Five hundred dollars in 1793 was a substantial sum of money. This northern opposition indicates that even in the 1790s opposition to slavery had some force. The defeat of this amendment, combined with other changes in the law favorable to the South, similarly suggests that the southern senators were far more unified in debate than were their northern counterparts. The southerners, although outnumbered in the Senate, were able to mold the 1793 act to protect their interests. This was similar to what southern politicians had successfully accomplished at the Constitutional Convention in 1787 and also in the First Congress.

The attempt by Congressman Moore to increase the penalties for those who helped fugitive slaves escape suggests that some southerners doubted the bill would be effective in preventing northerners from aiding fugitive slaves. But the failure of his motion should not be seen as a defeat of southern interests. More likely it indicated that most members of the House, including those from the South, did

[63] Boudinot and Dayton do not appear to have traded their support for the bill for economic gain or other special interests. Ohline, "Slavery, Economics, and Congressional Politics, 1790," argues that in 1790 some northerners, although significantly *not* Elias Boudinot, failed to support an aggressively antislavery position because it would undermine their desire for southern support for economic legislation, such as assumption of the state war debts. He notes that "some New Englanders did admit privately that the assumption of state debts took precedence over antislavery." *Ibid.*, 350. This was consistent with the position that New Englanders took at the Constitutional Convention, trading their support for the slave trade for South Carolinian support for the commerce clause. See Finkelman, "Slavery and the Constitutional Convention," 217–23.

[64] *Journal of the Senate*, V, 2 Cong., 2 Sess., 47, 48, 51, 53, 57 (February 5, 6, 8, 11, 14, 1793).

not want to prolong debate over a bill that, in one form or another, had been under consideration for over a year. A full debate of Moore's amendment might have undermined the whole bill. Most southerners in the House must have realized that a five-hundred-dollar penalty was high enough, especially since the bill preserved a suit at common law for any other costs or losses associated with someone interfering with the rendition process. This included a suit for the full value of any slaves actually lost.

The law that Washington signed contained four separate sections. The first two dealt with the extradition of fugitives from justice and the last two with the rendition of fugitive slaves. This order of the sections mirrored the form of Article IV, Section 2, of the Constitution.

Sections one and two set out the responsibilities of the governors in criminal extradition cases. A governor seeking a fugitive from justice was required to send to his counterpart a copy of an indictment, "or an affidavit made before a magistrate," charging the alleged fugitive with a crime. These had to be certified by the governor of the state "from whence the person so charged fled." The governor receiving this information was to then arrest the fugitive and notify "the executive authority making such demand" or his appointed agent. If no agent claimed the fugitive within six months, the fugitive was to be released. Anyone rescuing a fugitive from custody would be subject to a fine of up to five hundred dollars and up to a year in prison.[65]

Section one of the law declared that "it shall be the duty of the executive authority" to act on an extradition requisition. The law did not, however, indicate what might happen if a governor failed to act. Following the language of the Constitution, the statute simply set out the mode of procedure for the govenors to follow. In 1861 the Supreme Court would hold that this procedure, while required by the Constitution, could not be imposed on a governor. If a state governor refused to act there was nothing the Supreme Court or any other branch of the federal government could do to compel his cooperation.[66]

Sections three and four of the law, dealing with the rendition of fugitive slaves, failed to vest responsibility for the enforcement of the law in any one person or official. Nor was the requirement of proof precise. Section three outlined a three-stage process for rendition. First, a slaveowner, or the owner's agent, seized a runaway slave. The alleged slave was then brought before any federal judge, state judge, "or before any magistrate of a county, city or town cor-

[65] Act of 1793.

[66] *Ibid.*; *Commonwealth of Kentucky* v. *Dennison*, 24 Howard (65 U.S.) 66 (1861).

porate" where the fugitive was seized. The claimant then had to offer "proof to the satisfaction of such judge or magistrate" that the person claimed was a fugitive slave owned by the claimant. This proof could be oral or through an "affidavit taken before, and certified by, a magistrate" of the state from which the alleged slave had fled. Upon satisfactory proof the official hearing the case issued a certificate of removal to the claimant. Under section four of the act, any person interfering with this process could be sued for a five-hundred-dollar penalty by the owner of the alleged slave. In addition, the owner could initiate a separate suit for any "injuries" caused by this interference. Injuries, in this context, might include both loss of the slave, physical damages to the claimant or the slave, or the costs of the rendition.[67]

On the day that George Washington signed the 1793 law the Pennsylvania Abolition Society warned its members of the pending legislation. Society members worried about the use of affidavits sworn before southern judges. They did not trust southerners who sought to capture runaway slaves or to kidnap free blacks. They also feared that northern magistrates would allow renditions based on suspect affidavits. The society's committee of correspondence reported that there was "reason to fear" that the new law would "be productive of mischievous consequences to the poor Negro Slaves appearing to be calculated with very unfavorable intentions towards them . . . ." The society complained that the bill was "artfully framed" with "the word Slave avoided," which meant that only the most vigilant opponents of bondage would be aware of the danger. Society members feared the new law would "strengthen the hands of weak magistrates" who would be used by masters to recover fugitive slaves.[68]

The members of the abolition society must have recognized the irony of this new situation. They had initially written to Governor Mifflin to help secure the extradition of whites accused of kidnapping a free black. Their letter set in motion a chain of events that led to a weak criminal extradition law and a relatively strong fugitive slave law. Under the new law the governor of Virginia could have resisted the demands for the three kidnappers. But under the same law, many fugitive slaves were unable to protect their newly found freedom. Even blacks like John Davis, who had a bona fide claim to freedom, could not protect their liberty under the new law. Ironically,

[67] Act of 1793.

[68] See copy of bill with handwritten notations in Manumissions Box 4B, PAS Papers, microfilm reel 24, p. 184; J[ames] P[emberton] [Chairman of the Committee of Correspondence] to Alex. Addison, February 12, 1793, Committee of Correspondence, Letterbook, 1789–1794, Vol. I, 103–4 (quotation on p. 104), PAS Papers, microfilm reel 11.

the well-intentioned letter of the abolition society and the equally well intentioned letter of Governor Mifflin to President Washington led to this dangerous result. The Pennsylvania abolitionists probably had not expected Mifflin to turn to Washington for help. Nor could the Pennsylvania abolitionists have foreseen that Washington would turn the matter over to Congress. Had they realized that their letter would lead to federal legislation, they might not have written it. After all, they knew from the experience of 1790 that the northern majority in Congress was weak on slavery issues. The adoption of the 1793 law only underscores this.

In 1790 northern congressmen had failed to support antislavery petitions presented by the Pennsylvania Abolition Society. The northerners perhaps had taken this position as part of a quid pro quo for southern support for various economic programs, such as the Bank of the United States and the federal assumption of state revolutionary war debts.[69] However, it seems more likely that they had refused to oppose the interests of the slave states because of what historian William M. Wiecek has called the "federal consensus" on slavery—that the national government not interfere with slavery in the states and that support for slavery was part of the national compact necessary to keep the union together.[70] This analysis helps to explain the debates that led to the Fugitive Slave Law.

In 1792 and 1793 northern congressmen and senators did not seek an economic quid pro quo from the South, as they had in 1790. Assumption of the state debt was already in place, as was the Bank of the United States. Thus the northerners, who dominated both houses of Congress, might have taken a stronger stand on extradition and fugitive slave rendition. That they did not do so suggests that the "federal consensus" was already in place.

In addition to the "federal consensus," three other factors explain the adoption of the 1793 law. First, a majority of northerners were not overly concerned about slavery even though they opposed the institution. Second, the southerners were able, even in the early 1790s, to create a united front to defend their most valuable institution. Finally, those few northerners who did oppose slavery appear to have misunderstood the stakes of the fugitive slave question. They voted for a bill northerners later grew to hate.

Ironically, southerners also came to despise the law of 1793. However harsh it was, southerners continuously demanded even stronger

[69] Ohline, "Slavery, Economics, and Congressional Politics."
[70] Wiecek, *Sources of Antislavery Constitutionalism*, 16 (quotation).

measures.[71] The federal courts were too few to aid them, and after 1842 many northern state courts refused to take jurisdiction in fugitive slave cases.[72]

In the end then, the 1793 law worked poorly. It did not even resolve the issues immediately surrounding its passage: the fugitive Virginians were never returned to Pennsylvania and John Davis remained a slave, his freedom lost forever. In 1850 southerners obtained new and harsher amendments to the 1793 law. These amendments, in a number of ways, resembled the bill drafted by the House in 1791. The 1850 amendments came too late, however, to restore sectional harmony; they only undermined it further.

[71] Marion G. McDougall, *Fugitive Slaves: 1619–1865* (Boston, 1891), lists most of the southern attempts to amend the 1793 law prior to the passage of the Fugitive Slave Law of 1850, which was technically an amendment of the 1793 law.

[72] Finkelman, "*Prigg* v. *Pennsylvania* and Northern State Courts."

FUGITIVES FROM JUSTICE.

COMMUNICATED TO CONGRESS, ON THE 27TH OF OCTOBER, 1791.

UNITED STATES, *October* 27, 1791.

Gentlemen of the Senate and of the House of Representatives:

I lay before you a copy of a letter and of sundry documents which I have received from the Governor of Pennsylvania, respecting certain persons who are said to have fled from justice out of the State of Pennsylvania into that of Virginia, together with a report of the Attorney General of the United States upon the same subject.

GEO. WASHINGTON.

SIR: PHILADELPHIA, *July* 18, 1791.

I think it proper to lay before you copies of the various documents, respecting an application which I have recently made to the Governor of Virginia, requiring, agreeably to the provision contained in the second section of

the fourth article of the constitution of the United States, that he would take proper measures for apprehending Francis McGuire, Absalom Wells, and Baldwin Parsons, as fugitives from justice, in order that they might be delivered up to this State, having jurisdiction of their crime. The opinion which the Attorney General of Virginia has given upon this subject, as far as it respects the nature of the offence, is, I conceive, inaccurate; and could not have been given with a previous knowledge of the law of Pennsylvania on the subject; for, by an act of Assembly, passed on the 29th day of March, 1788, the offence charged in the several indictments is rendered highly criminal, and the perpetrators, on conviction in any court of quarter sessions, (a court of criminal jurisdiction exclusively,) are not only condemned to forfeit the sum of one hundred pounds, but are subject, likewise, to be confined at hard labor for any time not less than six months, nor more than twelve months. The fact charged, therefore, is a crime, made such by the laws of Pennsylvania; partaking of the nature of a felony, it is certainly included in the constitutional description of "treason, felony, or other crime;" and, although an action of trespass might be maintained in Virginia by the injured individual to recover damages for his personal wrongs, yet it is obvious that no indictment, no trial, no conviction, no punishment in the public name, could take place, according to the provisions of our Legislature, but under the authority of Pennsylvania, within her jurisdiction, and in the county where the offence was committed. It is equally certain that the laws of the State in which the act is committed must furnish the rule to determine its criminality, and not the laws of the State in which the fugitive from justice happens to be discovered.

I mean not, however, sir, to enter into any further controversy on this point; it is sufficient to explain it. But as the Attorney General of Virginia has suggested another difficulty with respect to the mode of arresting persons demanded as fugitives from justice, I have thought the present a proper occasion to bring the subject into your view, that, by the interposition of the Federal Legislature, (to whose consideration you may be pleased to submit it,) such regulations may be established as will, in future, obviate all doubt and embarrassment upon a constitutional question so delicate and important.

I have the honor to be, with perfect respect, sir, your most obedient, humble servant,

THOMAS MIFFLIN.

To GEORGE WASHINGTON, Esq., *President of the United States.*

No. 1.

To THOMAS MIFFLIN, *Governor of Pennsylvania: The memorial of the Pennsylvania Society for promoting the abolition of slavery, the relief of free negroes unlawfully held in bondage, and for improving the condition of the African race, respectfully showeth:*

That John, a free negro man, residing at Washington, in the county of Washington, in this commonwealth, entitled to and enjoying the peace and protection of the laws of this State, was, on or about the 10th day of May, in the year 1788, with force, and arms, and a strong hand, assaulted, seized, imprisoned, bound, and carried without the jurisdiction of this commonwealth, by certain persons in disguise, and at that time unknown. And that, at a court of Oyer and Terminer and general jail delivery, held in and for the said county, before William Augustus Atlee and George Bryan, Esquires, justices of the same court, on the 10th day of November, in the year aforesaid, bills of indictment were presented, and found to be true, by the grand inquest for the body of the said county of Washington, against Francis McGuire, Baldwin Parsons, and Absalom Wells, for imprisoning, binding, and carrying the said free negro John out of this State, with intent to cause him to be sold as a slave, contrary to the act of the General Assembly in such case made and provided, and against the peace and dignity of the commonwealth; as by the records and proceedings of the said court, true copies whereof from the office of Edward Bird, Esq., prothonotary of the Supreme Court, and clerk of the court of Oyer and Terminer for the said county, herewith laid before the Governor, fully appears.

The memorialists further show that the said Francis McGuire, Baldwin Parsons, and Absalom Wells precipitately fled from justice, taking with them the negro John, and have taken shelter in the State of Virginia, or, perhaps, within that part thereof which has been lately erected into a new State, by the name of Kentucky; and the said negro John is said now to be held in a state of slavery by Nicholas Casey, near Romney, on the south branch of the Potomac, in Virginia.

That, by the second paragraph of the second section of the fourth article of the constitution of the United States, it is provided, that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

The memorialists apprehend that a crime of deeper die is not to be found in the criminal code of this State, than that of taking off a freeman and carrying off with intent to sell him, and actually selling him as a slave; and inasmuch as the grand inquest for the body of the county of Washington have, upon their oaths or affirmations, found this crime to be truly charged against the persons above named, they respectfully request that the Governor will be pleased to demand from the Executive authority of Virginia or Kentucky, that the said Francis McGuire, Baldwin Parsons, and Absalom Wells be apprehended if to be found within their jurisdiction, and delivered to the Executive authority of this commonwealth, to be proceeded with according to law; and that the said negro John be also sent into this State, to the end that he may be restored to his freedom.

Sealed with the common seal of the said society, at a special meeting held in the city of Philadelphia, [SEAL.] the thirteenth day of the fifth month, called May, in the year of our Lord one thousand seven hundred and ninety-one; and signed by order of the meeting.

WILLIAM ROGERS, *Vice President.*

Attested by J. McCREE, *Secretary.*

No. 2.

This is to certify, that at a Court of Oyer and Terminer and general jail delivery, held at Washington, for the county of Washington, on the tenth day of November, in the year of our Lord one thousand seven hundred and eighty-eight, before the Honorable William Augustus Atlee, Esq., and the Honorable George Bryan, Esq., Justices of the Supreme Court of the State of Pennsylvania, and of the said Court of Oyer and Terminer, Francis McGuire, late of the county aforesaid, yeoman, was duly and legally indicted, for that he, on the tenth day of May, in the year of our Lord one thousand seven hundred and eighty-eight, with force and arms, at the county of Washington, then and there by force did take and carry away from the county aforesaid, within the State afore-

said, a free negro man, named John, to other parts without the same State, with a design and intention of causing the said negro man to be sold and disposed of as a slave, contrary to the act of General Assembly in such case made and provided, and against the peace and dignity of the commonwealth of Pennsylvania.

Witness my hand, this twenty-fourth day of May, Anno Domini 1791.

GEORGE DAVIS, for
EDWARD BURD, *Prothonotary of the Supreme Court.*

No. 3.

This is to certify, that at a Court of Oyer and Terminer and general jail delivery, held at Washington, for the county of Washington, on the tenth day of November, in the year of our Lord one thousand seven hundred and eighty-eight, before the Honorable William Augustus Atlee, Esq., and the Honorable George Bryan, Esq., Justices of the Supreme Court of the State of Pennsylvania and the said Court of Oyer and Terminer, Absalom Wells, late of the county aforesaid, yeoman, was duly and legally indicted, for that he, on the tenth day of May, in the year of our Lord one thousand seven hundred and eighty-eight, with force and arms, at the county aforesaid, then and there, by force, did take and carry away from the county aforesaid, without the State aforesaid, a free negro man named John, to other parts without the same State, with a design and intention of causing the said negro man to be sold and disposed of as a slave, contrary to the act of General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Witness my hand, this twenty-fourth day of May, Anno Domini 1791.

GEORGE DAVIS, for
EDWARD BURD, *Prothonotary of the Supreme Court.*

No. 4.

This is to certify, that at a Court of Oyer and Terminer and general jail delivery, held at Washington, for the county of Washington, on the tenth day of November, in the year of our Lord one thousand seven hundred and eighty-eight, before the Honorable William Augustus Atlee, and the Honorable George Bryan, Esquires, justices of the Supreme Court of the State of Pennsylvania, and of the said Court of Oyer and Terminer, Baldwin Parsons, late of the aforesaid county, yeoman, was duly and legally indicted, for that he, on the tenth day of May, in the year aforesaid, with force and arms, at the county aforesaid, then and there, by force, did take and carry away from the county aforesaid, within the State aforesaid, a free negro man named John, to other parts without the same State, with a design and intention of selling and disposing of the said negro man as a slave, contrary to the act of General Assembly in such case made and provided, and against the peace and dignity of the commonwealth of Pennsylvania.

Witness my hand, this twenty-fourth day of May, Anno Domini 1791.

GEORGE DAVIS, for
EDWARD BURD, *Prothonotary of the Supreme Court.*

No. 5.

SIR: PHILADELPHIA, *June* 4, 1791.

I am under the necessity of troubling your excellency with authenticated copies of a representation which has been made to me, by the incorporated society for the gradual abolition of slavery, &c. respecting the illegal and forcible seizure and carrying away from the county of Washington, in this commonwealth, a certain free negro man named John, with an intention to sell him as a slave in another State and of transcripts from the records of a Court of Oyer and Terminer, held in and for the said county of Washington, from which it appears that indictments have been duly found charging this violence to have been committed by Baldwin Parsons, Absalom Wells, and Francis McGuire, who fled from justice into the State of Virginia. Permit me, therefore, to request that your excellency will be pleased to take the proper measures to cause the said Baldwin Parsons, Absalom Wells, and Francis McGuire, to be delivered up to this State, having jurisdiction of their crime, agreeably to the provisions contained in the second section of the fourth article of the constitution of the United States. And I am persuaded that your excellency's regard for justice and humanity will prompt you to extend your interference on this occasion as far as it may be expedient to restore the negro to his freedom.

I am, sir, with great respect, your most obedient and most humble servant,

THOMAS MIFFLIN.

To His Excellency BEVERLY RANDOLPH, Esq.
Governor of the State of Virginia.

No. 6.

SIR: COUNCIL CHAMBER, RICHMOND, *July* 8, 1791.

I now do myself the honor to enclose you a copy of the opinion of the Attorney General of this State upon the subject of your letter of the 4th ultimo, demanding the delivery of Baldwin Parsons, Francis McGuire, and Absalom Wells, charged with forcibly seizing and carrying from the county of Washington, in the commonwealth of Pennsylvania, a certain free negro man named John, with an intention of selling him. Your excellency will readily perceive that this opinion of the first law officer of the State must preclude the Executive from taking any measures for apprehending and delivering the persons demanded by you.

It is to be lamented that no means have been provided for carrying into effect so important an article of the constitution of the United States.

This case will, however, we hope, be the means of calling the attention of the Legislature to a subject of such consequence.

I am, sir, with great respect, your most obedient servant,

His Excellency the GOVERNOR OF PENNSYLVANIA.

The above letter was received from his excellency Beverly Randolph, Governor of Virginia, but, through some neglect, he omitted to sign it.

A. J. DALLAS, *Secretary.*

No. 7.

SIR: RICHMOND, *June* 20, 1791.

The question you have stated for my advice seems to be confined to the manner of delivery and removal of persons charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State.

The constitution requires that there should be a person or persons charged with a *crime;* that that crime should be one comprised within the second section of the fourth article of the constitution of the United States; and that such offender or offenders should be within the limits of this commonwealth before a demand can be authorized. A charge, in the sense here used, must be such an accusation as of itself furnishes a sufficient evidence of guilt to put the accused upon his trial, or to justify his immediate punishment.

It cannot be an accusation founded on a mere suspicion; it must be founded on some judicial act. In this respect, the demand sent on by the Governor of Pennsylvania may be proper, if the crime stated in the bills of indictment are sufficient to fall within the provision of the General Government. It is not either treason or felony, (for the indictments state the taking away of the negro to have been done violently, and not feloniously,) and *other crimes* must be confined to such as the State making the demand possesses an exclusive jurisdiction over. For, if either the federal court, or the courts of the State into which the offenders may take refuge, are authorized to punish the offenders, there is no danger of an escape from justice, and no reason for a demand. The delivery and removal are only to be made for the sake of a proper jurisdiction; and therefore neither can be required from a jurisdiction that is proper. There must be a defect in the jurisdiction of which the demand is made, and an exclusive jurisdiction in the State making the demand.

The case stated in the indictments transmitted by Governor Mifflin would amount but to a trespass by our laws, as between the parties; as between the offenders and the commonwealth, but to a breach of the peace. In the first instance, the remedy follows the persons of the offenders into our State, and there is no defect of jurisdiction here. In the latter case, the offenders may appear by attorney to the indictment. If they should be acquitted, there can be no occasion for the demand. If found guilty, and their personal presence should be necessary for their punishment, it will be then time enough to make a demand of them. I presume, in these respects, the laws of Pennsylvania are assimilated to our own. If they are, then the offences stated do not appear to me to come within the description of crimes contained in the above-cited section of the federal constitution. As it is necessary that adequate proof to fix the residence of offenders against the laws of one State, to be within the limits of the State of which the demand is made, should precede such demand (for without that evidence no right to demand can exist,) so it becomes necessary that some proof of that fact ought to accompany the demand; otherwise, the State of which the demand is made will be forced to ascertain a fact after the demand, which should have been the precedent basis on which any demand could rightfully be made. In Governor Mifflin's letter, and its enclosures, no evidence is contained of this fact, and the demand might as well be made of Georgia as Virginia. Let it be conceded, however, that the constitution of the United States hath in all these requisites been satisfied. It is then required that the offenders should be delivered up to be removed to the State of Pennsylvania, possessing an exclusive jurisdiction over their crimes. In what manner are they to be arrested for delivery? How are they to be removed? Every free man in Virginia is entitled to the unmolested enjoyment of his liberty, unless it be taken away by the constitution or laws of the United States, or by the constitution or laws of Virginia. No molestation, seizure, or removal of his person, can take place, but under the authority of these or some of them.

The constitution and laws of the General Government, as well as those of this State, are silent on these important subjects. If the delivery and removal in question can be effected, it must be under authority only of the constitution of the United States. By that, the delivery is required, and the removal authorized. But the manner in which either shall be effected is not prescribed. There must be a legal control over the persons demanded, before they can be delivered or removed. That control ought not to be acquired by any force not specified and delegated by positive law. Neither the constitution of this, or of the United States, nor the laws made under them, direct the mode, or delegate an authority, by which the magistracy of this State can acquire such a control.

It therefore can only be acquired by force. And that such an exercise of undelegated power over the liberties of freemen would not be justifiable, I am sure I need not add.

It is therefore my opinion, that the directions of the General Government, under which the Governor of Pennsylvania has made a demand for the delivery and removal of the persons mentioned in his letter, cannot be complied with by the Goverment of this State without some additional provisions by law to enable it to do so.

I have the honor to be, very respectfully, sir, your most obedient servant,

JAMES INNIS.

A true copy. Attest: SAMUEL COLMAN, *A. C. C.*

His Excellency BEVERLY RANDOLPH, *Governor of Virginia.*

No. 8.

SIR: PHILADELPHIA, *July* 20, 1791.

The Secretary of State yesterday submitted to me, by your instruction, copies of the letter from the Governor of Pennsylvania to you, and of his correspondence with the Governor of Virginia on the demand of Francis McGuire, Baldwin Parsons, and Absalom Wells, as fugitives from justice.

This demand is founded on that article of the federal constitution which directs that "A person *charged* in any State with treason, felony, or *other crime*, who shall *flee from justice*, and be *found* in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State *having jurisdiction* of the crime."

He must be *charged.* This term is sufficiently technical to exclude any wanton or unauthorized accusation from becoming the basis of the demand. It would, in the language of mere legal entries, be applicable where a bill had been found by a grand jury. It must be interpreted under the constitution, as at least requiring some sanction to be given to the suspicion of guilt by a previous investigation. In the present instance, a grand jury convened before two of the justices of the Supreme Court of Pennsylvania, have made it, and thus have furnished a ground for bringing the foregoing persons to a formal trial. Should such a procedure as this be declared to be incompetent as a charge, the object of this article in the constitution must be either defeated or be truly oppressive. For, between an indictment and an actual trial there is no intermediate examination of the fact; and, to wait for the condemnation of an absent culprit before a demand, would compel a judgment to be rendered behind his back. Outlawry, indeed, may be practised sometimes, but it cannot be always pursued; and even where it is pursued, it stamps the offence with no higher appearance of truth than a true bill received from the grand jury.

The person charged must be also charged with a *crime*. That the supposed conduct of McGuire and others is a crime under the laws of Pennsylvania, the very respectable Attorney General of Virginia has not been informed. It is punishable by a fine and hard labor. The first process is a *capias:* outlawry is inadmissible on it, and the offender cannot appear by his attorney. Some doubt may, perhaps, be entertained, whether, according to a known rule of construction, the words " or other crime" being associated with treason and felony, ought not to be confined to crimes having some quality common to them, and treason, and felony. Such a common quality does not exist, unless it be that of felony itself. Why, then, are the words " or other crime" added, if felonies alone were contemplated? In the penal code of almost every State, the catalogue of felonies is undergoing a daily diminution. But it is not by the class of punishment that the malignity of an offence is always to be determined. Crimes, going deep into the public peace, may bear a milder name and consequence; and yet it would be singular to shelter those who were guilty of them, because they were not called and punished as felonies.

The person charged with a crime must also flee from justice. Some species of proof is indispensable; otherwise, the most innocent citizen may be carried in chains from his own to another State. It cannot be denied that every assertion of a Governor ought to produce assent. But, upon a judicial subject, testimony, according to the judicial course, is alone adequate; and the demand is the only thing which is referred to an Executive absolutely. The Governor of Virginia is responsible for the just use of his discretion; and if he should yield to informal evidence, he must yield at his peril. With every respectful deference, therefore, for the communications of the Governor of Pennsylvania, he ought to exact the return of a public officer on some process, or an affidavit, before he takes measures for apprehending McGuire and others. On this occasion, however, the Governor of Pennsylvania builds his demand on the documents transmitted to the Governor of Virginia, not one of which has the semblance of proof that they do flee from justice. Permit me, too, to observe, sir, that the Governor of Pennsylvania is perhaps not apprized of a fact, which the prothonotary of the Supreme Court of Pennsylvania has at this moment stated to me in writing, to wit: That, in the spring of 1790, he issued writs of *capias* against them; that it was returned that McGuire and Parsons *were not found*, and that Wells was taken and committed; and that nothing was done at the last session in these cases. Now this is no complete proof that even McGuire and Parsons have fled from justice; it manifests that Wells has not fled; and it evinces the necessity of caution in branding a man as a deserter of a fair trial.

The person charged with a crime must not only flee from justice, but he must be *found* in another State. At first it may seem unimportant whether he be so found or not; because if he be not there, he can sustain no injury from an arrest. I will not decide how far his character may suffer, if he be proclaimed throughout a State as a fugitive, when he may never have entered it; nor yet what other inconveniences he may undergo. But if the probability of these be striking, he ought not to be hunted for by public authority at random. The expense, although afterwards repaid, and the trouble, which cannot be avoided in the pursuit, ought not to be causelessly thrown on a sister State. Hence, is it made a pre-requisite to a demand, that the culprit shall be *found* in the State; that is, that some satisfaction be given that Government will not be put upon a frivolous search. In this case, no legal exhibit is shown to this effect; nay, it is presumable, that Wells remains in the custody of Pennsylvania.

The person charged with a crime, fleeing from justice, and found in another State, is to be delivered up to be removed to the State *having jurisdiction*. In this place, I am compelled to differ from the Attorney General of Virginia in two points: he is pleased to affirm that, to support the demand, " there must be a defect in the jurisdiction of the State from which the demand is made, and an exclusive jurisdiction in the State making the demand; and that the Executive of Virginia cannot comply with such a demand, until some additional provisions by law shall enable them to deliver up the offenders."

It is notorious, that the crime is cognizable in Pennsylvania only; for crimes are peculiarly of a local nature. Therefore, his two conditions are here fulfilled, namely, a defect of jurisdiction in Virginia, and an exclusive jurisdiction in Pennsylvania. But if it were conceived, that Virginia might chastise offences against Pennsylvania, or, that an action might be maintained in Virginia for what is a crime in Pennsylvania, it would not follow that the latter could not demand a malefactor from the former; for the clause in the constitution was obviously dictated by a wish to prevent that distrust which one State would certainly harbor against another, in situations so capable of abuse. Besides, it corresponds with the words of the constitution, if the State demanding *has a jurisdiction*, although it might not be an exclusive one. And these observations would have equal weight if the federal courts in Virginia could animadvert on crimes arising within the limits of Pennsylvania. But the constitution directs that trials " shall be held in the State where crimes shall have been committed."

I differ further in not discovering the disability of Virginia to deliver up the offenders. It has been sometimes fancied that, by delivering up, is meant only that the State from which the demand is made should express an approbation that they may be apprehended within its territories. But as a State cannot be said to deliver up without being active, and it might disturb the tranquillity of one State if the officers of another were at liberty to seize a criminal within its limits, the natural and safe interpretation is, that the delivery must come from Virginia.

To this duty the Executive of that State offer no objection; but they contend that her own constitution and laws, and those of the United States, being silent as to the manner and particulars of arrest and delivery, they cannot, as yet, move in the affair.

To deliver up is an acknowledged federal duty; and the law couples with it the right of using all incidental means in order to discharge it. I will not inquire here how far these incidental means, if opposed to the constitution and laws of Virginia, ought, notwithstanding, to be exercised; because McGuire and his associates may be surrendered without calling upon any public officer of that State. Private persons may be employed, and clothed with a special authority. The Attorney General agrees that a law of the United States might so ordain; and wherein does a genuine distinction consist between a power deducible from the constitution, as incidental to a duty imposed by that constitution, and a power given by Congress as auxiliary to the execution of such a duty? Money, indeed, must be expended; and a State may suspend its exertions until the preliminary proofs are adduced. I cannot undertake to foresee whether the expending State will be reimbursed. If the constitution will uphold such a claim, it will, doubtless, be enforced. If it will not, it must be remembered that that instrument was adopted with perfect free will.

From these premises I must conclude that it would have been more precise in the Governor of Pennsylvania to transmit to the Governor of Virginia an authenticated copy of the law declaring the offence; that it was essential that he should transmit sufficient evidence of McGuire and others having fled from the justice of the former, and being found in the latter; that, without that evidence, the Executive of Virginia ought not to have delivered them up; that, with it, they ought not to refuse.

The Governor of Pennsylvania, however, appears to be anxious that this matter should be laid before Congress; and, perhaps, such a step might content all scruples.

But, at any rate, I can find no obligation or propriety which can warrant the interposition of the President at this stage of the business. A single letter has gone from the Governor of Pennsylvania to the Governor of Vir-

ginia. A compliance has been denied; and the denial has proceeded from a deficiency of proof in two instances, from a misapprehension of fact in another, and probably untenable reasoning in some others. This deficiency, then, ought to be supplied by the Governor of Pennsylvania; and the fact, which has been mistaken, placed on its true footing. As to any inaccuracy of reasoning, the President can do no more than show to the Governor of Virginia where it lies; he cannot be authoritative; nor would he, I presume, even if he had power, choose to exert it until every hope should be lost of convincing the judgment of the State. But this argumentative intercourse belongs to the Governor of Pennsylvania, and ought to be managed by him until the prospect of satisfaction shall disappear. At such a period it may, perhaps, be seasonable for you to interfere. But *now* to interfere would establish a precedent for assuming the agency in every embryo dispute between States; whereas your mediation would be better reserved until the interchange of their sentiments and pretensions shall fail in an accommodation.

I have the honor, sir, to be, with the highest respect, your most obedient servant,

EDMUND RANDOLPH.

The PRESIDENT OF THE UNITED STATES.

No. 9.

SIR: PHILADELPHIA, *August* 2, 1791.

I find, on referring to the records of the Supreme Court of this commonwealth, in the case of McGuire, Parsons, and Wells, which I lately submitted to your consideration, that the last of these persons was apprehended. I have, therefore, in addition to the other documents, enclosed to you a transcript of the record, a copy of which I shall likewise transmit to the Governor of Virginia, together with the necessary evidence, as soon as it can be procured, to prove that McGuire and Parsons have actually fled from the justice of Pennsylvania into that State, agreeably to the form suggested in the opinion of the Attorney General, which you have been pleased to communicate.

I am, with perfect respect, sir, your most obedient and most humble servant,

THOMAS MIFFLIN.

To GEORGE WASHINGTON, Esq.
President of the United States.

No. 10.

I certify, that at a court of Oyer and Terminer and general jail delivery, held at Washington, for the county of Washington, in the State of Pennsylvania, the tenth of November, in the year of our Lord one thousand seven hundred and eighty-eight, Francis McGuire, Absalom Wells, and Baldwin Parsons, late of the said county, yeomen, were severally indicted of having, on the tenth day of May, in the year of our Lord one thousand seven hundred and eighty-eight, at Washington county aforesaid, with force and arms, &c. taken and carried away from the county of Washington aforesaid a free negro man named John, to other parts without the said State, with a design and intention of selling and disposing of the said negro man as a slave, contrary to the act of Assembly in such case made and provided, and against the peace and dignity of the commonwealth of Pennsylvania. I further certify, that writs of *capias* were issued on the said indictments, bearing test the twenty-fifth day of May, in the year of our Lord one thousand seven hundred and ninety, and that the returns of David Williamson, Esq., late sheriff of the county, to the said court were, that he had taken the said Absalom Wells, and that he had the said Absalom Wells in his custody, ready to answer to the said indictment against him, as aforesaid, but that he could not find either the said Francis McGuire or the said Baldwin Parsons within his bailiwick.

Witness my hand, the twenty-fifth day of July, in the year of our Lord one thousand seven hundred and ninety-one.

EDWARD BURD, *C. C.*

Copy:

A. J. DALLAS, *Secretary of the Commonwealth of Pennsylvania.*

Reel 11, Letter book, 1789 – 1794, pgs. 72 – 78

Washington 6 Decm. 1790

Gentlemen,

A letter to the Washington Society, a Circular Letter, a Copy of a Report of the Committee of Congress, with an address to the Public and a plan for improving the Condition of the Free Blacks, transmitted by the Pennsylvania Society, were read at our last Meeting,

A Correspondence with the Pennsylvania Society we have always considered honorable, we once thought would be practically useful. In this last view however we have been disappointed in the only instance on which we have had occasion to request your exertions—we mean the case of John Davis, who having been carried off in a violent manner from the town of Washington, and sent we knew not where, was at last heard of in Virginia on the South Branch of the Patowmack—first with a W. Drew, in Romney, and afterwards with a Nicholas Casey near it. Thinking that the name of influence of the Pennsylvania Society would be some counter balance to the vulgar prejudice against the pleadings of humanity, we were desirous of engaging your patronage to a suit for procuring his freedom; but found that the only assistance we could receive from you was an advice that he should run away—an advice that had it been pursued and unsuccessful, as it probably would have been, would have drawn upon the poor wretch an aggravated [refutation?] of his past suffering and might have hurried him beyond our reach forever. Disapproving therefore of [thei?] [cousrod?] <u>two</u> of our Members for it is not William, but David Bradford who were immediately and peculiarly interested, judged it necessary to commence a suit supported only by their individual Interest. For this purpose, they wrote last Summer by a man who gave them information where Davis was as to Mr. White a lawyer in [M---?] who is nephew to Mr. White in Congress and had been recommended by him in a letter to [Myers Fisher?] on this subject. Whether they have been received by the man, who carried the letter, or disappointed by accident, or whether Mr. White has received and neglected the Letter, we cannot say; But we are sorry to say that no answer or further knowledge of the business, has yet been procured. The success therefore of this attempt is yet doubtful, and should it prove favorable, we regret that the Pennsylvania Society carried the [numbered?] among his deliverers. But we suspect the time of usefulness is not yet past, and fear there may yet be occasion for your services, if you choose to bestow them.

The Circumstances are already in your Minutes. The application to Council for a demand on the execution power of Virginia to have the persons who carried him off delivered up to the Justice of Pennsylvania, was then we believe postponed till the operation of the Federal Constitution. A renewal of this application now, when the will of one man is to be moved, would either produce the direct end of the application a peremptory requisition from our Governor to the Governor and Council of Virginia or a prosecution (if that were thought better) by the State of Pennsylvania of those offenders in the Federal Court. Means of bringing them to punishment will be the means of delivery. We had one of them taken here; but the Sheriff let him slip through his fingers—the Application to Mr. White will be [senesect?] whether you join in it or not.

[The letter goes on to quote the other items listed in the first paragraph. It is signed by Alexander Addison. In the P.S., Alexander Addison discusses the laws in Pennsylvania regarding registering slaves from 1780 – 1783.]