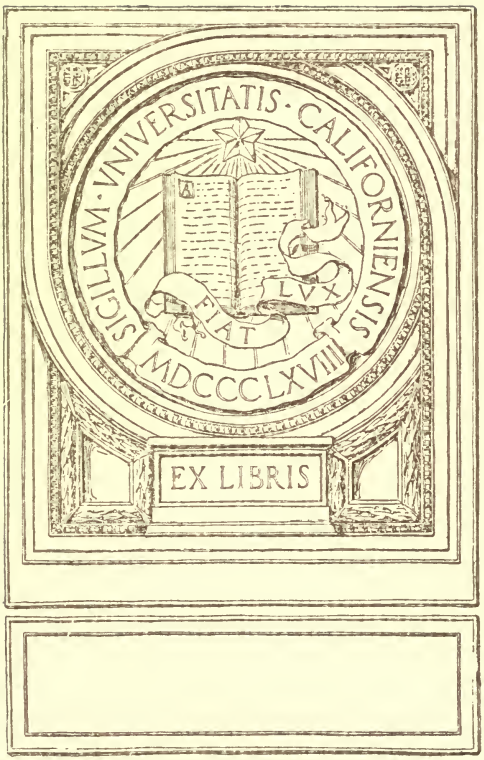
SIGILLVM · VNIVERSITATIS · CALIFORNIENSIS
LVX
FIAT
MDCCCLXVIII
EX LIBRIS

Francis Lieber

A

SKETCH OF THE LAWS

RELATING TO

SLAVERY

IN THE SEVERAL STATES

OF THE

UNITED STATES OF AMERICA.

BY GEORGE M. STROUD.

PHILADELPHIA:

PUBLISHED BY KIMBER AND SHARPLESS,

No. 93 Market Street.

.....

I. Ashmead, Printer.

1827.

Eastern District of Pennsylvania, to wit:

{L. S.} BE IT REMEMBERED, that on the tenth day of October, in the fifty-second year of the Independence of the United States of America, A. D. 1827.

GEORGE M. STROUD, ESQ.

of the said district hath deposited in this office the title of a book, the right whereof he claims as author, in the words following, to wit:

A Sketch of the Laws relating to Slavery in the several States of the United States of America. By George M. Stroud.

In conformity to the Act of the Congress of the United States entitled, "An act for the Encouragement of Learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned."—And also to the act, entitled, "An act supplementary to an act, entitled, "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned," and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

D. CALDWELL,
Clerk of the Eastern District of Pennsylvania.

PREFACE.

THE state of slavery in this country, so far as it can be ascertained from the *laws* of the several independent sovereignties which belong to our confederacy, is the subject of the following sheets. This comprises a particular examination of the laws of the states of Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Kentucky, Tennessee, Louisiana, Mississippi, Alabama and Missouri. With respect to the remaining states, slavery, in some, having been abolished, and in others, never tolerated, a cursory notice of a few of their laws, chiefly important for the evidence which they furnish of the right of these states to the appellation of *non-slave-holding*, is all which the title or object of this work requires.

The District of Columbia, though, in this connexion, not properly denominated, *a state*, yet, from its important character in being exclusively within the jurisdiction of the Federal Government, deserves an equal share of attention. It happens, however, that this *District* in regard to slavery as well as many other topics, is not regulated, *integrally*, by a code of laws enacted for the purpose by Congress;—that body, having by an act, dated February 27th, 1801, declared, that, the part of the District of Columbia which had been ceded to the United States by the state of Virginia, should be governed by the laws which were then in force in Virginia, and the other part, which had been ceded by the state of Maryland, should in like manner be governed by the laws then in force in Maryland. But few alterations have been made in the laws affecting the condition of slaves in either of the states just named, since the date of the act of congress; the quotations, therefore, given from their respective codes, being applied in conformity with the distinction

established by the act of congress, may, with but little hazard of error, be received as the laws of the District of Columbia.

Such provisions of the *Constitution of the United States*, as might be fitly introduced into this sketch, have been added in an *Appendix*. Several acts of congress, will be found inserted there also. These, however, are not numerous, since from the peculiar relation which subsists between the Federal Government and the individual states, the former, except within the District of Columbia and the *territories* not yet incorporated into the union, as *states*, is restrained from the exercise of legislative functions on all subjects of a character exclusively municipal.

The value of a work like the present, must depend, mainly, upon the authenticity of its materials. On this point, but little, if any, exception can be justly taken. The most approved code, of each state, was sought for, and, in most instances, obtained. The laws of Delaware, Maryland, Virginia, Georgia, Kentucky, Louisiana, Mississippi, Alabama and Missouri, have been cited, from publications made under the express sanction of the several legislatures of these states. The laws of South Carolina have been drawn principally from a source entitled to equal consideration. I mean the Digest by *Judge Brevard*. This, however, having been issued from the press in 1814, it became necessary to procure a work which would indicate the changes effected by the legislature since that period. The *second* edition of *James' Digest*, has been used for this purpose, and though the *first* edition of this work is stated, in Griffith's Law Register, to have been imperfectly executed and not to deserve much reliance, yet, a *second* one having been called for, it seems fair to presume that in this, the errors of the *first* have been corrected and its defects supplied.

For the laws of North Carolina, as well as for the larger portion of those of Tennessee, recourse has been had to "Haywood's Manual." *Professedly*, this work treats of the laws of North Carolina only, yet, as the territory which now composes Tennessee, was until April 2d, 1790, included within the bounds of the former state, and subject to its jurisdiction, it was judged expedient, when the separation took place, to provide that

the laws of North Carolina should continue to be observed by the citizens of Tennessee, until severally altered or repealed by competent legislative authority. By a copy, which I possess, of the laws, of this latter state, applicable to slaves, it does not appear that many such alterations or repeals have been made. I have, therefore, *in general*, omitted to mention specifically, that a particular law of North Carolina, is also in force in Tennessee, but have given the date of such law, if passed *before* April 2d, 1790, intending to apprize the reader, that in every citation of this kind, Tennessee should be classed with North Carolina, unless the contrary be distinctly mentioned. Legislative enactments emanating from the *territorial* government which succeeded the cession by North Carolina, and those also which have been made by the *state* of Tennessee, are referred to, under the name of *Laws of Tennessee*, stating the year in which they were enacted, and the chapter in which theymay be found.

In a treatise of no greater extent, than that which is here offered, it may be thought unnecessary to speak, in this place, of the *plan* which has been observed. I allude to the topic, chiefly, to avail myself of the opportunity which it affords, of acknowledging my obligation, in this respect, to James Stephen, Esq. *of London*, to whose comprehensive work, "*The Slavery of the British West India Colonies Delineated*," I am also largely indebted for much valuable information. The titles to the chapters and sections into which *this sketch* has been divided, will be found to correspond, in most instances, *substantially*, and in some, *verbally*, with those employed by him. The reason of this adoption, will be evident, when it is recollected that the prominent features of slavery in the British West Indies, and in our slave-holding states, closely resemble each other, and I could not hope to excel the model of so competent a master. I might also suggest as an additional reason, that Mr. Barclay *of Jamaica*, in the work which he has published as a reply to Mr. Stephen, has pursued the same arrangement. *Fas est ab hoste doceri.*

Having been under the necessity of bringing together, the laws of so large a number of independent states, it must be ob-

vious that considerable difficulty existed in assigning to each part its proper place, and giving to each its due effect, and at the same time, preserving the appearance of symmetry in the whole. As the best method of meeting this difficulty, when the provisions of different codes on the same point, were in the same language, or, as was most commonly the case, the same in substance but not in language, I have in general, used a transcript frome *one* code, and having noted, in immediate connexion, the work from which it was taken, have added, successively, references to the other codes. The words "*similar*," and, "*nearly similar*," are sometimes interposed;—the purpose of which, needs no explanation. The titles of the different *Digests* being cited, seemed to me to render a perpetual repetition of the *names* of the *States*, unnecessary. In many occasions, therefore, these are omitted.

That the comments which I have offered on many of the laws, might the more readily be understood, and their propriety judged of, I have, in almost every quotation which has been made, given the exact words of the law, omitting such only, as were not essential to the perception of the legislative intent.

Of the *actual* condition of slaves, this sketch does not profress to treat. In representative republics, however, like those of these United States, where the popular voice so greatly influences all political concerns, where the members of the legislative departments are dependant for their places upon *annual* elections, the *laws* may be safely regarded as constituting a faithful exposition of the sentiments of the people, and as furnishing, therefore, strong evidence of the practical enjoyments and privations of those whom they are designed to govern. To the condition of the *passive* members of the community, such as slaves, this latter deduction is, emphatically, applicable. I speak of the case of slaves *generally*. Their condition will, no doubt, in a great degree, take its complexion from the peculiar disposition of their respective masters;—a consideration which operates as much *against* as in *favour* of the slave: for it cannot be denied, that there are many persons but little controlled by feelings of humanity, and less restrained by the precepts of religion, many who "feeling power, forget right."

The very existence of slavery is calculated to produce the worst effects on the temper and morals of the masters. On this point, and indeed, on the general treatment of slaves by their masters, the most decisive testimony is borne, by Mr. Jefferson, in his *Notes on Virginia.* "The whole commerce between master and slave," says he, "is a perpetual exercise of the most boisterous passions—the most unremitting despotism on the one part, and degrading submissions on the other. Our children see this, and learn to imitate it; for man is an imitative animal. If a parent had no other motive, either in his own philanthropy or his self-love, for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child is present. *But generally, it is not sufficient. The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst passions,* AND THUS NURSED, EDUCATED, AND DAILY EXERCISED IN TYRANNY, CANNOT BUT BE STAMPED BY IT, WITH ODIOUS PECULIARITIES."

Philadelphia, October 8th, 1827.

ADVERTISEMENT.

The laws of several of the states, being contained in *Digests*, in citing them, the names of the compilers have been generally given, and not the names of the states. Thus, the laws of *Georgia* are cited from "*Prince's Digest*," 1 vol.; the laws of *South Carolina*, *some* from "*Brevard's Digest*," 3 vols. and *some*, from "*James' Digest*," 1 vol.; the laws of *North Carolina* as well as a portion of those of *Tennessee*, (as explained in the *preface of this sketch*,) from "*Haywood's Manual*," 1 vol.; the laws of *Kentucky*, from "*Littell & Swigert's Digest*," 2 vols.; the laws of *Louisiana*, to the year 1816, from "*Martin's Digest*," 3 vols.; the laws of *Pennsylvania* from "*Purdon's Digest*," 1 vol.; the laws of *Alabama* from "*Toulmin's Digest*," 1 vol. In *Virginia* and *Mississippi*, *Revised Codes* have been prepared, and are cited, "*Virg. Rev. Code* and *Miss. Rev. Code*," unless in some instances, where the name of the state is *prefixed* to the extract made, and *Rev. Code* only marks the citation. The *Civil Code of Louisiana* and *the Code of Practice* adopted in the same state, are cited by their respective titles, and the *article* and *its number* given, but not the *page*,—this being the *usual* and most convenient mode of reference, as to these codes.

With respect to the laws of the other states, no explanation is necessary, as the name of the state is used.

ERRATA.

Page 121-2. In describing the tribunal by which slaves are tried on criminal accusations, in *Tennessee*, I have stated, that this state was in the year 1793, a part of *North Carolina*, &c. This is erroneous, as will appear, by the *preface* to this sketch, in which the proper date of the separation is noted, and, of consequence, the remarks there made which rest upon that hypothesis, are inappropriate.

The date of the act of Tennessee, as stated in the text, is also erroneous. It should be *November 8th*, 1819, instead of *October 23d*, 1813. A corresponding alteration must be made in the reference.

Page 128, *line* 10*th from the top*, instead of the statement, that *the ordinary* tribunal for the trial of slaves in *Tennessee*, consists of but *three* justices and freeholders, it should be, of THREE *justices and nine freeholders*, or *slave-holders*, such an alteration having, by an act of November 9th, 1815, been made in the law previously in force. *See Laws of Tennessee of* 1819, *chap.* 138.

LAWS

RELATING TO SLAVERY.

CHAPTER I.

OF THE PERSONS WHO MAY BE HELD AS SLAVES, AND UPON WHAT AUTHORITY THEY ARE SO HELD.

The design of this sketch being merely to furnish a connected view of the *laws* which relate to the institution of slavery as it exists among us, it would be supererogatory to enter upon a *particular* inquiry into its *origin*. I shall introduce the subject to the reader, by ascertaining what persons are included under the denomination of slaves, and upon what authority they are regarded as such. These propositions present but little difficulty; since positive enactments of the several legislatures of the slave-holding states constitute the authority; and the language by which they are enunciated is sufficiently explicit to prevent any misapprehension of their meaning.

The earliest law which I shall quote is taken from the laws of Maryland. It is an act of the year 1663, chap. 30, in these words: "All negroes or other slaves within the province, and all negroes and other slaves to be hereafter imported into the province, shall serve *durante vita;* and all children born of any negro or other slave, shall be slaves as their *fathers* were for the term of their lives." *Section* 2. "And forasmuch as divers free-born *English* women, forgetful of their free condition and to the disgrace of our nation, do intermarry with negro slaves, by which also, divers suits may arise, touching the issue of

such women, and a great damage doth befall the master of such negroes, for preservation whereof, for deterring such free-born women from such shameful matches, *be it enacted, &c.* That whatsoever free-born woman shall intermarry with any slave, from and after the last day of the present assembly, shall serve the master of such slave during the life of her husband; and *that all the issue of such free-born women, so married, shall be slaves as their* FATHERS *were.*"

This law is remarkable for two particulars: First, the recognition of the common law doctrine, "partus sequitur *patrem*," that the offspring follows the condition of *the father:* Second, the *pur auter vie* slavery to which it subjected the *white free-born English women* who might come within its provisions. The number of this *new* species of slaves must have been very small, and as the act had but a short duration, it is unnecessary to take further notice of this branch of it. With respect to the *offspring* of such marriages consummated while the act was in force, as these were made *slaves for life;* and as an act passed in 1681, for the purpose of repealing that of 1663, contained an *express saving of the rights acquired under the act of* 1663, *before the date of the repealing act, so far as concerned the enslavement of the woman* AND HER ISSUE, it is not improbable that some of their *descendants* are at the present day in that condition.*

* It is certain several such persons were held in absolute bondage until the year 1791, when (after the lapse of more than a century) it was finally decided by the highest court of judicature in the state, that for want of a *conviction* of the *white woman* who originally violated the law, her descendants were not slaves, and could not legally be retained as such. *See the case, Mary Butler vs. Adam Craig,* 2 *Harris and M'Henry's Reports,* 214 *to* 236. At a former period, (1770) in a case in which the *parents* of the same Mary Butler were plaintiffs and petitioners for freedom, it was adjudged that they *were* slaves—their grandmother, a white woman, having been married to a negro slave in the year 1681, a short time prior to the repeal of the act of 1663. *Case of William and Mary Butler vs. Richard Boardman,* 1 *Maryland* (*Harris and M'Henry's*) *Reports,* 371 *to* 385.

A statement of one of the counsel for the petitioners in this latter case, as it serves to elucidate this anomalous portion of the history of slavery in Maryland, is here transcribed. "In the year 1676, the lord proprietary met the assembly in person: in 1677 he returned to England, and in 1681 he re-

The doctrine of "partus sequitur patrem" obtained in the province till the year 1699 or 1700,* when a general revision of the laws took place, and the acts, in which this doctrine was recognised, were, with many others, repealed. An interval of about fifteen years appears to have elapsed without any *written* law on this subject; but, in 1715, (*chap.* 44, *sect.* 22,) the following one was passed: "All negroes and other slaves already imported or hereafter to be imported into this province, and all *children now born or hereafter to be born of such negroes and slaves,* shall be slaves during their natural lives." Thus was the maxim of the civil law, "partus sequitur *ventrem,*" introduced, and the condition of the *mother,* from that day up to the present time, has continued to determine the fate of the child.

This maxim of the civil law, the genuine and *degrading* principle of slavery, inasmuch as it places the slave upon a level with *brute* animals, prevails universally among the slave-holding states. The law of South Carolina may be quoted as follows: "All negroes, *Indians,* (free Indians in amity with this government, and negroes, mulattoes and mestizos, who are *now* free, excepted,) mulattoes or mestizos, who now are or shall hereafter be in this province, and all their issue and offspring born or to

turned to this province, bringing Irish Nell" (Eleanor Butler, grandmother of the petitioners, who I presume were first cousins, as they were both petitioners for freedom as the descendants of the same parent, and were also husband and wife) "with him as a domestic servant. In 1681 she married," (a negro slave) "and the repealing law was passed in the month of August immediately after the marriage, and his lordship interested himself in procuring the repeal, with a view to this particular case. The act of 1663 was repealed also, to prevent persons from purchasing white women" (as servants) "and marrying them to their slaves, for the purpose of making slaves of them" (and their offspring.) "The penalty is laid upon the masters, mistresses, &c. and the clergyman and the woman are intended to be favoured." This statement, though not very creditable to the early settlers of Maryland, is confirmed by the *preamble* to the repealing act, and also by the terms of the enacting clause; for it sets *free* any such white servant woman, and imposes a fine of ten thousand pounds of tobacco upon the master or mistress who should procure or connive at the marriage. *Act of* 1681, *chap.* 4.

* See the act of 1699, chap. 46, entitled "An act ascertaining the laws of this province;" and the act of 1700, chap. 8, entitled "An act for repealing certain laws in this province, and confirming others."

be born, shall be and they are hereby declared to be and remain for ever hereafter absolute slaves, and shall *follow the condition of the mother.*" *Act of* 1740, 2 *Brevard's Digest*, 229; similar in Georgia, *Prince's Dig.* 446, (*act of* 1770); and in Mississippi, *Revised Code of Mississippi, of* 1823, *page* 369; and see 1 *Rev. Code of Virg.* (*of* 1819) *page* 421; 2 *Litt. and Swi.* 1149-50, *Civ. Code of Louisiana, art.* 183. By this law, any person whose *maternal* ancestor, even in the *remotest* degree of distance from him or her, can be shown to have been a negro, or an Indian, or a mulatto, or a mestizo, *not* free at the date of the law, although the *paternal* ancestor at each successive generation may have been a *white free man*, is declared to be the subject of perpetual slavery. This is a measure of cruelty*

* Under this law it may frequently happen, that a person whose complexion is European may be *legally* retained as a slave. The well informed mind will, upon a little reflection, perceive the justness of this conclusion. A competent judge of the subject, Don Anthonio de Ulloa, whose opinion is confirmed by that of Mr. Edwards in his History of the West Indies, furnishes the following testimony: "Among the tribes which are derived from an intermixture of the whites with the negroes, the *first* are the *mulattoes;* next to these are the *tercerones*, produced from a white and a mulatto, with some approximation to the former, but not so near as to obliterate their origin. After these follow the *quarterones*, proceeding from a white and a terceron. The last are the *quinterones*, who owe their origin to a white and a quarteron. *This is the last gradation, there being no visible difference between them and the whites, either in colour or features;* NAY, THEY ARE OFTEN FAIRER THAN THE SPANIARDS." See *Edwards' West Indies, book* 4, *chap.* 1. Thus the quinterones, who are only *four* removes from a negro ancestor, are found to be undistinguishable from the whites, either by colour or features. Yet even these, and the descendants of these to the remotest generation, are deemed slaves with us. In point of fact, *tercerones* are sometimes almost, if not entirely white. An instance of this kind occurred in an individual, whose case underwent judicial investigation in the city of Philadelphia, in the year 1786; the report of which appears in 1 *Dallas' Rep.* 167, *Pirate alias Belt vs. Dalby.* The reporter's statement is given in these words: "The plaintiff, being the *supposed* issue of *white* and *mulatto* parents, attended the defendant to Philadelphia in the autumn of 1784, and presented *so pure a complexion*, that the attention of the Society (Abolition Society of Pennsylvania) was excited, &c. &c. Upon the trial it was given in evidence, that the plaintiff was born in Maryland of an unmarried *mulatto* woman" (who was a slave.)

I shall now quote another instance, of a most extraordinary character—of *white* children the immediate offspring of a *negro* mother; and though this may

and avarice which, to the reproach of our republics, there is much reason to believe has no precedent in any other civilized country. "In Jamaica, the condition (of slavery) *ceases* by *express law* to attach upon the issue, at the *fourth* degree of distance from a negro ancestor. In other islands, (British West Indies,) the *written* law is silent on this head; but by established custom, the quadroons or mestizoes (so they call the second and third degrees) are rarely seen in a state of slavery."

be looked upon as a *lusus naturæ*, to which no reasonable person would expect the general laws of society to be accommodated, yet, as it proves incontestably that *whites* are now in slavery in one of our states, under the *express* sanction of law, I will make no apology for introducing it. The instance to which I refer, is thus related by Laurence J. Trotti, in a letter to Professor James, of the University of Pennsylvania, dated November 15th, 1825. "Sometime in the year 1815, a *negro woman*, belonging to Mr. Allen, of Barnwell, *South Carolina*, was delivered by a natural unassisted labour of three children; *two* of them were *white* males, the other a perfectly *black* female. The two boys are now alive and full grown for their age. Having, in company with other gentlemen, visited the *mother* and *children*, expressly to ascertain the truth of these facts, I have no hesitation in stating the above mentioned circumstances as correct," &c. &c. See *The North American Medical and Surgical Journal, No.* 2, *April* 1826, *page* 466. From the character of the Journal from which this account has been taken, and especially in reliance upon the judgment of the highly respectable gentleman to whom the letter is addressed, I have treated the whole relation as substantially true. I confess, there is something (particularly the distance of time between the birth of the children and the date of the communication) which leaves room to doubt whether an imposition has not been practised on the *writer* of the letter—whether the *white children* were not born of *white parents;* yet, admitting this supposition to be correct, it would fortify the position, that our lawgivers should pay some respect to colour; for here are two *white* children who have been already in slavery more than ten years, and in all probability they will remain so during life.

An additional case may be here subjoined, illustrative of the general doctrine contained in this note. An advertisement recently inserted in a newspaper published in the city of Philadelphia, offers a reward of one hundred dollars for the apprehension of a person alleged to be a runaway *slave*, who is thus described: "Absconded from the subscriber on the 10th instant, a *very bright* mulatto man named Washington Thomas. HE HAS SOMETIMES BEEN MISTAKEN FOR A WHITE MAN!!" What the degree of distance of this person from an African ancestor is, does not appear; yet, though *more than once* taken for a white man, he is still claimed as a slave!! See *Democratic Press of August* 13, 1827.

Stephen's Slavery of the British West India Colonies delineated, 27; *Edwards' West Indies, book* 4, *chap.* 1. And, as in the Spanish and Portuguese colonies, slavery is in all respects milder than in those of the British, it is fairly inferrible that a regulation equally favourable to freedom, by custom, if not by express law, prevails there also. Of the French colonies and of the Dutch, I have not such information as will authorize an opinion which may deserve much reliance; yet, in the *Code Noir* it is certain many provisions may be indicated, of a much more humane character than can can be found in the codes of our slave-holding states, on kindred topics.

It has been already incidentally noticed, that by the common law,—the law of Villanage,—the offspring always followed the condition of the *father:* it has been also stated, and indeed the law which I have just extracted, declares this principle in *unequivocal* terms, that, with respect to slavery among us, the condition of the *offspring* depends upon the condition of the *mother.* A consequence of this latter rule is, that whether born in or *out* of wedlock, the children are slaves whenever the mothers are so. But as to the child born *out* of wedlock, while from motives of public policy the *common law* prevents him from deriving any *benefit* from his parents, by way of *inheritance,* it declares, with a consistency strongly recommended by its humanity, that he shall not be obnoxious to the evils of slavery. Had these two maxims of the common law, i. e. that the offspring follows the condition of the father,—and, that an illegitimate is always born free,—been permitted to retain their place in colonial jurisprudence, none but negroes of the whole blood (except from the rare instances of a matrimonial alliance between a free woman not black and an abject negro slave) would be numbered among the victims of slavery!! Every mulatto, except from the source just mentioned, would have been free—a destiny, at which, though it may have no claim to support it superior to what may be avouched for the *negro,* yet, inasmuch as it would have prevented the tremendous augmentation of our servile population, the evils of which are daily more and more felt, humanity and religion would have had cause to rejoice.

I am aware of a reply which may be given to these remarks.

It may be said, "True, on your principles, no mulatto would be a slave—negroes only would be such; still it would be necessary only to encourage matrimony among slaves, and the decrease of slaves, which you consider so important, would not happen." Without stopping to show that this view of the matter is not altogether correct, it may be justly rejoined, that *this* very *encouragement to matrimony* would, in itself, be of vast moment, from *its moral effects;* and, furthermore, (what ought by no means to be lost sight of,) since while the parties to a marriage contract are in full life, neither of them can lawfully enter into a similar contract with a third person, the master's interest, or what he conceives to be so, would in a great degree avert the terrible calamity, which is now common—a separation of the parents of the same children—a separation of those who ought to be strictly and legally husband and wife.

It may excite the surprise of some, to discover *Indians* and their offspring comprised in the doom of perpetual slavery; yet not only is *incidental* mention of them as slaves to be met with in the laws of most of the states of our confederacy, but in one at least, direct legislation may be cited to sanction their enslavement. In Virginia, "By an act passed in the year 1679, it was, for *the better encouragement of soldiers*, declared, that what INDIAN PRISONERS should be taken in a war in which the colony was then engaged, should be *free purchase* to the *soldiers* taking them. In 1682, it was declared, that all servants brought into this country, (Virginia) by sea or land, not being *Christians*, whether negroes, Moors, mulattoes or INDIANS, (except Turks and Moors in amity with Great Britain,) and all INDIANS which should thereafter be SOLD by neighbouring Indians, or any other trafficking with us, *as slaves*, should be SLAVES *to all intents and purposes.*"* Per Judge Tucker, *in*

* "These acts," says Judge Tucker, speaking of the acts cited in the text, "continued in force till the year 1691, when an act having been passed, authorizing a free and open trade for all persons, at all times and at all places, with *all Indians whatsoever*, it was decided by the courts, that this operated as *a repeal of the former acts.*" See 1 *Henning and Munford's Reports*, 139. The descendants of such Indians as were reduced to slavery under the sanction of the acts of 1679 and 1682, and during the time in which these were in force,

the case of Hudgins vs. Wright, 1 *Henning and Munford's Reports*, 139.

And, in the state of New Jersey, it was decided by the supreme court, in the year 1797, "That *Indians* might be held as slaves." No law was adduced to show the origination of such a right, but it appeared by several acts of assembly, one of which was as early as 1713-14, that they were classed with negroes and mulattoes, *as slaves*. Chief Justice Kinsey remarked, "They (Indians) have been so long recognised as slaves, in our law, that it would be as great a violation of the rights of property to establish a contrary doctrine at the present day, as it would in the case of Africans; *and as useless to investigate the manner in which they* ORIGINALLY lost their freedom." *The State vs. Waggoner*, 1 *Halstead's Reports*, 374 *to* 376.

In addition to the laws already cited, declaring who shall be deemed slaves, the codes of the slave-holding states exhibit a considerable number of enactments, by which FREE negroes, &c. are converted into absolute slaves. Thus, in *South Carolina*, if a *free* negro *harbour*, *conceal* or ENTERTAIN a runaway slave, or a slave charged "with *any* criminal matter," he shall forfeit the sum of ten pounds currency for the first day, and twenty shillings for every succeeding day, &c. And in case such forfeitures cannot be levied, or such free negro, &c. shall not pay the same, together with the charges attending the prosecution, such FREE *negro*, &c. shall be ordered by the justice *to be sold at public outcry*, and the money arising by such sale shall, in the first place, be paid for and applied towards the forfeiture, &c. to the owner, &c.; *and the overplus, if any, shall*

may even at the present time be held as slaves in Virginia!! But the decisions of the courts protect all others. The highest court of judicature has decided, that "a *native* American Indian brought into Virginia *since* the year 1691, could not lawfully be held in slavery there, although such Indian was a slave in the country (Jamaica) from which she had been brought, previously to and at the time of her removal." *Butt vs. Rachel*, 4 *Munford's Reports*, 209. See also, 2 *Henning and Munford's Reports*, 149, *Pallas and others vs. Hill and others*, in which cases the claim to freedom of at least *twelve* descendants of *native* American Indians, whose maternal ancestors had not been reduced to slavery till *after* 1691, was established.

*be paid by the said justice into the hands of the public treasurer,** &c. 2 *Brevard's Digest*, 237, *act of* 1740.

* I have, in the text, considered the whole of the 34th section of the act of 1740, as the law of South Carolina at the present time. A very recent proceeding in one of the judicial tribunals of that state, is my justification for so doing. The subjoined extract from the *Charleston* Courier of the 13th August, 1827, details the proceeding to which reference is here made: "A trial of much interest took place on Saturday last, at the City Hall, before a court, composed of *John Michel, Esq. Justice of the Quorum, and two Freeholders.* The parties put upon their trial were *Hannah Elliott,* a free black woman, together with her daughter *Judy,* and her sons *Simon* and *Sam.* They were severally indicted *under the act of* 1740, for harbouring, concealing, entertaining two female children, aged about six and nine years, the property of a lady of this city, the extraordinary concealment and discovery of which, was mentioned a short time since.

"After a patient investigation of all the circumstances of the case, the prisoners having the aid of able counsel, the court found them all guilty, and sentenced them, in accordance with the provisions of the aforesaid act, as follows: Hannah Elliott, with having harboured these slaves, for the term of two years; and her children with having harboured them respectively, for sixteen months each. The penalty under the act, is a forfeiture of *ten pounds* currency for the *first* day, and *twenty shillings* currency for *every day after,* to the use of the owner of any slave so harboured, concealed or entertained. The act also provides, that, in case the forfeiture cannot be levied on such free negro, together with the charges attending the prosecution, the parties must be sold, at public outcry, and the money arising from such sale be applied, in the first place, towards the forfeiture due to the owner, &c. and the overplus, if any, be paid into the public treasury."

Newspapers of later dates confirm this statement, and inform us, what might naturally have been anticipated, that the unhappy convicts, being unable to satisfy the enormous penalties which had been imposed upon them, were sold at public outcry, ten days after the trial, for slaves during life.

But, notwithstanding this decision of the Charleston court, I have no doubt, that the act of 1740, *so far as concerns the offence of free negroes, mulattoes or mestizoes, in harbouring, concealing or entertaining a runaway slave,* NOT CHARGED WITH ANY CRIMINAL MATTER, *is repealed.* On the 20th December, 1821, the legislature of South Carolina enacted a law in these words: "If any free negro, mulatto or mestizo, shall harbour, conceal or entertain any fugitive or runaway slave, and be convicted thereof before *two justices and five freeholders,* he shall suffer such corporeal punishment, not extending to life or limb, as the said justices and freeholders, who try such offender, shall in their discretion think fit." *See Acts of the Session of Dec.* 1821, *page* 20; *and James' Digest,* 390.

By comparing these two acts together, it will be perceived that they *agree* in the description of the offence to be provided against, while they *differ* in

So, "in case any slave shall be emancipated or set free, otherwise than according to the act (of 1800) regulating emancipations, it shall be lawful *for any person whosoever to seize and convert to his or her own use*, and *to keep as his or her property* the said slave so illegally emancipated or set free." 2 *Brevard's Digest*, 256. And see *Hayward's Manual*, 525, *act of* 1777.

And in Virginia, "If* any emancipated slave (infants excepted) shall remain within the state more than twelve months after his or her right to freedom shall have accrued, he or she shall *forfeit* all such right, and may *be apprehended and sold*

two important particulars: *first*, as to the tribunal before which offenders against the law are to be tried: *secondly*, in the punishment to be inflicted on conviction. Under the act of 1740, the tribunal consists of *one* justice and *two* freeholders, as is stated in another section of the same act: and the act of 1821 expressly directs a tribunal composed of *two* justices and *five* freeholders. By the former act, two (a majority) members of the court, can convict or acquit: according to the latter, *four* are necessary for either purpose. On the supposition that both acts are in force, the offender may be tried and punished *twice* for one and the same offence—a conclusion, which is forbidden by a principle of criminal jurisprudence, which has no exception in the laws of any civilized country, namely, that "no man can be placed in peril of legal penalties more than once upon the same accusation." 1 *Chitty's Criminal Law*, 452; 4 *Bla. Com.* 335. The provisions of the two acts are therefore manifestly inconsistent with each other, in which case, although words of express repeal are not used in the latter act, yet by implication it repeals the former, the *old* statute always giving place to the *new*, where both cannot stand together. 1 *Bl. Com.* 89.

The only argument by which the position, that both acts are in force, can be maintained, is, that the penalties are cumulative. This, however, can take place only where but *one* conviction is required; whereas, it has been shown above, that *two* are necessary according to these acts, inasmuch as *two distinct* tribunals for trial are appointed.

* The late President Jefferson, having, by his last will, emancipated five slaves, for whom he appears to have entertained much *personal* regard; in consequence of this section, made the following pathetic appeal to the legislature of his native state: "I *humbly* and *earnestly* request of the legislature of Virginia, a confirmation of the bequests to these servants, *with permission to remain in this state*, where their families and connexions are, as an additional instance of the favour, of which I have received so many other manifestations in the course of my life, and for which I now give them my solemn and dutiful thanks."

by the overseers of the poor, &c. for the benefit of THE LITERARY FUND!!" 1 *Rev. Code*, 436.

By an act of Georgia, (December 19, 1818,) a penalty of a fine of one hundred dollars is incurred by any *free* person of colour, (Indians in amity with the state, and regularly articled seamen, &c. arriving in any ship, &c. excepted,) *for coming into the state;* and "upon failure to pay the same within the time prescribed in the sentence, &c. he, she or they shall be liable *to be sold* by public outcry *as a slave*," &c. *Prince's Digest*, 465; *and see* 467.

In Mississippi, every negro or mulatto found within the state, and *not having the ability** to show himself entitled to freedom, may be sold, by order of the court, as *a slave*. *Mississippi Rev. Code*, 389.

Maryland, in 1717, (chap. 13, sect. 5,) adopted these provisions: "If any *free* negro or mulatto *intermarry* with any white woman, or if any white man shall intermarry with any negro or mulatto woman, such negro or mulatto shall become *a slave during life*, except mulattoes born of white women, who, &c. shall become servants for seven years."

Another copious source of slavery,—the condemnation under laws of several of the slave-holding states, made specifically for this purpose, of natives of Africa, brought into the United States in violation of the act of congress of March 2, 1807, entitled "An act to prohibit the importation of slaves, &c. from and after the first day of January, 1808"—I shall defer the consideration of, to a subsequent chapter. *See the Appendix, chap.* 2.

Before quitting this chapter, it may not be amiss to notice cursorily, a species of SERVITUDE, (*growing out of slavery*,) which is peculiar, it is thought, to our country. It originated most probably in the *province* of Maryland, and will be readily apprehended from the subjoined extract from the act of that province in 1663, *chap.* 20, *sect.* 3: "All the ISSUE of *English*

* The extreme hardship of this law will be seen, when I come to treat of the exclusion of negroes, mulattoes, &c. as witnesses, where the interest of white persons is in question.

or other free-born women, that have already married negroes, shall serve the master of their parents till they be *thirty* years of age, and no longer." This act having been annulled in 1699 or 1700, was revived in *principle* by the *act of* 1715, *chap.* 44, *sect.* 26, with an extension of *one* year to the period of servitude fixed by the old law. The same provision shortly afterwards recommended itself to the general assembly of *Pennsylvania*,* and may be found incorporated in an act passed March 5th, 1725-6, entitled "An act for the better regulating of negroes in this province." In 1741, *chap.* 24, *sect.* 18, it became the law of North Carolina, where, as also in Tennessee, it is presumed to be in force at the present time. With respect to Maryland, it is necessary to add, that the progressive light of nearly a century and a half has at length enabled her to discover, as is declared in the act of 1796, *chap.* 67, *sect.* 14, that "it is contrary to the dictates of humanity and the principles of the christian religion, to inflict personal penalties on children for the offence of their parents;" and this species of servitude has, in that state, been accordingly abolished.

* I have been careful to note with particularity the act of assembly of Pennsylvania, which gave rise to this species of servitude, chiefly because the late Judge Rush, has *inadvertently* stated, that *usage* was the authority upon which it was founded. See *Respublica vs. Negro Betsey et al*, 1 *Dallas' Reports*, 475.

CHAPTER II.

OF THE INCIDENTS OF SLAVERY.

With the present chapter I propose to begin an examination of the nature and legal incidents of slavery. And in doing so, I will, in the first place, treat of the laws which regard the slave as *property*. This will comprehend such laws only as concern *the relation of master and slave*. Afterwards, those which treat of the slave as *a member of civil society* will be discussed.

The civil law, except where modified by statute or by usages which have acquired the force of law, is generally referred to in the slave-holding states, as containing the true principles of the institution. It will be proper, therefore, to give an abstract of its leading doctrines; for which purpose, I use *Dr. Taylor's Elements of the Civil Law, page* 429. "Slaves," says he, "were held *pro nullis: pro mortuis: pro quadrupedibus.*— They had no head in the state, no name, title or register: they were not capable of being injured: nor could they take by purchase or descent: they had no heirs, and therefore could make no will: exclusive of what was called their *peculium*, whatever they acquired was their master's: they could not plead nor be pleaded for, but were excluded from all civil concerns whatever: they could not claim the indulgence of absence *reipublicæ causa:* they were not entitled to the rights and considerations of matrimony, and therefore had no relief in case of adultery: nor were they proper objects of cognation or affinity, but of *quasi-cognation* only: they could be sold, transferred or pawned as goods or personal estate; for goods they were, and as such they were esteemed: they might be tortured for evidence: punished at the discretion of their lord, or even put to death by his authority." This description is to be taken as applicable to the condition of slaves at an early period of the Roman history; for before the fall of the Roman empire, several important changes had been

introduced favourable to the slave. By the lex Cornelia de sicariis, the killing of a slave became punishable. *Dig.* 488. *Cooper's Justinian*, 411. The jus vitæ et necis claimed by the master, was restrained by Claudius, the successor of Caligula. *Ibid.* The emperor Adrian prohibited generally cruel treatment towards slaves; and he banished Umbricia, a lady of quality, for five years, quôd ex levissimis causis *suas ancillas*,* atrocissime tractâsset. *Cooper's Justinian*, 412. Antoninus Pius applied the *lex Cornelia de sicariis*, specifically to the masters of slaves; and the same law was strengthened by Severus and by Constantine. *Ibid.* Slaves might always induce an investigation by flying to the statues of the princes. *Ibid.*

I believe it will be found upon a close comparison, that the condition of the slave, in our slave-holding states, *so far as the law may be invoked in his behalf*, is but little, if in any respect, better than was that of the Roman slave under the civil law. According to the law of Louisiana, "A slave is one who is in the power of a master to whom he belongs. The master may sell him, dispose of his person, his industry and his labour: he can do nothing, possess nothing, nor acquire any thing but what must belong to his master." *Civil Code, art.* 35. As to the master's power to punish his slave, a *limitation seems* to be contemplated by the following article: "The slave is entirely subject to the will of his master, who may correct and chastise him, *though not with unusual rigour, or so as to maim or mutilate him, or to expose him to the danger of loss of life, or to cause his death.*" *Art.* 173.—Yet, as will be fully demonstrated hereafter, no such limitation actually exists, or can by law be enforced.

With respect to the other slave-holding states, as none of these have adopted *entire written codes*, enunciations of such a *general* nature, as are exhibited in the quotations just made from the law of Louisiana, are not to be expected. Nevertheless, the cardinal principle of slavery,—that the slave is not to be ranked

* Because for very slight causes she had treated her female slaves very cruelly.

among *sentient beings*, but among *things**—is an article of property—a chattel personal,—obtains as undoubted law in all of these states. In South Carolina it is expressed in the following language: "Slaves shall be deemed, sold, taken, reputed and adjudged in law to be *chattels personal*† in the hands of their

* An apt illustration of this doctrine, is presented in an act of Maryland, of 1798, Chap. CI. ch. 12. No. 12. The following is the language of this enlightened state: "In case the personal property of a ward shall consist of specific articles, *such as* SLAVES, WORKING BEASTS, ANIMALS OF ANY KIND, stock, furniture, plate, books, AND SO FORTH, the court, if it shall deem it advantageous for the ward, may at any time pass an order for the sale thereof," &c. &c.

† In Louisiana, "Slaves though moveable by their nature," says the civil code, "are considered as immoveable by the operation of law." *Art.* 461. And by act of assembly of June 7, 1806, "Slaves shall always be reputed and considered *real* estate; shall be, as such, subject to be mortgaged, according to the rules prescribed by law, and they shall be seized and sold as *real* estate." 1 *Martin's Digest*, 612. And in Kentucky, by the law of *descents*, they are considered *real* estate, 2 *Litt. and Sui. Digest.* 1155, and pass in consequence to *heirs* and not to executors. They are, however, liable *as chattels* to be sold by the master at his pleasure, and may be taken in execution for the payment of his debts. *Ibid. and see* 1247. A law (act of 1705) similar to that of Kentucky, once obtained in Virginia, but it was repealed after a short experiment. *See note to* 1 *Rev. Code*, 432.

In Massachusetts and Connecticut, and probably in the whole country which used to bear the name of New England, the *harsh* features of slavery were never known. In Massachusetts colony, so early as in the year of our Lord one thousand six hundred and forty-one, the following law was made: "It is ordered by this court and the authority thereof, that there shall never be any bond slavery, villenage or captivity among us, unless it be lawful captives taken in just war, (such) as willingly sell themselves or are sold to us; *and such shall have the liberties and* CHRISTIAN *usage which the law of GOD* ESTABLISHED IN ISRAEL *concerning such persons doth morally require.*" See *General Laws and Liberties of Massachusetts Bay, chap.* 12, *sect.* 2. Though the phraseology of this law savour more of *Hibernia* than is supposed to be common to *New England*, yet its meaning is sufficiently palpable. That the law was not a dead letter, we have the authority which may be collected from an opinion delivered in the case of *Winchenden vs. Hatfield*, 4 *Mass. Rep.* 127-8, by Chief Justice Parsons. "Slavery," says he, "was introduced into this country soon after its first settlement. The slave was the property of the master, subject to his orders, and to reasonable correction for misbehaviour. If the master was guilty of a cruel or unreasonable castigation of his slave, he was liable to be punished *for the breach of the peace*, and, I believe, the slave was allowed to demand sureties of the peace against a violent and barbarous master. Under these regu-

owners and possessors, and their executors, administrators and assigns, *to all intents, constructions and purposes whatsoever.* 2 *Brev. Dig.* 229; *Prince's Digest,* 446, *&c. &c.* Absolute despotism needs not a more comprehensive grant of power than that which is here conferred. And though the particular design of the law-makers in framing this section was merely to declare of what nature—whether real or personal estate—slaves as *property* should be regarded, yet it is not on that account the less appropriate for the purpose to which I apply it. It is strictly consonant with an inflexible principle of their acknowledged law.

Viewing the language, "*that a slave shall be deemed a chattel personal in the hands of his owner, to all intents, constructions and purposes whatsoever,*" in this light, it is plain that the dominion of the master is as unlimited, as is that which is tolerated by the laws of any civilized country in relation to brute animals—to *quadrupeds,* to use the words of the civil law. How far the existing state of slavery, *as by law established and protected,* may conform to this deduction, will best appear by a more minute investigation of the subject. And in order to simplify the inquiry, and to enable the reader to arrive at a proper conclusion without difficulty, I shall subjoin, in distinct propositions, what will be found to be *corollaries*

lations, the treatment of slaves was in general mild and humane, and they suffered hardships not greater than hired servants."

And in Connecticut, Judge Reeve, speaking of slavery there, holds this language: "The law, as heretofore practised in this state, respecting slaves, must now be uninteresting. I will, however, lest the slavery which prevailed in this state should be forgotten, mention some things, that show that slavery here was very far from being of the absolute, rigid kind. The master had no control over the life of his slave. If he killed him, he was liable to the same punishment as if he killed a freeman. The master was as liable to be sued by the slave, in an action for beating or wounding, or for immoderate chastisement, as he would be if he had thus treated an apprentice. A slave was capable of holding property, in character of devisee or legatee. If the master should take away such property, his slave would be entitled to an action against him, by his *prochein ami* (next friend.) From the whole we see, that slaves had the same right of life and property as apprentices; and that the difference betwixt them was this: an apprentice is a servant for time, and the slave is a servant for life." *Reeve's Law of Baron & Femme, &c.* 340-1.

from the act of South Carolina; and, in connexion with each of them, such laws as may be specifically applicable will be quoted, and their just bearing indicated.

Prop. I. The master may determine the kind, and degree, and time of labour, to which the slave shall be subjected.

II. The master may supply the slave with such food and clothing only, both as to quantity and quality, as he may think proper, or find convenient.

III. The master may, at his discretion, inflict any punishment upon the person of his slave.

IV. All the power of the master over his slave may be exercised not by himself only in person, but by any one whom he may depute as his agent.

V. Slaves have no legal rights of property in things, real or personal; but whatever they may acquire belongs, in *point of law*, to their masters.

VI. The slave being a *personal chattel*, is at all times liable to be sold absolutely, or mortgaged or leased, at the will of his master.

VII. He may also be sold by process of law for the satisfaction of the debts of a living, or the debts and bequests of a deceased master, at the suit of creditors or legatees.

VIII. A slave cannot be a party before a judicial tribunal, in any species of action, against his master, no matter how atrocious may have been the injury received from him.

IX. Slaves cannot redeem themselves, nor obtain a change of masters, though cruel treatment may have rendered such change necessary for their personal safety.

X. Slaves being objects of *property*, if injured by third persons, their owners may bring suit, and recover damages, for the injury.

XI. Slaves can make no contract.

XII. Slavery is hereditary and perpetual.

Preparatively to the separate discussion of the above propositions, the remark may be made, as applicable to each, that the absence of a legislative change as to the *law* of the proposition, is always to be taken as an implication that it exists as is therein stated. For the *propositions*, it will be recollected, are *corollaries* from the *express general* law.

Prop. I. THE MASTER MAY DETERMINE THE KIND, AND DEGREE, AND TIME OF LABOUR, TO WHICH THE SLAVE SHALL BE SUBJECTED.

In *most* of the slave-holding states, the law is silent on this topic. There can be no doubt, therefore, as I have just intimated, that it is given correctly in the terms of the proposition. As to the *silence* of the law, the codes of Georgia, South Carolina, Louisiana and Mississippi, furnish exceptions—with what efficacy, will be shown in the succeeding observations. One of these exceptions is as follows:

"If any person shall on the Lord's day, commonly called Sunday, employ any slave in any work or labour, (works of absolute necessity, and the necessary occasions of the family only excepted,) every person so offending shall forfeit and pay the sum of ten shillings for every slave he, she or they shall so cause to work or labour." *Act of May* 10, 1770; *Prince's Digest*, 455. So in *Mississippi*, under a penalty of two dollars. *Rev. Code*, 317; *Act of June* 13, 1822.

"Any owner or owners of a slave or slaves, who shall cruelly beat* such slave or slaves, by unnecessary or excessive whipping, by withholding proper food and sustenance, by requiring greater labour from such slave or slaves than he or she or they are able to perform, by not affording proper clothing, whereby the health of such slave or slaves may be injured and impaired, every such owner or owners shall, *upon sufficient information* being laid before the grand jury, be by said grand jury presented, whereupon it shall be the duty of the attorney or solicitor general to prosecute said owner or owners, who, on conviction, shall

* *Beat* is the word used in Prince's Digest, from which the citation is made. To make sense, *treat* should be substituted.

be sentenced to pay a fine, or be imprisoned, or both, at the discretion of the court." *Prince's Digest*, 376 (*act of* 1817.)

The *ostensible* design of these laws, is to afford protection to the slave. But, unfortunately for the oppressed, a single *fact* proves that the "*promised good*" is almost, if not altogether illusory. *It is an inflexible and universal rule of slave law*, (to which more particular attention will be hereafter given,) founded in one or two states upon *usage*, in others sanctioned by *express legislation*, THAT THE TESTIMONY OF A COLOURED PERSON, WHETHER BOND OR FREE, CANNOT BE RECEIVED AGAINST A WHITE PERSON!!! It is scarcely necessary to add another word to substantiate the allegation, that these laws of Georgia ought to be considered entirely and unqualifiedly nugatory. By way of illustration, however, suppose a slave, *by the command of his master*, and through terror of his displeasure and punishment, is discovered, employed on the Sabbath, in the ordinary labours of the field. It may be assumed that the master is apprised of the prohibition of the law. He knows *equally well* too, that the testimony of a *white man* only can be produced against him. He will, of course, obey the dictate of common prudence,—a sufficient share of which, for this purpose, every man possesses,—*and issue his commands to the slave in the absence of a white man.* How, then, can he be convicted of this offence? or in what manner can the law be enforced? It must be a dead letter. It can serve no valuable end. For any benefit it yields the slave, it might as well not have been passed.

The same objections apply to the clause in the second section which has been cited, and which comes within the scope of the proposition under present consideration, i. e. "The requiring greater labour from such slave or slaves than he, she or they are able to perform." Indeed, the difficulty in effecting a conviction is increased, inasmuch as the charge is by the law of a *criminal* nature—every thing must therefore be *strictly* proved —the law itself must be *construed strictly*—and, such a construction, without doubt, requires that all the illegal circumstances enumerated in the section should exist at the same time,

and be proved against the master, to constitute the *single* crime of cruelty to the slave.

There is an obscurity and confusion in the penning of this law, which will strike every one with surprise, who is not in some degree acquainted with slave laws. There is an *omission* too, which deserves notice. The cruelty of the *owner* only, is made penal in the section; while the exaction of too much labour, &c. by the *overseer* or *agent*, is not provided against.

The negro act of *South Carolina*, passed in 1740, contains the following language as restrictive of the master's power in the exaction of labour from the slave. I copy, in addition to the *enacting part* of the section, the *preamble*, since it serves to evidence the *abuse* which obtained in this particular, at a very early period, when the labour of the slave was probably of much less value than it is at the present time. "Whereas many owners of slaves, and *others* who have the care, management and overseeing of slaves, *do confine them so closely to hard labour, that they have not sufficient time for natural rest:* Be it therefore enacted, That if any owner of slaves, or other person who shall have the care, management, or overseeing of any slaves, shall work or put any such slave or slaves to labour more than *fifteen* hours in twenty-four hours, from the twenty-fifth day of March to the twenty-fifth day of September; or more than *fourteen* hours in twenty-four hours, from the twenty-fifth day of September to the twenty-fifth day of March, every such person shall forfeit any sum not exceeding twenty pounds, nor under five pounds, current money, for every time he, she or they shall offend herein, at the discretion of the justice before whom the complaint shall be made." 2 *Brevard's Digest*, 243.

In Louisiana, the subjoined act was passed, July 7, 1806. "As for the hours of work and rest, which are to be assigned to slaves in summer and winter, the old usages of the territory shall be adhered to, to wit: The slaves shall be allowed half an hour for breakfast during the whole year; from the first day of May to the first day of November, they shall be allowed two hours for dinner; and from the first day of November to the first day of May, one hour and a half for dinner: Provided, however, That the owners who will themselves take the trouble

of causing to be prepared the meals of their slaves, be, and they are hereby authorized to abridge, by half an hour per day, the time fixed for their rest." 1 *Martin's Digest*, 610-12.

The remarks which were made, in relation to the laws of Georgia, bear with equal force upon those of South Carolina and Louisiana, above cited. They are wholly inoperative—incapable of being executed—and must, without doubt, give way to the cupidity of the master, whenever circumstances excite the passion for gain. But to speak of the law of South Carolina —suppose it to be religiously observed, is not the measure as to the length of time (for as regards the *kind* or *degree* of labour no regulation exists, and it would be futile to make any) excessive, and likely to be destructive to bodily energy? In a matter of this nature, *exact* graduation is not easily attainable; yet, judging from such data as I have been able to collect, I think myself authorized in the conclusion that *too much* is permitted. In the island of Jamaica, besides many holidays which are by law accorded to the slave, ten hours a day is the extent of the time which the slave is compelled *ordinarily* to work. *See* 2 *Edward's West Indies, book* 4, *chap.* 5. Also, *Consolidated Slave Act of Jamaica, ibid. book* 4; *Appendix, section* 18. The regulations of *penitentiaries*, in reference to the employment of *convicts* at *hard* labour, furnish additional criteria deserving of our attention. And, happily, it is in my power here to adduce the authority of at least three slave-holding states, viz. Maryland, Virginia, and Georgia, in conjunction with that of Pennsylvania and New Jersey. In each of these states this law has been adopted: "Such offenders (convicts) unless prevented by ill health, shall be employed in work every day in the year except Sundays, and such days when they shall be confined in the solitary cells; and the hours of work, in each day, shall be as many, as the season of the year, with an interval of half an hour for breakfast and an hour for dinner, will permit; *but not exceeding eight hours* in the months of November, December and January; *nine hours* in the months of February and October; and *ten* hours in the rest of the year. 1 *Virg. Rev. Code*, 624; *Prince's Digest*, 382; *Laws of Maryland, Nov. Sess.* 1809, *ch.* 138, §30; *Laws of New Jersey, revised and published*

in 1821, *page* 326; *Purdon's Digest of the Laws of Pennsylvania, page* 324 (*act of April* 5, 1790.)

Hence it appears, that according to a statute which was enacted upon the most solemn deliberation by one legislature, and which has been adopted since by four other distinct bodies of the same nature, *ten* hours make up the *longest* space out of twenty-four hours, which can be demanded for labour from *convicted felons*, whose PUNISHMENT was designed to consist chiefly of HARD LABOUR. Yet the slave of South Carolina, under a law professing *to extend humanity* towards him, may be subjected to unremitting toil for FIFTEEN HOURS within the same period!!

If we turn to Louisiana, the condition of the slave, in this particular, will be found without melioration. For though the purpose of the act which I have transcribed, is declared to be to ascertain what hours are to be assigned to the slave for *work* and REST, the only *rest* which it provides is half an hour at breakfast and two hours for dinner. At what time a third meal is to be taken, whether at sunset or at midnight, is left to the master's pleasure. And judging from our knowledge of the mode in which sugar is made, and cotton raised and *pressed*, it is not too much to say, that the going down of the sun is by no means the signal of repose to the weary slave.* And let it not be forgotten, that the slave within the short time allotted for *rest*, is under the necessity of preparing food for his meals!!

Prop. II. THE MASTER MAY SUPPLY THE SLAVE WITH SUCH FOOD AND CLOTHING ONLY, BOTH AS TO QUANTITY AND QUALITY, AS HE MAY THINK PROPER OR FIND CONVENIENT.

* An extract from a Louisiana newspaper, dated New Orleans, March 23, 1826, will tend in some measure to confirm this remark. The words are these: "To judge from the activity reigning in the cotton presses of the suburbs of St. Mary, and the *late hours* during which *their slaves work*, the *cotton* trade was never more brisk." Sugar making is, I believe, generally more laborious than the cultivation of cotton. In an article on the agriculture of *Louisiana*, contained in "The Western Review," No. 2, (the editor of which is by no means unfavourable to slavery,) the following statement appears: "*The work* (sugar making) *is admitted to be severe for the hands*, (slaves) *requiring, when the process of making sugar is commenced*, TO BE PRESSED NIGHT AND DAY."

Legislation, having a direct reference to the subject of this proposition, may be quoted from the codes of Louisiana and of North and South Carolina. Still, as the slave is entirely under the control of his master—is unprovided with a protector—and especially as he cannot be a witness, or make complaint in any known mode against his master, the *apparent* object of these laws may *always* be defeated. I might, therefore, spare myself any further attention to this proposition. But, for the information of those who have not resided in a slave state, I think fit to copy the authentic testimony of acts of assembly, as to the *quantity* and *quality* of food which are directed to be provided for slaves. Thus in Louisiana, "Every owner shall be held to give to his slaves the quantity of provisions hereafter specified, to wit: *one barrel of Indian corn*, or the equivalent thereof in rice, beans or other grain, and a pint of salt, and to deliver the same to the said slaves in kind *every month*, and never in money, under a penalty of a fine of ten dollars for every offence." 1 *Martin's Digest*, 610, *act of July* 7, 1806. In North Carolina, a *much less* quantity of the same kind of food is deemed sufficient, as is *implied* from the following *curious* section of an act passed in 1753, and which is still in force: "In case any slave or slaves, who shall not appear to have been clothed and fed according to the intent and meaning of this act, that is to say, to have been sufficiently clothed, and to have constantly received for the preceding year an allowance not less than *a quart of corn per day*, shall be convicted of stealing any corn, cattle, &c. &c. from any person not the owner of such slave or slaves, such injured person shall and may maintain an action of trespass against the master, owner or possessor of such slave, &c. and shall recover his or her damages, &c." *Haywood's Manual*, 524-5.

The allowance of clothing in Louisiana, seems to have been graduated by the same standard by which the quantity of food was determined in North Carolina. "The slave who shall not have on the property of their owners a lot of ground to cultivate on their own account, shall be entitled to receive from said owner *one* linen shirt and pantaloons (*une chemise et une culotte de toile*) for the summer, and a linen shirt and woollen great coat and pantaloons for the winter." 1 *Martin's Digest*, 610.

The other slave-holding states do not *pretend* to fix the kind and quantity of food and clothing to be furnished to the slave; but in South Carolina and in Georgia, the cruelty of denying to him a sufficiency of either, is *attempted* to be guarded against. That full justice may be done to the humanity of the lawgivers of South Carolina, I extract a section of the law which professes to give redress to the injured slave: "In case any person, &c. who shall be owner, or who shall have the care, government or charge of any slave or slaves, shall deny, neglect or refuse to allow such slave or slaves under his or her charge sufficient clothing, covering or food, it shall and may be lawful for any person or persons, on behalf of such slave or slaves, to make complaint to the next neighbouring justice in the parish where such slave or slaves live, or are usually employed; and the said justice shall summons the party against whom such complaint shall be made, and shall inquire of, hear and determine the same; and, if the said justice shall find the said complaint to be true, or that such person will not exculpate or clear himself from the charge, by his or her own oath, which *such person shall be at liberty to do in all cases* where positive proof is not given of the offence, such justice shall and may make such orders upon the same, for the relief of such slave or slaves, as he in his discretion shall think fit; and shall and may set and impose a fine or penalty on any person who shall offend in the premises, in any sum not exceeding twenty pounds, current money, for each offence, to be levied by warrant of distress and sale of the offender's goods," &c. &c. 2 *Brevard's Dig.* 241; similar in Louisiana, 1 *Martin's Dig.* 638-40.

Now, as the slave cannot be heard as a witness, it is not very easy to see how *positive* proof as to the insufficiency of food can be obtained; and, of course, by the terms of the act, the master or overseer, by his oath, may exculpate himself—may answer the *general* charge by as general a denial—a matter which an intrepid conscience, as all experience testifies, will easily compass.

The act of Georgia remains to be considered. It will be seen, by recurring to the *latter* section of the law of this state, upon which I adventured a brief comment while speaking of the *first*

proposition of this chapter, that among the *constituents* of the crime of cruelty by the master to his slave, are enumerated, "*the withholding proper food and sustenance,*" and "*not affording proper clothing.*" For "withholding proper food and sustenance," it has been demonstrated, I trust, that the master is dispunishable. The *proof* cannot be had. Whether the slave be properly clothed may, however, be ascertained by *inspection.* But here it is necessary to advert to a remark already made, namely, that the *crime* of cruelty, according to the legal interpretation of the section, requires the *co-existence of all the illegal circumstances specified in the act.* It is not enough that "proper clothing is not afforded"—proper food must be withheld—excessive labour must be exacted—unnecessary and excessive whipping must be inflicted; and from all these concomitant *causes,* an *effect* is to be produced and proved, "whereby," such is the language of the act, "the health of such slave or slaves may be injured and impaired!!"

Upon the topics of this proposition, another act of Georgia may be cited, the provisions of which are of a character so novel, that I shall be under the necessity of detaining the reader longer in its discussion than is altogether consistent with the plan of this sketch. The act is a brief one, and I transcribe it entire: "*Section* 1. From and after the passing of this act, (December 12, 1815,) it shall be the duty of the *inferior* courts of the several counties in this state, on receiving information, on *oath,* of any *infirm* slave or slaves being in a *suffering* situation, from *the neglect of the owner or owners* of such slave or slaves, to make particular inquiries into the situation of such slave or slaves, and render such relief as they in their discretion may think proper.

"*Section* 2. The said courts *may,* and they are hereby authorized, to sue for and recover from the owner or owners of such slave or slaves, the amount that may be appropriated for the relief of such slave or slaves, in any court having jurisdiction of the same; any law, usage or custom to the contrary notwithstanding." *Prince's Digest,* 460.

By the terms of this act, the relief spoken of is confined to *infirm* slaves. The purpose of this restriction I cannot per-

ceive. It is unnecessary, however, to trouble ourselves with the inquiry, since to the *professed* objects of its bounty it is *scarcely possible* a benefit can result. As a preliminary to judicial investigation, the express directions of the first section require *information* to be given to the inferior judges *on oath*. I need not repeat, that this must be the oath of a *white man*. A flagrant case it must be, it will occur to every reflecting mind, which will induce such a person to incur the enmity of a planter, by making a formal complaint, *on oath*, before the judges of the court, that "*an infirm slave is in a suffering condition from the neglect of his owner.*" But, let it be granted, that such complaint has been preferred by a competent person; it is, it will be observed, but an *incipient* proceeding, and without the *inadmissible* evidence of the slave himself, how can the other requirements of the act be complied with? What kind of replies can be expected to the "*particular inquiries*" which the judges are directed to make? The charge is a grave one—it strikes at the *character* of the master; the evidence to support it should be proportionately cogent—it should be incontrovertible.

Improbable as I think I have shown the supposition to be, let it be further granted, that the complaint has been established by evidence satisfactory to the judges, and that, in conformity with the directions of the act, they have proceeded "to render such relief as they, in their discretion, have thought proper."

If the reader be in any degree conversant with judicial proceedings, he will be apt to conclude that this *latter* concession is an abandonment of the argument. And, truly, had the law under examination been founded on practical principles—had it been framed, as all laws ought to be, to answer the behests of justice, the concession would be open to this objection. Yet, unwilling as we may be to believe the reproach, it is impossible to shut out the conviction, that the makers of the act did not design it to be efficient; otherwise, the *second* section would not have been appended. This section gives to the act, as has been before observed, a character altogether novel in jurisprudence. By the *first* section, it will be recollected, the *duty* is imposed on the judges of the inferior courts, after having made "particular inquiries into the situation of the suffering slave," *to ren-*

der such relief as they should think fit. One would naturally infer, that after a judicial tribunal had solemnly adjudged "*relief to be necessary for* AN INFIRM *slave in a* SUFFERING *condition from the* NEGLECT *of his owner,*" that the hand of justice would not be tardy to enforce the decision. Very different, however, were the sentiments of the humane legislature of Georgia. No relief is administered. The *duty* of the judges is *at an end,* by the determination *that relief is necessary!* They cannot order an *execution* upon their *judgment.* The harvest should have been ready for the sickle—but the seed has not been sown—the ground is not even prepared to receive it. The *judges* are authorized (not *commanded*) to assume the unheard-of character for *judges*—to become SUITORS in *another court*—"to sue for," says the second section, "and recover from the owner or owners of such slave or slaves, the amount that may be appropriated for the relief of such slave." No special provision is made for the payment of *costs,* in case these *plaintiff judges* should, from defect of evidence, or from any other cause, be unable to convince the ulterior court and jury that relief should be afforded. It results, of course, that they must defray them from their private resources, like all other unsuccessful parties to an action. The delay and uncertainty of the law, even in its ordinary mode of administration, where every reasonable facility for investigation is accorded, are *proverbial;* is it to be expected, then, with the obstacles to the execution of this act which have been pointed out—the exclusion of slave testimony when no other testimony would be likely to disclose the necessary facts—the preferment of the complaint before one set of judges whose decision, at *most,* leads to no other result than that these judges *may* become *suitors* in the cause before another distinct judicial tribunal, with the certain inconvenience of the loss of time, and the *almost certain* loss of money, that a suit should ever be terminated—or that it should be terminated in favour of the slave!! Legislation such as this, is worse than mockery.

Prop. III. THE MASTER MAY, AT HIS DISCRETION, INFLICT ANY SPECIES OF PUNISHMENT UPON THE PERSON OF HIS SLAVE.

If the power of the master, to the extent here implied, were sanctioned by *express* law, we should have no claim to the character of a civilized people. The very being of the slave would be in the hands of the master. Such is not the case; on the contrary, from the laws which I shall cite, it will be fully evident *that so far as regards the pages of the statute book*, the *life* at least of the slave, is safe from the *authorized* violence of the master. The evil is not that laws are wanting, but that they cannot be enforced—not that they sanction crime, but that they do not punish it. And this arises chiefly, if not *solely*, from the cause which has been more than once mentioned—the exclusion of the testimony, on the trial of a *white* person, of all those who are *not white*.

There was a time in many, if not in all the slave-holding districts of our country, when the murder of a slave was followed by a pecuniary fine only. In one state, a change of the law in this respect has been very recent. At the present date, I am happy to say, the wilful, malicious and deliberate murder of a slave, by whomsoever perpetrated, is *declared* to be punishable with death in every state. *James' Digest*, 392 (*act of December* 20, 1821); 1 *Rev. Code Va.* 616; *Haywood's Manual*, (*N. C.*) 530 (*act of* 1798); *Constitution of Georgia, art.* 4, § 12, *and act of Assembly* (1817); *Prince's Digest*, 348 & 456; *Mississippi Rev. Code*, 297; *Missouri Constitution, art.* 3, § 28, *and act of July* 4, 1825; 1 *Missouri Laws*, 282; *Laws of Tennessee, act of Oct.* 23, 1799, &c. &c.

A slight difference in the laws of the several states obtains on this point, which is not unworthy of being noted. In Virginia,* the penal code contains no definition of murder, as such, but impliedly adopting the *common law* definition, prescribes the punishment to be inflicted for this crime. Of consequence, whatever be the *complexion* of the person murdered, or whether he be bond or free, the law as to the *guilt* of the offender is the same. *Act of March* 6, 1819; 1 *Rev. Code*, 616.—Similar in

* The distinction, which originated in Pennsylvania, as to degrees of guilt in the crime of murder, has been recognised in Virginia. The name of the crime, however, is not changed in either of these states—it is in the punishment only, that the distinction is important.

Missouri, *Constitution, art.* 3, § 28; *and* 1 *Missouri Laws*, 282, § 3.

The conflicting influences of humanity and prejudice are strangely contrasted in the law of North Carolina on this subject. Section 3, of the act passed in 1798, runs thus: "Whereas by another act of assembly, passed in the year 1774, the killing of a slave, however wanton, cruel and deliberate, is only punishable in the first instance by imprisonment and paying the value thereof to the owner, which *distinction of criminality between the murder of a white person and one who is equally a human creature, but merely of a different complexion, is* DISGRACEFUL TO HUMANITY, AND DEGRADING IN THE HIGHEST DEGREE TO THE LAWS AND PRINCIPLES OF A FREE, CHRISTIAN AND ENLIGHTENED COUNTRY, Be it enacted, &c. That if any person shall hereafter be guilty of wilfully and maliciously killing a slave, such offender shall, upon the first conviction thereof, be adjudged guilty of murder, and shall suffer the same punishment as if he had killed a free man: *Provided always, this act shall not extend to the person killing a slave outlawed by virtue of any act of assembly of this state, or to any slave in the act of resistance* to his lawful owner or master,* OR TO ANY SLAVE DYING UNDER MODERATE CORRECTION." *Haywood's Manual*, 530; *and see Laws of Tennessee, act of Oct.* 23, 1799, with a like proviso.

The language of the constitution of Georgia, art. 4, § 12, is so nearly similar, that I transcribe it in this place, in order that both may be considered together. "Any person who shall maliciously dismember or deprive a slave of life, shall suffer such punishment as would be inflicted in case the like offence had been committed on a free white person, and on the like proof, except in case of insurrection of such slave, and unless SUCH DEATH SHOULD HAPPEN BY ACCIDENT IN GIVING SUCH SLAVE MODERATE CORRECTION." *Prince's Digest*, 559.

The glaring inconsistency of the declaration in the preamble to the act of North Carolina, that "a distinction of criminality

* In reference to this clause in the proviso, it has been judicially determined, that it is *justifiable* to kill a slave, resisting or *offering* to resist his master, by force. 2 *Haywood's Reports*, 54.

between the murder of a white person and one who is equally a human creature, but merely of a different complexion, is disgraceful to humanity, and degrading in the highest degree to the laws and principles of a free, christian and enlightened country," and the *impunity* which is granted, *in the same section*, to the murderer of an *outlawed* slave, needs but little explanation or comment. To set the matter, however, in its proper light, it may be added, that a proclamation of *outlawry** against a slave is authorized, whenever he runs away from his master, conceals himself in some obscure retreat, and, to sustain life, kills *a hog*, or some animal of the cattle kind!! *See Haywood's Manual*, 521; *act of* 1741, *ch.* 24, § 45.

But to turn to another part of the proviso, attached to this act. To style the "*correction*" of a slave which causes DEATH, "*moderate*," is a solecism too monstrous for sober legislation. And yet such has been the law of two enlightened states for more than a fourth of a century; and the same provision, with an unimportant increment, has been incorporated into the *constitution* of a third state for an equal space of time!! Had a statement of this nature appeared in the pages of a *foreign journal*, who is there among us that would not have indignantly repelled the charge as an *opprobrious falsehood?*

There is another point of view in which this *exception*, as to death produced by the *moderate correction* of the slave, claims an observation. I mean, in respect to the *protection* which it throws over the murderer, when on his trial for killing a slave. Every one who has been the least attentive to trials for *capital* offences, or who knows the human heart, is well aware that the *compassion* of a jury is ever ready to lay hold of a pretext to save themselves from the painful duty of *convicting* a fellow being of a crime, the punishment of which is death. Strong evidence will not, therefore, be required by them to induce the

* The outlawry of a slave is not, I believe, an unusual occurrence. Very recently, a particular account was given of the killing of a black man, not charged with any offence, by a person in pursuit of an *outlawed* slave, owing, as it was stated, to the person killed *not* answering to a *call* made to him by the pursuers. Whether the call was *heard or not*, of course could not be ascertained, nor did it appear to have excited any inquiry.

belief that the murderer's design was the *correction* of the slave —that possibly (and possibilities are usually urged as sufficient justification for acquittals, where life is in jeopardy) the measure bestowed was *moderate*, and of course the death must have been *accidental.*

In South Carolina, (act of 1740,) the legislature having by some means made the discovery, as they set forth in the law, that "cruelty is not only highly unbecoming those who profess themselves *Christians*, but is odious in the eyes of all men who have any sense of virtue or humanity—to restrain and prevent barbarity being exercised towards slaves," enacted, "That if any person whosoever, shall wilfully murder his own slave, or the slaves of any other person, every such person (i. e. the offender) shall, upon conviction thereof, forfeit and pay the sum of seven hundred pounds, current money, and shall be rendered for ever incapable of holding, exercising, &c. any office, &c. and in case any such person shall not be able to pay the penalty and forfeiture hereby inflicted and imposed, every such person shall be sent to any of the frontier garrisons of the province, or committed to the work-house in Charleston for the space of seven years, &c. &c. at hard labour." 2 *Brev. Dig.* 241. This pecuniary mulct was the only restraint upon the wilful murder of a slave in this state, from the year 1740 to the year 1821, a period of more than eighty years. But *wilful* murder, in the sense in which the epithet *wilful* is here used, it is not very likely would be often* perpetrated by the master. The species of murder, the cruelty of which can scarcely be exaggerated by

* Perhaps in this supposition I am mistaken. I find in the case of "*The State vs. M'Gee*, 1 *Bay's Reports*, 164, it is said incidentally by Messrs. Pinckney and Ford, counsel for the state, "that the *frequency* of the offence (*wilful* murder of a slave) was owing to the *nature of the punishment*," &c. &c. *Relatively*, however, I have no doubt the latter species of this crime, i. e. *murder by undue correction*, &c. must have been much more common. A reflection naturally suggests itself from the remark of Messrs. Pinckney and Ford, which I have here transferred. This remark was made in 1791, when the above trial took place. It was made in a public place—a court-house—and by men of great personal respectability. There can be, therefore, no question as to its *verity*, and as little of its *notoriety;* nevertheless, thirty years elapsed before a change of the law was effected!!

any description, and which there is a strong probability, would be not unfrequently chargeable upon the master or his overseer, is delineated in another section of the same act, and guarded against, *how adequately*, the reader will judge for himself, from the following quotation: "If any person shall, on a sudden heat or passion, or by *undue correction*, kill his own slave, or the slave of any other person, he shall forfeit the sum of *three hundred and fifty pounds*, current money." *Ibid.* 241.

The first named of these sections, I have already mentioned, has been repealed by an act of 1821, which punishes the wilful, malicious and deliberate murder of a slave, by death without benefit of clergy. The latter section, so far as relates to the killing of a slave on a sudden heat or passion, has been supplied by an enactment in the same year, which DIMINISHES the *pecuniary* penalty to five hundred *dollars*, but authorizes an imprisonment not exceeding six months. *James' Digest*, 392.

Where the *life* of the slave is thus feebly protected, his *limbs*, as might be expected, share no better fate. I quote again from the act of 1740, of South Carolina. "In case any person shall wilfully cut out the tongue, put out the eye,* castrate, or *cruelly* scald, burn, or deprive any slave of any limb, or member, or shall inflict *any other cruel punishment, other than by whipping or beating* with a *horsewhip*, cowskin, switch or small stick, or *by putting irons on, or confining or imprisoning such slave*, every such person shall, for every such offence, forfeit the sum of one hundred pounds, current money." 2 *Brevard's Digest*, 241. This section has, as far as I have been able to learn, been suffered to disgrace the statute book from the year 1740 to the present hour. Amidst all the mutations which Christianity has effected within the last century, she has not been able to conquer the spirit which dictated this abominable law. To say nothing of the trifling penalty for *mutilation*, what idea of humanity must a people entertain, who, by *direct legislation* sanction the beating, *without limit*, of a fellow crea-

* How different was the Mosaic law: "If a man smite *the eye* of his servant, or the eye of his maid, *that it perish*, he shall let *him go free for his eye's sake.*" "And if he smite out his man servant's *tooth*, or his maid servant's tooth, he shall let him go free for his tooth's sake." *Exodus, chap.* 21, *verses* 26, 27.

ture, with a *horsewhip or cowskin*—and the infliction of any torture which the ingenuity and malignity of man may invent, in the application of irons to the human body, and the perpetual incarceration, if the master so will, of the unfortunate slave, in a "dungeon keep," however loathsome. Such, nevertheless, is the just interpretation of this law—a law too, which at the same time denominates these very acts WHICH IT AUTHORIZES, *cruel* punishments.

Louisiana has borrowed the last section of the South Carolina law, with the exception of what respects mutilation, and making the penalty not more than five hundred dollars, nor less than two hundred. *See* 1 *Martin's Digest*, 654. Whatever remarks, therefore, were made upon that law, will apply equally to this. Her new Civil Code effects no reformation of the old law, but is content with the enunciation of a general principle, which is regarded, no doubt, as the quintessence of humanity. "The slave is entirely subject to the will of his master, who may correct and chastise him, though not with *unusual* rigour, nor so as to maim or mutilate him, or to expose him to the danger of loss of life, or to cause his death." *Civil Code of Louisiana, art.* 173. How far the power of the master is limited by the expression *unusual** rigour, may be easily inferred, when it is recollected that the law of South Carolina last noticed, had been in full force in Louisiana for many years before, and was so at the time when the Civil Code was adopted.

The constitution of Mississippi bestows upon the general assembly power to make laws to oblige the owners of slaves to

* So lately as 1819, the legislature of Louisiana recognized the practice of putting iron chains and collars upon slaves, to prevent them from running away. The act reads thus: "If any person or persons, &c. shall cut or break any iron chain or collar, which any master of slaves should have used in order to prevent the running away or escape of any such slave or slaves, such person or persons so offending shall, on conviction, &c. be fined not less than two hundred dollars, nor exceeding one thousand dollars; and suffer imprisonment for a term not exceeding two years, nor less than six months." *Act of Assembly, of March* 6, 1819—*pamphlet, page* 64. It is worthy of special commemoration, that the legislature of the same state, by the law given above in the text, from 1 *Martin's Digest*, 654, imposes a *much less* penalty for the infliction of "cruel punishments," of the most atrocious description, upon the slave.

treat them with humanity—to abstain from all injuries to them extending to life or limb; and, in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of the owner or owners. *Const. Mississippi, Title Slaves, sect.* 1; *Rev. Code*, 554. In the exercise of the power thus granted, in the first and second clauses, viz. "to oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb," the general assembly have passed this act: "No cruel or unusual punishment shall be inflicted on any slave within this state. And any master or other person entitled to the service of any slave, who shall inflict such cruel or unusual punishment, or shall authorize or permit the same to be inflicted, shall, on conviction, &c. be fined according to the magnitude of the offence, at the discretion of the court, in any sum not exceeding five hundred dollars," &c. *Rev. Code*, 379* (*act of June 18th*, 1822.) Without the testimony of the slave, I again remark, a law of this nature may be regarded as nugatory. But, abstractedly considered, what protection does it hold forth. "*Cruel*" and "*unusual*," connected as they are by the disjunctive "*or*," mean precisely the same thing, and will be so construed by the court. And what horrible barbarities may be excused under the name of *usual* punishments, the reader will be enabled to judge by recurring to the laws of South Carolina and Louisiana, contained on the preceding pages.

But what reason can be alleged for not putting in requisition at once, the important power, "to have slaves sold from their owners who neglect or refuse to comply with the directions of laws designed to secure humane treatment to such slaves." This point will be the subject of separate examination hereafter, and I forbear therefore enlarging upon it now.

The constitution of Missouri has gone beyond that of Mississippi, in relation to the protection of slaves from the inhumanity of their masters; for it not only *empowers* the legislature "to oblige the owners of slaves to treat them with humanity, and to

* Alabama has a similar law, except as to the penalty, which is but one hundred dollars. *Toulmin's Digest*, 631.

abstain from all injuries to them extending to life or limb," *Art.* 3, § 26, *last clause* (1 *Missouri Laws*, 48) but it is made its DUTY *to pass such laws as may be necessary for this purpose.* If this injunction be regarded in its proper light, it will be incumbent on the legislature to remove the restriction which has been imposed on the reception of the testimony of all who are not whites. As yet, no law has been enacted on the authority of the article in the constitution; on the contrary, there is an act which confers upon the master a new mode of inflicting punishment on the slave, which *may be* perverted to subserve purposes most cruel. "If any slave resist his or her master, mistress, overseer or employer, or *refuse* to obey his or her lawful commands, it shall be lawful for such master, &c. to commit such slave to the common gaol of the county, there to remain *at the pleasure* of the master, &c.; and the sheriff shall receive such slave, and keep him, &c. in confinement, at the expense of the person committing him or her." 1 *Missouri Laws*, 309. While for the obvious reason, that the master, if cruel and vindictive, can gratify his disposition in a manner *less expensive*, and much less troublesome to him in its execution, and more severe towards his victim, I do not think it probable this power will be *abused;* yet, viewing man as he is, no law ought to justify and *assist* in the imposition of a punishment of this nature, to be prosecuted to any extent which a wicked heart may desire.

Upon a fair review of what has been written on the subject of this proposition, the result is found to be—That the master's power to inflict corporal punishment to any extent, short of life and limb, is fully sanctioned by law, in *all* the slave-holding states—that the master, in at least two states, is *expressly* protected in using the *horsewhip* and *cowskin*, as instruments for *beating* his slave—that he may, with entire impunity, in the same states, load his slave with irons, or subject him to perpetual imprisonment whenever he may so choose—that for cruelly scalding, *wilfully* cutting out the tongue, putting out an eye, and for any other dismemberment, if *proved*, a fine of one hundred pounds currency only is incurred in South Carolina—that though in all the states the wilful, deliberate and malicious mur-

der of the slave is now *directed* to be punished with death, yet, as in the case of a *white* offender, none except whites can give evidence, a conviction can seldom, if ever, take place.

Prop. IV. ALL THE POWER OF THE MASTER OVER THE SLAVE MAY BE EXERCISED, NOT BY HIMSELF ONLY IN PERSON, BUT BY ANY ONE WHOM HE MAY DEPUTE AS HIS AGENT.

Louisiana is the only state in which an act of assembly has been passed on this topic. The language of the act may be cited, as an appalling definition of slavery itself. "The condition of a slave being merely a passive one, his subordination to his master, and to all who *represent* him, is not susceptible of any modification or restriction, (except in what can incite the slave to the commission of crime,) in such manner, that he owes to his master and to all his family a respect without bounds and an absolute obedience, and he is consequently to execute all the orders which he receives from him, his said master, or from them." 1 *Martin's Digest*, 616.

In the other slave-holding states, the subjoined extract from Mr. Stephen's delineation of slavery in the West Indies, will, it is believed, accurately express the law and the practice.*

* A case is reported among the decisions in the supreme court of appeals in Virginia, which, while it confirms the text, proves how wantonly this power may be, and is abused. The statement prefixed to the opinion of the court is in these words: "*May* brought an action of trespass vi et armis, in the Petersburg district court, against the appellants, (*Brown & Boisseau,*) for breaking and entering his close, and *beating several of his slaves,* in the declaration named, *so that he was deprived of their services for a long time,* and throwing down his enclosures round his field, whereby his wheat, then and there growing, was trodden down and injured by a great number of cattle and horses, &c. &c. A bill of exceptions states, that on the trial the defendants offered, in mitigation of damages, the testimony of a witness, tending to prove that the *plaintiff had given a general permission to Brown, one of the defendants, to* VISIT *his negro quarters, and to chastise any of his slaves who might be found acting improperly.*" This evidence was rejected, not that it was in itself improper, but on *technical* objections, one of which was, that it was offered, and according to the state of the pleadings, if received, would go to the defence of both Brown and *Boisseau,* whereas THE PERMISSION *was granted to* BROWN *only; and the beating,* as had been previously shown, had been inflicted *solely* by BOISSEAU—"to whom," continues the report, "it was admitted no such permission had been given." *See* 1 *Munford's Reports,* 288, *Brown & Boisseau vs. May.* What more flagrant

"The slave is liable to be coerced or punished by the whip, and to be tormented by every species of personal ill-treatment, subject only to the exceptions already mentioned, (i. e. the deprivation of life or limb,) *by the attorney, manager, overseer, driver, and every other person to whose government or control* the owner may choose to subject him, as fully as by the owner himself. Nor is any special mandate or express general power necessary for this purpose; it is enough that *the inflictor of the violence is set over the slave for the moment, by the owner, or by any of his delegates or sub-delegates, of whatever rank or character.*" *Stephen's Slavery, page* 46.

This power of deputation by the master is one of the degrading and distinguishing features of *negro* slavery. It was not permitted by the law of *villanage.* "The villein might have an action against any man but his lord for beating him, except for just cause; and it *was no legal defence in such action, to plead that it was done by the command of the lord.*" 9 *Coke's Reports,* 76 *A. and see Stephen's supra.*

The most common delegate of the master is known by the appellation of "*overseer.*" A description of this class of beings, is furnished by *Mr. Wirt, in his life of Patrick Henry, page* 34. Coming from this source, there is no reason to suspect the character to be surcharged *with cruelty,* and the following extract is in the words of that author: "Last and lowest, (i. e. of the different classes of society in Virginia,) a *feculum* of beings called '*overseers*'—the *most abject, degraded, unprincipled race*—always cap in hand to the dons who employed them, and furnishing materials for the exercise of their pride, insolence, and spirit of domination."

Prop. V. SLAVES HAVE NO LEGAL RIGHTS OF PROPERTY IN THINGS REAL OR PERSONAL, AND, WHATEVER PROPERTY THEY MAY ACQUIRE, BELONGS, IN POINT OF LAW, TO THEIR MASTERS.

abuse of the master's power of delegation could be practised than this—to grant a *general permission* to one *not* in the function of an overseer, or general deputy, to superintend the employment, &c. of the slaves, (for this character is plainly denied to Brown, inasmuch as he is charged with having *broken the close* of May, i. e. entered unlawfully, without his consent, upon his premises,) to visit his negro quarters, and to chastise any of his slaves who might be found acting improperly!!!

Of *negro* slavery only, can this harsh doctrine be affirmed. Among the Romans, the Grecians and the ancient Germans, slaves were permitted to acquire and enjoy property of considerable value, as their own. "The Polish slaves, even prior to any recent alleviations of their lot, were not only allowed to hold property but were endowed with it by their lords." *Stephen's Slavery, &c.* 59, *citing Wraxall's Memoirs*, 2 *vol. letter* 21. In the Spanish and Portuguese colonies, the money and effects which a slave acquires by his labour at times set apart for his own use, or, by other honest means, are *legally* his own and cannot be seized by his master. *Ibid* 60. And even in the *British* West India Islands, where the condition of slavery on the whole, is not perhaps, less severe than it is in the slave-holding sections of the United States, and, where in truth, the *unwritten* law is as above stated in this proposition, yet, the feelings of the community there forbid its enforcement by the master. Since, however, to deprive the slave of any little articles of property which he might obtain, by the exercise of his industry and skill, in the few moments of leisure occasionally indulged to him, has been thought of sufficient importance to call for *solemn acts* of the general assemblies in our slave-holding states, there seems but little reason to believe, that humanity has opposed their execution and established a better practice there. I insert various acts of assembly, which will evidence, in what light this subject is viewed in the states, so often alluded to. Thus in *South Carolina:* "It shall not be lawful for any slave to buy, sell, trade, &c. for any goods, &c. without a license from the owner, &c. nor shall any slave be permitted to keep any boat, periauger* or canoe, or raise and

* *Periaugua* as this word should be spelled, is thus defined, in the Encyclopædia, (first American edition, published by Mr. Dobson;) "a sort of large canoe made use of in the Leeward Islands, South America and the Gulf of Mexico. It is composed of the trunks of *two* trees hollowed and united together; and thus differs from the canoe which is formed of *one* tree." In this country, the distinction here mentioned, between a canoe and periaugua, is not always observed—In "a series of letters from Timothy Flint, principal of the Seminary of Rapide, Louisiana, to the Rev. James Flint, of Salem, Mass. I find the periaugua, described, as "a vessel of from two to four tons burthen, hollowed, *sometimes* from *one* prodigious tree, or from the trunks of two trees united, and a plank rim fitted to the upper part."

breed, for the benefit of such slave, any horses, mares, cattle, sheep or hogs, under pain of forfeiting all the goods, &c. and all the boats, periaugers or canoes, horses, mares, cattle, sheep, or hogs. And it shall be lawful for any person whatsoever, to seize and take away from any slave, all such goods, &c. boats, &c. &c. and to deliver the same into the hands of any justice of the peace, nearest to the place, where the seizure shall be made, and such justice shall take the oath of the person making such seizure, concerning the manner thereof; and if the said justice shall be satisfied that such seizure has been made according to law, he shall pronounce and declare the goods so seized, to be forfeited, and order the same to be sold at public outcry, one half of the monies arising from such sale to go to the state, and the other half to him or them that sue for the same." *James' Digest*, 385-6. *Act of* 1740.

The act of the legislature of Georgia, is in nearly the same words. *Prince's Digest*, 453. And, lest perchance, the benevolence of the master, should sometimes permit the slave to hire himself, to another for his own benefit, Georgia has imposed a penalty of thirty dollars "for every weekly *offence*, on the part of the master, unless the labour be done on his own premises." *Prince's Dig.* 457. So, in Kentucky, with a slight modification, 2 *Litt. & Swi. Digest*, 1159-60. *See Mississippi Rev. Code*, 375, *and Laws of Tennessee, Oct.* 23, 1813, *chap.* 135.

And in Virginia, if the master shall permit his slave to hire himself out, it is made *lawful for any person* and the *duty* of the Sheriff, &c. to apprehend such slave, &c. and the master shall be fined not less than ten dollars, nor more than twenty, &c. 1 *Rev. Code*, 374-5. Similar, 2 *Missouri Laws*, 743, and *see Haywood's Manual*, 534.

As early as the year 1779, North Carolina interposed as follows: "*All horses, cattle, hogs or sheep, that one month after the passing of this act, shall belong to any slave or be of any slave's mark, in this state, shall be seized and sold by the County Wardens, and by them applied, the one-half to the support of the poor of the county, and the other half to the informer.*" *Haywood's Manual*, 526. *See Missis-*

sippi Rev. Code, 378, *and Kilty's Laws of Maryland, act of* 1723, *chap.* 15, §6.

In Maryland, by act of *April sessions*, 1787, *chap.* 33, "any person who shall permit and authorize any slave belonging to him or herself, &c. to go at large or hire himself or herself, within this state, shall incur the penalty of five pounds, (thirteen and one-third dollars,) current money per month, except ten days at harvest. This penalty was increased to twenty dollars, excepting however, an additional ten days in harvest. *Act of December sessions*, 1817, *chap.* 104, §1. By both acts, a slave being a pilot, is not included within the prohibition.

In Mississippi a slave is forbidden to cultivate cotton for his own use, and, should the master permit him to do so, he incurs a fine of fifty dollars. *Miss. Rev. Code*, 379.

And, "if any master, &c. of a slave license such slave to go at large and trade as a freeman, he shall forfeit the sum of fifty dollars for each and every offence. *Mississippi Rev. Code*, 374,—and *see* 2 *Missouri Laws*, 743. Also, *Kilty's Laws of Maryland, act of April*, 1787, *chap.* 33. An equal fine is imposed upon a master, *convicted* of permitting his slave to keep "*stock of any description:*" *act of January* 29, 1825, *pamph. laws of Mississippi of* 1825.

The civil code of Louisiana coincides with the text in the following manner: "*all that a slave possesses belongs to his master*—he possesses nothing of his own, except his peculium, that is to say, the sum of money or moveable estate, *which his master chooses he should possess.*"—*Art.* 175, and see, 1 *Martin's Digest*, 616. "Slaves are incapable of inheriting or transmitting property." *Civil Code, art.* 945. "Slaves cannot dispose of or receive by donation inter vivos or mortis causa, unless they have been previously and expressly enfranchised conformably to law, or unless they are expressly enfranchised by the act, by which the donation is made to them." *Art.* 1462. "The earnings of slaves and the price of their service, belong to their owners, who have their action to recover the amount from those who have employed them." *Louisiana Code of Practice, art.* 103.

The decisions of the courts confirm the doctrine* of these acts of assembly;—as in South Carolina, where it was held, "That slaves cannot take property by *descent or purchase*, 4 *Dessaussure's Chancery Reports*, 266, *Bynum vs. Bostwick.* —And, in *North* Carolina,—"Slaves cannot take by sale, or devise, or descent. And, *a devise of land, to be rented out for the maintenance of a slave, was adjudged to be void.* 1 *Cameron's and Norwood's Reports*, 353—same decision, 1 *Taylor's Reports*, 209.—Also, in Maryland, a gift, bequest, or devise made to a slave, by any one *not* his owner, would be void. *See Dulany's opinion*, 1 *Maryland Reports*, 561. Though in this last state, such a devise of real or personal estate, made by the *owner* of the slave, has been held to entitle

* There is an isolated case, of pretty early date, (determined in the Supreme Court of *South Carolina.* See 1 *Bay's Reports*, 260-3. *The Guardian of Sally, a negro vs. Beatty,*) which is too interesting in *several* points of view to be passed by unnoticed. It is in opposition to the spirit of the laws, and to other *later* decisions of the courts, on which account, if no other reason could be assigned, it would be necessary to insert it. An outline of the facts of the case, is thus given by the reporter. "This was a special action, in nature of ravishment of ward, to establish the freedom of a negro girl, according to the form prescribed by the act of the legislature for that purpose. The case was this: a negro wench slave, the property of the defendant, by working out in town, *with permission of her master*, had by her industry, acquired a considerable sum of money, over and above what she had stipulated to pay for her monthly wages to her master, and *having an affection* for a negro girl, Sally, she purchased her with this money which she had been for years accumulating, and gave her her freedom. For a considerable time after the purchase was made, the defendant never claimed any property in the negro girl,—never paid taxes for her, but on the contrary, acknowledged he had no property in her. Some short time, however, before the commencement of the present action, when called upon to deliver up the girl, as free, he refused; in consequence of which, this action was brought. The court charged the jury in favour of the plaintiff. Chief Justice Rutledge, saying, in conclusion, 'If the wench chose to appropriate the savings of her extra labour to the purchase of this girl, in order, afterwards to set her free, would a jury of the country say No!! He trusted not. They were too humane and upright, he hoped to do such manifest violence to so singular and extraordinary an act of benevolence.'—The jury, without retiring from the box, returned a verdict for the plaintiff's ward, *and she was set at liberty.*" Which of these was neighbour to the oppressed negro girl?

the slave to freedom, as the *implied* intention of the owner; *Hall vs. Mullin*, 5 *Harris and Johnson's Reports*, 190.

Prop. VI. THE SLAVE BEING "A PERSONAL CHATTEL," IS AT ALL TIMES, LIABLE TO BE SOLD ABSOLUTELY, OR MORTGAGED OR LEASED, AT THE WILL OF HIS MASTER.

After what has been said, with respect to the master's power over his slave, it may seem to be of but little consequence to the slave, whether he remain for life, subject to one and the same master, or be transferred successively to many others. As far as the master's treatment towards him is concerned, this conclusion may be taken as generally correct. But it must not be forgotten that the slave is a human being, and although his degraded condition may have blunted, or perhaps destroyed the nicer sensibilities of our nature, yet, is he susceptible of many of the feelings which attach those of the same species to each other, and even to insensate objects. *As man*, he must be alive to the ties of consanguinity and affinity. *As man*, he must know what friendship is. *As man*, it is scarcely possible he should not feel an attachment even *to place*. And *as man*, the indulgence of these feelings, cannot fail to contribute largely to his happiness. To be torn from such endearments, without the hope of a restoration, and yet live, must inflict a pang, agonizing beyond description. The terror which his master's presence inspires, renders those of his own condition more dear. Nevertheless, in the slave-holding states, except in Louisiana, no law exists to prevent the violent separation of parents from their children, or even from each other.* In most

* One of the abolition acts of Pennsylvania, (act of 29th March, 1788), contains this provision: "If any owner or possessor of any negro or mulatto slave or slaves, or servant or servants, for a term of years, shall, from and after the first day of June next, separate or remove, or cause to be separated or removed, a husband from his wife, a wife from her husband, a child from his or her parent, or a parent from a child, of any or either of the descriptions aforesaid, to a greater distance than ten miles, with the design and intention of changing the habitation or place of abode of such husband or wife, parent or child, unless such child shall be above the age of four years, or unless the consent of such slave, &c. shall have been obtained and testified as herein before described, (i. e. by acknowledgment before a magistrate, &c.)

other countries in which slavery is tolerated, the slave is employed in the cultivation of the soil, and cannot, by sale, be detached from it. Such is the case, in the Spanish, in the Portuguese, and even in the French colonies. The *Code Noir*, art. 47, (I quote from Stephen, not having the code before me,) prohibits the selling of the husband without the wife, the parents without the children, or vice versa. In *voluntary* sales, made contrary to this regulation, the wife or husband, children or parent, though expressly retained by the seller, pass by the same conveyance to the purchaser, and may be claimed by him without any additional price.* *See Stephen's Slavery*, &c. 69.

If the humanity of the French has adopted this law, why should not the citizens of our republics imitate so good an example? But it is foreign to my plan, to dwell longer on this topic. I pass to a kindred proposition,—the source of, perhaps, greater evil.

Prop. VII. THE SLAVE IS AT ALL TIMES LIABLE TO BE SOLD, BY PROCESS OF LAW, FOR THE SATISFACTION OF THE DEBTS OF A LIVING, OR THE DEBTS AND BEQUESTS OF A DECEASED MASTER, AT THE SUIT OF CREDITORS OR LEGATEES.

In the British West Indies, where the law is similar to that which is expressed in this proposition, well-informed writers seem to regard the sales of slaves by *process of law*, as productive of more cruel consequences than those which arise from *voluntary* alienation. Mr. Bryan Edwards, who, it will be

such person or persons shall severally forfeit and pay the sum of fifty pounds, with costs of suit, for every such offence, to be recovered by action of debt, &c. &c. *at the suit of any person* who will sue for the same, one moiety, &c. for the use of the plaintiff," &c. There is but little humanity, however, in this provision.—Slaves separated from each other by a distance of ten miles, might never see each other.—Besides the separation of children, from their parent, after four years of age, is unwarrantable cruelty.

* "This law," says the Compiler of the annals of the sovereign Council of Martinique, "has always been rigidly executed, whenever a claim has been set up, on the part of the purchaser. I have known slaves who have been sent to Guadaloupe, or St. Domingo, to be expatriated and sold, to reclaim their children remaining in our colony, with success, through the action of the purchasers in the colonies to which they were sent." *See Stephen's Slavery*, 69 *and* 70, *citing Annales de la Martinique, tome* 1, *p.* 285.

recollected, *was the champion of slavery and of the slave trade*, in his *History of the West Indies, vol. 2, book 4, chap. 5*, after speaking of certain regulations which had been proposed for the melioration of slavery, uses this language: "But these and all other regulations which can be devised for the protection and improvement of this unfortunate class of people, will be of little avail, unless, as a *preliminary measure*, they shall be exempted *from the cruel hardships* to which they are frequently liable, of *being sold by creditors*, and made subject, in a course of administration by executors, to the payment of all debts, both of simple contract and speciality." This he stigmatises as a "*grievance remorseless and tyrannical in its principles, and dreadful in its effects*"—the revival "in a country that pretends to Christianity of the odious severity of the Roman law, which declared sentient beings to be inter res—a practice injurious to the national character, and disgraceful to humanity. A good negro," continues he, "with his wife and young family rising about him, is seized on by the sheriff's officer, forcibly separated from his wife and children, dragged to public auction, purchased by a stranger, and perhaps sent to terminate his miserable existence in the mines of Mexico; and all this without any crime or demerit on his part, real or pretended. He is punished because his master is unfortunate."

It would be in vain for me to attempt to augment the horror which every well-regulated mind must feel from this eloquent description of the cruelty of this law. For humanity's sake, I rejoice to say, that the sphere of its operation is by no means co-extensive with the prevalence of slavery. With the exception of the British colonies in the West Indies, and I suppose at Demarara, and perhaps in the small islands belonging to the Dutch, it obtains only in the *republican states of North America!!** And here again I recur to Mr. Stephen, as ample

* From the generality of this remark, the state of Louisiana must be excepted. It will be recollected, that, at the beginning of this chapter, a law was extracted from the Civil Code of the state, by which slaves are declared to be *real* estate—to be ranked among *immoveable* property. When, therefore, the owner of slaves is, as I presume is most commonly the case, possessed of land, the slave cannot be separated from it by process of law. Besides this humane regulation, there are several others, which deserve to be signalized, viz. "If,

authority. "Of the liability," says he, "of slaves to be seized and sold separate from the land they cultivate, by the master's creditors, for the payment of his debts—it may safely, I believe, be pronounced, that a precedent to such cruel injustice is not to be found in any part of the old world." "Plantation slaves, not only in the Spanish and Portuguese, but in the French colonies also, are *real estate*, and attached to the soil they cultivate, partaking therewith all the restrainsts upon voluntary alienation to which the possessor of the land is there liable, and they cannot be seized or sold by creditors for satisfaction of the debts of the owner." It has already been stated, that by the *Code Noir*, *art.* 47, the husband cannot be sold without the wife, nor the parents without the children. "Sales made contrary to this regulation, by process of law *under seizure for debts*, are declared void." *See Stephen's Slavery*, *&c.* 68-9.

Since, then, from what has been said upon this and upon the last preceding proposition, it appears no restraint (except a partial one in the state of Louisiana) is imposed upon the sale and transfer of slaves*—but that these may take place, not only at the will of the master, but against his will—*by process of law*, *&c.* sufficient authority is at once disclosed for the prosecution,

at a public sale of slaves, there happen to be some who are disabled through old age or otherwise, and who have children, such slaves shall not be sold but with such of his or her children whom he or she may think proper to go with." 1 *Martin's Digest*, 612, *act of July* 7, 1806.

"Every person is expressly prohibited from selling separately from their mothers, the children who shall not have attained the full age of ten years." *Ibid.* These provisions have probably been suggested by a knowledge of the *much more* humane ones which are comprised in the *Code Noir of Louis XIV.* extracts from which are given in the text of the former proposition. I call the *Code Noir much more humane*, for though the slaves disabled by old age, &c. according to the Louisiana law, are not *to be sold* apart from their children without their consent, yet the master may *retain* them and *sell* their children, and thus the like painful separation be effected.

* This, as most of the remarks in this work, applies exclusively to those states in which laws for the abolition of slavery have not been enacted. For, in these latter states, at least, whenever the abolition of slavery has been, by a law, *gradual* in its operation, it has been found necessary to prevent slaves from being carried out of their respective limits. And in Delaware, though a slave-holding state, slaves cannot be *exported* from the state without the license of two justices of the court of quarter sessions. *Act of June* 14, 1793, *ch.* 20.

to any extent, of the *inter-territorial* slave trade which exists among us. Many of the slave-holding states, however, while they permit their citizens to sell their slaves to whom they please, and to carry them where they please, yet, for reasons of policy, have found it expedient to enact laws to prohibit, *in a great measure*, the further introduction of them into their respective limits. Laws with this aspect, have been enacted in the states of Delaware, Maryland, North and South Carolina, Tennessee, Kentucky, Georgia, and Louisiana. The act of assembly of North Carolina, which, being one of the earliest,* has probably served as a precedent in the other states, deserves particular commemoration, and I therefore transcribe those sections which are important to the present inquiry: "From and after the first day of May next, no slave or indented servant of colour shall be imported or brought into this state by land or water; nor shall any slave or indented servant of colour, who may be imported or brought contrary to the intent and meaning of this act, be bought, sold or hired by any person whatever.

"*Section* 2. Every person importing or bringing slaves or indented servants of colour into this state, after the said first day of May next, by land or water, contrary to the provisions of this act, shall forfeit and pay the sum of one hundred pounds for each and every slave or indented servant of colour so imported or brought. And every person who shall knowingly sell, buy or hire such slave or indented servant of colour, shall, in like manner, forfeit and pay the sum of one hundred pounds for each and every slave, &c.; one moiety of which forfeiture shall be to the use of the state, and the other moiety to him or them who shall sue for the same, &c.

"*Section* 3. It shall be the duty of all justices of the peace, sheriffs, coroners, constables or other judicial and ministerial officers of this state, to use all reasonable and lawful means to carry this act into effect; which if they or any of them neglect

* The law of Delaware bears date a few years anterior to that of North Carolina, but the provisions of the act of the latter state have been adopted, with but little variation, in the other states.

to do, it shall be deemed a misdemeanor in office. And any officer who shall fail, neglect or refuse upon application, to perform the duties aforesaid, shall be held and deemed liable to the foreitures inflicted on those who may import or bring a slave or indented servant of colour into this state in the first instance, and shall be proceeded against in the like manner and to the like effect."

To the generality of this prohibition the following exceptions are added:

"*Section* 4. Nothing in this act shall be construed to prevent any person or persons, being citizens of the United States, or subjects or citizens of foreign countries, who intend to reside and settle within the limits of this state, from bringing with him, her or them, such slaves or servants of colour as they may think proper; or to prevent such persons from travelling with their slaves, &c. through this state, in order to settle in another state; or to prohibit any citizen of this state, who may obtain slaves, &c. by marriage, gift, legacy, devise or descent; or who hath heretofore entered into bona fide contracts, from bringing the slaves or servants of colour so obtained or contracted for, into this state, by land or water." And in order to guard against an abuse of the privileges conferred by these exceptions, it is made the duty of the persons coming within them to make oath, that the slaves introduced are not intended for traffic, nor in evasion of the act of assembly above cited. *Haywood's Manual*, 533-4, *act of* 1794, *chap.* 2. And see 2 *Brevard's Digest*, 256 *to* 261 *inclusive*, (*acts of* 1800, 1802 *&* 1803,); *Laws of Maryland, act of* 1796, *chap.* 67; *Laws of Delaware, act of* 1787, *chap.* 145, § 7, *and act of* 1789, *ch.* 193; 2 *Litt. & Swi.* 1162, *act of* 1815; *Prince's Digest*, 373-4,* *act of* 1817; *Louisiana, act of* 1826, (*see pamphlet laws.*)

The number of slaves admissible into the above states, in virtue of the proviso, as to persons removing with slaves into the state, and in favour of those who may derive them by gift, de-

* The *African* slave trade was prohibited in Georgia in 1798, by an article of her constitution, *art.* 4, § 11. But it was not until 1817, that the act of the legislature was procured for the prohibition of the *inter-territorial* traffic.

scent, marriage or devise, it is probable would not greatly augment this species of population. It must, however, be evident, that while every coloured person is presumed to be a slave, and while a transfer of such is permitted without restraint among citizens of the same state, no matter how remote in distance may be the places of their respective residences, that it cannot be very difficult, especially with the pretext which is supplied by the proviso, to introduce within the extensive limits of most of the above states, as many slaves as any one, lured by a high price, may choose. At the present time, I presume there is but little temptation to prosecute this traffic, in the states where the prohibitory law has been adopted; for a mart is open in the *new states* of Alabama, Mississippi and Missouri, and in the *territories* of East and West Florida, Arkansas and Missouri, which is not likely to be glutted for many years to come. And even *Virginia*,* after having, in the year 1778, enacted an

* Between the years 1699 and 1772, the legislature of Virginia passed numerous acts to *discourage* the importation of slaves. The means resorted to for this purpose, was the imposition of a considerable *duty* on imported slaves. *See* 2 *Tucker's Blackstone, Appendix*, 49, 50. The *royal negative* was exercised in relation to several of these acts, and it is abundantly demonstrated by Judge Tucker, that a *direct* effort by the *colony* would have been entirely unavailing. The fate of an act of this description, which was attempted by the assembly of *Pennsylvania*, in the year 1712, might be cited as additional proof of this disposition on the part of the crown. At the period of our revolution, a strong conviction of the impolicy and inhumanity of the traffic in slaves, seems to have existed in Virginia. And in the year 1778, as is stated in the text, an entire inhibition of the importation of slaves within her borders, except such as might be brought by *emigrants* to the state, or might be derived by her citizens from descent, marriage or devise, took place. This humane act, after having undergone, by subsequent legislatures, several revisions and slight mutations, without materially affecting its principles, was, in the year 1819, *almost* wholly annulled—*wholly* it could not be, from the paramount force of the constitution and laws of the United States. How humiliating the contrast which is exhibited by the provisions of this act of 1819, and the following quotation from the preamble to the constitution of this state, promulgated on the 29th June, 1776: "Whereas George the third, king, &c. heretofore entrusted with the exercise of the kingly office in this government, hath endeavoured to pervert the same into a detestable and insupportable tyranny, by prompting our negroes to rise in arms among us, *those very negroes, whom*, BY AN INHUMAN USE OF HIS NEGATIVE, HE HATH REFUSED US PERMISSION TO EXCLUDE BY LAW."

inhibition of the importation of slaves, with a few exceptions, within her borders, has recently resumed her ancient policy, and now proclaims her willingness to *receive* all those, not convicted of crimes, who have been "born within the United States, or any territory thereof, or within the District of Columbia." 1 *Rev. Code*, 421-2, *act of* 1819.

I will conclude my observations on the subject of this and the next preceding section, by holding up for the imitation of those whom it may concern, the conduct of the aborigines of our country, whom, in courtesy to those for whom this is written, I shall style *savages*. Speaking of the Seminole Indians, the author of a small work, published at Charleston, South Carolina, in the year 1822, entitled "*Notices of East Florida, with an account of the Seminole nation of Indians, by a recent traveller in the Province*," says: "Another trait in their character, is their great indulgence to their slaves. Though hunger and want be stronger than even the *sacra fames auri*, the greatest pressure of these evils never occasions them to impose onerous labours on the negroes, or to dispose of them, though tempted by high offers, *if the latter are unwilling to be sold.*"

Prop. VIII. A SLAVE CANNOT BE A PARTY BEFORE A JUDICIAL TRIBUNAL IN ANY SPECIES OF ACTION, AGAINST HIS MASTER, NO MATTER HOW ATROCIOUS MAY HAVE BEEN THE INJURY WHICH HE HAS RECEIVED FROM HIM.

In a former part of this chapter, the several laws which *profess* to give redress to the slave for cruelty inflicted upon him by his master, were brought together, their principles discussed, and their inefficacy exposed.—By none of these, it will be perceived, however, could the slave appear in any capacity against his master, and therefore, though they may seem to have *some* connexion with this proposition, I do not deem it fit or necessary to make any comment upon them in this place.—The law is unquestionably, as stated above, without any exception or limitation.

Prop. IX. SLAVES CANNOT REDEEM THEMSELVES, NOR OBTAIN A CHANGE OF MASTERS, THOUGH CRUEL TREATMENT MAY

HAVE RENDERED SUCH CHANGE NECESSARY FOR THEIR PERSONAL SAFETY.

This proposition holds good, as to the right of *redemption* in all the slave-holding states,—and equally true is it, as respects the right to compel a *change of masters, except in Louisiana.* The new civil code of that state, contains a regulation by which the latter privilege may sometimes, perhaps, be obtained by the slave. Yet the conditions upon which its extension to the slave depends, are such, that it needs strong proof to induce the belief that the law has ever been called into action. For it requires as preliminaries—First, that the master be *convicted* of cruelty,—a task so formidable, that it can hardly be ranked among possibilities; and, secondly, it is afterwards, *optional* with the judge, whether or not, to make the decree in favour of the slave.—I extract the article of the code, which is in these words; "No master shall be compelled to sell his slave, but in one of two cases, to wit: the first, when being only co-proprietor of the slave, his co-proprietor demands the sale, in order to make partition of the property; *second, when the master shall be* CONVICTED *of cruel treatment of his slave,* AND THE JUDGE SHALL DEEM IT PROPER *to pronounce, besides the penalty established for such cases, that the slave shall be sold at public auction, in order to place him out of the reach of the power which his master has abused.*" *Art.* 192.

The constitution of Mississippi, as we have before seen, empowers the legislature to enact a law for the benefit of the slave in this particular,* yet, though the subject of cruelty by the master to his slave has claimed a portion of their attention, the humane design of the constitution has been disregarded. This neglect, not only in Mississippi, but in all the slave-holding states, is the more remarkable, inasmuch, as in the codes of several of these same states, a provision of this nature exists for the cases of *indented servants and apprentices. See particularly, Prince's Digest,* 458. Such a regulation, every one who will take the trouble to reflect on the subject, must consider indispensable for the slave's protection.—What a mockery must it

* See, supra, page 42.

be to pass laws *professedly* to punish the master's cruelty to his slave, if the slave is still to be left in the power of the same master, exasperated by the punishment and disgrace which must ensue from conviction.—"Would you," said Mr. Randolph, in his speech, delivered* in the house of representatives, on the imprisonment of the Spanish officers in Florida, "would you send a slave who had been abused by his overseer to that very overseer for protection."

Prop. X. SLAVES BEING OBJECTS OF PROPERTY, IF INJURED BY THIRD PERSONS, THEIR OWNERS MAY BRING SUIT AND RECOVER DAMAGES FOR THE INJURY.

This is a maxim of the common law, with respect to property in general, and it may, therefore, be assumed to be the law of all the slave-holding states, in regard to slaves also. Taken strictly, it does not operate as a shield to the slave against corporal aggression, unless the violence used is so great as to *deteriorate* the property of the master. And so, a decision of the supreme court of Maryland, has established the law to be, in that state. "There must be, a loss of service, or at least, a diminution of the faculty of the slave for bodily labour, to warrant an action by the master. 1 *Harris and Johnson's Reports*, 4. *Cornfute vs. Dale.*

A case, the report of which may be found in 2 *Bay's Reports*, 70, by the name of *Sims White vs. James Chambers*, was decided by the constitutional court of appeals in South Carolina, in the year 1796, by which the master was enabled to sustain his suit against a third person, for a corporal injury to his slave, although *a loss of service* was not *alleged in the declaration.* The following is the statement prefixed to the case, by the reporter.—"Special action in the case for beating the plaintiff's negro man. It came out in evidence on the trial, that the negro in question, had the care of his master's fishing canoe, on Sullivan's Island, when the defendant went down to the landing place, where it was, and said he would take it and go out fishing in it. The negro told him he could not have it,

* February 27th, 1822.

as his master had given him orders to let no one take it away, as he was in the constant habit of using it himself, and he expected him down every minute to go out in it. The defendant, however, persisted in taking it away, *and the negro in obeying his master's orders* in refusing to let him have it: upon which some high words passed between them on both sides, whereupon the defendant struck him a blow with his fist, *and then took up a paddle, which was in the canoe, and knocked him down, and afterwards beat him very severely, which laid him up for several days, before he was able to go about his master's business again.*" Having given the reader this statement of the facts, in the case, it is fit that I should gratify his curiosity by a faithful record of the *verdict.* He will, then, be enabled to form some estimate of the degree of protection, which is derived by the slave from his owner's right of action against third persons for brutal violence to the slave. The jury "found a verdict, for *five* pounds sterling, and costs of suit!!".

Let not the *jury only*, be reproached with this verdict. A whole community are implicated with them. A section of the negro act of 1740, which was in force when this decision was given, and is, indeed, the law of South Carolina at the present hour, has fixed a measure of damages, which fully sustains the conduct of the jury. "If any negro or other slave, who shall be employed in the lawful business or service of his master, owner, overseer, &c. shall be beaten, &c. by any person or persons, not having sufficient cause or lawful authority for so doing, and shall be *maimed* or *disabled by such beating*, from performing his or her work, such person and persons *so offending*, shall forfeit and pay, to the owner or owners of such slave, the sum of *fifteen shillings current* money, *per diem*, for every day of his lost time, and also the charge of the cure of such slave." 2 *Brevard's Digest*, 231-2.

I do not find any provision on this subject, among the laws of the other slave-holding states, except in Louisiana, where an act of assembly, in most respects analagous to that which I have cited from the code of South Carolina, has been passed with a special penalty adapted for the *benefit* of the master, where the injury to the slave is of a most aggravated charac-

ter. For "if the slave," (*maimed, &c.*) *be forever rendered unable to work*, the offender shall be compelled to pay the value of said slave, according to the appraisement made by two freeholders, appointed by each of the parties; and the slave thus disabled, shall be forever maintained at the expense of the person who shall have thus disabled him, which person shall be compelled to maintain and feed* him agreeably to the duties of masters towards their slaves, as ordered by this act." 1 *Martin's Digest*, 630-2.

From the abstract of the cases decided in Maryland and in South Carolina, and especially from the laws which I have here quoted, it will be perceived that the protection of slaves, from the violent and wanton assaults of those, not their masters, &c. is scarcely to be looked for, as a consequence of the master's right to be compensated for the deterioration of his property in the slave. The purpose of these laws, is not, in truth, the protection of the slave, but the vindication of the master's rights of property.† And yet in slave-holding countries, this *right of action* in the master, is, not unfrequently, proclaimed to be a sufficient protection to the slave: it would be more just to say, *that it is the only one which is accorded to him.*

Prop. XI. SLAVES CAN MAKE NO CONTRACT.

Besides such of the laws referred to under Proposition V. of this chapter as relate to *this* proposition, it may be added, that a slave cannot even contract matrimony—the association which takes place among slaves, and is *called* marriage, being properly designated by the word *contubernium*—a relation which has no sanctity, and to which no civil rights are attached. "A slave has never maintained an action against the violator of his bed. A slave is not admonished for incontinence, or punished for fornication or adultery; never prosecuted for bigamy, or petty treason for killing a husband being a slave, any more than ad-

* See as to food and clothing, supra, pages 28-9.

† By an extreme refinement of this principle, it has been held, in North Carolina, that "patrols are not liable to the master, for inflicting punishment on his slave, *unless their conduct clearly demonstrates* MALICE AGAINST THE MASTER. 1 *Hawk's Reports*, 418. *Tate vs. O'Neal.*

mitted to an appeal for murder." *Opinion of Daniel Dulany, Esq. Attorney General of Maryland,* 1 *Maryland Reports,* 561, 563.

Prop. XII. SLAVERY IS HEREDITARY AND PERPETUAL.

This is not merely a corollary from the clause of the act of assembly which was extracted near the beginning of this chapter, but is the effect of an express declaration found in the same act of assembly, which, having been already transcribed, need not be here inserted.

That a child should be deprived of any of its *natural* rights in consequence of its parents' misfortunes, is surely not the deduction of reason from any known principle applicable to the social condition of man. Yet the *hereditary* nature of slavery has probably been an incident of the institution, in every age and among every people, where the institution has been tolerated.* It was so with the Hebrews, both before and after the Mosaic dispensation—it was so with them during their bondage to the Egyptians,—the Helots of Sparta, and the Roman slave, suffered the like injustice.

But the *perpetuity* of slavery,—the natural product of its *inheritable* quality,—received a check by the *Mosaic* polity. The Israelites having been miraculously freed from the yoke of the Egyptians, it was ordained in unequivocal terms, that a Hebrew should not retain his brother whom he might buy as a servant more than *six years, against his consent,* but that in the *seventh* year he should go out free, for nothing. If he came by himself he should go out by himself; if he were married (when he came) his wife should go out with him. *Exodus, ch.* 21, *v.* 2, 3. *Deut. ch.* 15, *v.* 12. *Jeremiah, ch.* 34, *v.* 13.

* In Massachusetts, "several negroes *born* in this country of *imported* slaves, demanded their freedom of their masters by suits at law, and *obtained* it by judgments of the courts." *See Winchenden vs. Hatfield, &c.* 4 *Massachusetts Reports,* 128. But these cases can hardly be ranked as exceptions to the general allegation in the text. They appear to have been the effect of collusion between the masters and the slaves. For, according to Chief Justice Parsons, "the defence of the master was faintly made, for such was the temper of the times, that a restless discontented slave was *worth little, and when his freedom was obtained in a course of legal proceedings, the master was not holden for his future support, if he became poor.*"

Besides this important regulation, *Hebrew* slaves were, without exception, restored to freedom by the *jubilee.* I am aware that the authority of respectable names may be avouched for the opinion, that the benefit of the jubilee, as to this particular, was enjoyed by *all classes* of bondmen, according to the literal import of the command: "Ye shall hallow the fiftieth year, and *proclaim liberty throughout all the land,* and UNTO ALL THE INHABITANTS THEREOF." *Leviticus, ch.* 25, *v.* 10. With an anxious desire to sustain this opinion, if tenable, it appears to me, that not only was such a privilege not required by the general purpose for which the jubilee was appointed, but the positive language of the 44, 45 and 46th verses of the same chapter, forbids such an inference.

It seems, however, highly probable, that the term *perpetual,* in its proper and absolute sense, was not applicable to the slavery by the Israelites even of *the heathen* nations. For the command was given to Abraham, and was not abrogated by Moses, that "he that is born in thy house, and he *that is bought with thy money,* must be circumcised." *Genesis, ch.* 17, *v.* 13. Jewish commentators agree, that this command was strictly construed and carried faithfully into practice. Thus, it is said by *Maimonides,* "Whether a servant be born in the power of an Israelite, or whether he be purchased from the heathen, the master is to bring them both into the covenant. But he that is born in the house is to be entered upon the *eighth day,* and he that is bought with money on the day on which the master receives him, unless the slave be unwilling. For, if the master receives a grown slave, and he be unwilling, his master is to bear with him, to seek to win him over by instruction, and by love and kindness, for *one year;* after which, should he refuse so long, it is forbidden to keep him longer than the twelvemonth, and the master must send him back to the strangers from whence he came, for the *GOD* of Jacob will not accept any other than the worship of a willing heart." *Maimon. Hilcoth Miloth, chap.* 1, *sect.* 8. *See Gill's Exposition of the Old and New Testaments, &c.*

And, according to *Genesis, chap.* 17, *ver.* 10, compared with *Romans, chap.* 4, *ver.* 11, by the rite of circumcision, the re-

cipient was consecrated to the service of the *true GOD*. *See* 3 *Horne's Introd. to Crit. Study of the Holy Scriptures*, 413. And on such a one were, in consequence, conferred nearly all the rights of a son of Abraham. "Although," says the respectable author last quoted, "the constitution of the Jewish polity, and the laws of Moses, allowed no other nations to participate in their sacred rites, yet they did not exclude from them such persons as were willing to qualify themselves for conforming to them. Hence, they admitted proselytes, who renounced the worship of idols and joined in the religious services of the Jews, although they were not held in the same estimation as Jews by birth, descent and language." *Ibid.* 255.

Notwithstanding the bearing of these authorities, I would not be thought to speak of the conclusion which they tend to establish, with a confidence approximating to positiveness. The dealings of the Almighty with the heathen nations, through the instrumentality of his chosen people the Israelites, is a subject not to be discoursed upon with the freedom of ordinary criticism. And on this point especially—what effect had proselytism on the condition of heathen slaves held by Hebrews, there is an obscurity which leaves the mind unsatisfied.

But whether or not the proselyte heathen slave became entitled to freedom at the jubilee, is of no importance to us, so far as we are concerned in respect to our duties to the enslaved. *As to us*, there exists *no people* who can be called *heathen*, in the sense in which that appellation was used by the Israelites. The master and the slave are of the same class—are both Gentiles. The only legitimate inference, therefore, which in a comparison with the Mosaic regulations analogy furnishes, is, that our conduct to slaves should be the same, as was the conduct of the Israelites to *Hebrew* slaves.

CHAPTER III.

OF THE CONDITION OF THE SLAVE CONSIDERED AS A MEMBER OF CIVIL SOCIETY.

To speak of a slave as a member of civil society may, by some, be regarded a solecism. Such a condition, however, is recognized by the laws of the slave-holding states. To what extent, and for what purpose, it is recognised, will be sufficiently manifested, in the course of this chapter; which, for the sake of perspicuity, will be arranged and examined under the following titles:

I. A slave cannot be a witness against a white person, either in a civil or criminal cause.

II. He cannot be a party to a civil suit.

III. The benefits of education are withheld from the slave.

IV. The means for moral and religious instruction are not granted to the slave; on the contrary, the efforts of the humane and charitable to supply these wants are discountenanced by law.

V. Submission is required of the slave, not to the will of his master only, but to that of all other white persons.

VI. The penal codes of the slave-holding states bear much more severely upon slaves than upon white persons.

VII. Slaves are prosecuted and tried upon criminal accusations in a manner inconsistent with the rights of humanity.

I. A SLAVE CANNOT BE A WITNESS AGAINST A WHITE PERSON, EITHER IN A CIVIL OR CRIMINAL CAUSE.

I have had occasion, very frequently, to advert to this subject, as the cause of the greatest evils of slavery. Acts of assembly apparently intended to give protection to the slave from his master's cruelty, have been adduced, and yet shown to be altogether nugatory, in consequence of the rule of law which forms the title of this section. In truth, in our slave-

holding states, this exclusion is not confined to the evidence of *slaves*, but natives of Africa, and their descendants, whatever may be the shade of their complexion, and whether bond or free, are under the like degrading disability. In a few of the slave-holding states, the rule derives its authority from *custom*—in others, the legislatures have sanctioned it by express enactment. In Virginia, there is an act of assembly in these words: "Any negro or mulatto, bond or free, shall be a good witness in pleas of the commonwealth for or against negroes or mulattoes, bond or free, or in civil pleas where free negroes or mulattoes shall alone be parties, *and in no other cases whatever.*" 1 *R. V. C.* 422. Similar in Missouri, 2 *Missouri Laws*, 600. In Mississippi, *Mississippi Rev. Code*, 372. In Kentucky, 2 *Litt. & Swi.* 1150. In Alabama, *Toulmin's Digest*, 627. In Maryland, *Maryland Laws, act of* 1717, *ch.* 13, § 2 & 3, *and act of* 1751, *ch.* 14, § 4. In North Carolina and Tennessee, *act of* 1777, *ch.* 2, § 42. And in Ohio, *act of Assembly, of January* 25, 1807.*

Such being the law, it requires no extraordinary perspicacity to pronounce, that its effects must be most injurious to the unhappy victim of slavery. It places the slave, who is seldom within the view of more than one white person at a time, entirely at the mercy of this individual, without regard to his fitness for the exercise of power—whether his temper be mild and merciful, or fierce and vindictive. A *white* man may, with impunity, if no other white be present, torture, maim, and even murder his slave, in the midst of any number of negroes and mulattoes. Having absolute dominion over his slave, the master or his delegate, if disposed to commit illegal violence upon him, may easily remove him to a spot safe from the observation of a *competent* witness. Indeed, it is probable, few *white* persons ordinarily reside upon the same plantation, since I find, in most of the slave-holding states, the owners of slaves are compelled by a considerable penalty, "to keep *at least* one white

* The existence of such a law *in Ohio*, will, I suspect, create surprise even in the mind of an inhabitant of a slave-holding state. Stronger proof of the effect of prejudice could scarcely be produced.

man on each plantation to which a certain number of slaves is attached"—a law which would not have been necessary, unless a contrary practice was prevalent. *See Prince's Digest*, 455, *&c.*

Plain and conclusive as this reasoning must be to the mind of any candid person, I think it best, nevertheless, to corroborate it by the direct testimony of several distinguished persons, whose means of information entitle them to speak with authority. Sir William Young, then governor of Tobago, and an advocate of slavery, thus expressed himself in 1811: "Instances of bad treatment and cruelty, and of unjust and immoderate punishments of slaves, I think occur exclusively within the narrow trading or household circle of unattached slaves; and, I am sorry to say, have *frequently* been reported to me, with circumstances of atrocity to be *believed*, though (for reasons which I shall give) not to be *proved* against lower white or coloured people domineering over from two to ten or more wretched beings, their slaves. In such cases, what protection by law have the slaves against the abuse of power over them, by Europeans, or other free people? *I think the slaves have no protection.* In this, and I doubt not in every other island, *there are laws* for the protection of slaves, and *good ones;* but *circumstances in the administration of whatever law render it a dead letter. When the intervention of the law,*" he continues, "*is most required, it will have the least effect;* as, in cases where a vindictive and cruel master *has care* to commit the most atrocious cruelties, *even to murder his slave,* NO FREE PERSON BEING PRESENT TO WITNESS THE ACT. There appears to me a *radical defect* in the administration of justice throughout the West Indies, *in whatever case the wrongs done to a slave are under consideration;* or rather, *that justice cannot in truth be administered, controlled as it is by a law of evidence which covers the most guilty European with impunity, provided that when having a criminal intent, he is cautious not to commi the crime in the presence of a free witness.* I should consider it as inconsistent with the respect and deference I bear to the sagacity and wisdom of the august body for whose use this report is framed, to idly enlarge it with the enumeration of *humane laws* for the protection of slaves, *all rendered nugatory* by the

conditions of evidence required in their administration." See for this extract from Sir William Young, Report, &c. *a note to page* 167 *of Stephen's West Indian Slavery, &c. page* 168-9. Mr. Stephen has collected the statements of many others holding official stations in the British West India colonies, all concurring in relation to this one point—the inefficacy of all laws made for the protection of slaves, in consequence of the rejection of the testimony of slaves. I avail myself of an additional citation from this source. *The Chief Justice,** &c. of the island of St. Vincent, gives the following answer to parliamentary inquiries proposed to him in the year 1791. "The only instances in which their (slaves) persons *appear* to be protected by the *letter* of the law, are in cases of murder, dismemberment and mutilation; and in these cases, *as the evidence of slaves is never admitted against a white man, the difficulty of establishing the facts is so great, that white men are in a manner put beyond the reach of the law.*"

I subjoin a further proof, not that I consider the present topic difficult of explanation, but because what I now adduce is borrowed from the authentic records of a slave-holding state of our own country. The negro act of South Carolina contains the following preamble to one of its sections: "Whereas, by reason of the extent and distance of plantations in this province, the inhabitants are far removed from each other, and *many cruelties* may be committed on slaves, because *no white person* may be present *to give evidence* of the same," &c. 2 *Brevard's Digest,* 242.

After such admissions of the evils of this law, we are naturally induced to inquire what reasons have led to its adoption, and especially what can justify its continuance.

It is *alleged* by its advocates, that it is coeval with the institution of slavery; and they add, moreover, as if this circumstance were of great moment, that slavery has existed since the time of Noah. 2 *Brevard's Digest,* 222, *note.* That servitude *under some form* is of a very remote antiquity, there can be no doubt; but it cannot be established, it is believed, by proofs at

* Drewry Ottley, Esq.

all worthy of reliance, that the rejection of the testimony of the slave has always been a concomitant evil.* If indeed it could be shown that such had, in all ages, been the misfortune of the oppressed, it would not surely, on that account, carry conviction, of the justice of the rejection, to the mind of any one, who rightly weighs the claims of humanity, and who believes that "to do justly, and love mercy," are duties of inflexible and perpetual obligation.

Villanage, as it existed in England, furnishes no authority for the universal application of this rule. A villain was a good witness, in civil cases, against any one except his lord; *see Bro. abridg. tit. villeinage*, 66; and, as he might *prosecute* his lord in *the king's* name, for violence done to his person, it is right

* Josephus, in book 4, chap. 8, § 15, of his Antiquities of the Jews, (*Whiston's translation,*) states the law on this subject differently from what we find it recorded in the Sacred Scriptures of the Old Testament. The passage in Josephus stands thus: "Let not a single witness be credited, but three or two at least, and those such whose testimony is confirmed by their good lives. *But let not the testimony of women be admitted on account of the levity and boldness of their sex, nor let servants be admitted on account of the ignobility of their soul, since it is probable that they may not speak the truth, either out of hope of gain or fear of punishment.*" The authority of Josephus cannot be set in competition with that of the Sacred Scriptures, as they have descended to us. And though he professes to give the law as established by Moses, and left by him in writing, without any ornament or addition, yet it requires but little attention to discover, that instead of the Pentateuch itself, he has furnished a commentary upon it by the Scribes and Pharisees, whose "traditions," as we are told by unerring wisdom, had made "void the law." *See note, to Whiston's translation, on the text of Josephus above cited; also, 3d volume of Horne's Introduction to a Critical Study of the Holy Scriptures*, 112, (American edition.) When, therefore, we find the law of Moses, according to our Canon, prescribes numerous rules for the treatment of servants or slaves, regulates with considerable minuteness judicial proceedings in general, and makes particular mention of the *number* of witnesses required to establish the truth, and yet is entirely silent as to the *competency* of women and servants as witnesses, it is fair to presume that no such disqualifications were ever sanctioned by the Jewish lawgiver. *See Deut. ch. 17, v. 6—and ch. 19, v. 15, et seq.* The judges, indeed, were expressly empowered to decide upon the *credibility* of witnesses—to proceed against those who testified falsely, in a summary manner, and to inflict retaliatory punishment upon them. From which, I infer, that both the accuser and accused had a *right* to produce their witnesses, and compel the hearing of them, leaving the *judges*, like *our juries*, to decide upon the weight of their testimony.

to presume, in such a case, he must have been admitted as a witness against him also; *Coke Litt.* 124, *a.; Dulany's Opinion,* 1 *Maryland's Reports,* 561; and, without doubt, in *criminal* cases generally, it was *no exception* to a witness that he was a villain or bondman." *Hawkin's Pleas of the Crown, book* 2, *chap.* 46, § 28; *Coke Litt.* 124, *a.*

We must have recourse to the *civil law* for its probable origin. "The general rule of that law certainly was, that a slave could not be a witness, though there were exceptions to it, founded in reason and policy, for men of that condition might be examined when the welfare of the state, in cases of weight and difficulty, required such a departure from general principles, or *when other evidence was unattainable.*" *Stephen's West India Slavery,* 171, *citing Voetius's Commentary on the Pandects.* This latter exception, it is obvious, destroys the rule, if we are to understand by it that a slave might be examined, in the defect of other proof, for the inculpation of any offender against the laws. And such I suppose to be the true meaning, since "slaves might always (among the Romans) induce an investigation, by flying to the statues of the princes;" *Cooper's Justinian,* 412; a privilege which would be of but little value, unless the slave could be examined as a witness against his injurer; and if thus admissible in his own case, with much more propriety could he be heard on behalf of third persons, where feelings of interest would not operate to bias him.

It may be safely averred, I *believe,* that this rule of evidence, *to the extent in which it obtains in our slave-holding states,* cannot challenge for its support the authority of any country, either ancient or modern. For it must not be forgotten, that it is not the evidence of slaves only, which is rejected by it—it applies equally to coloured persons, or rather to the descendants of Africans, as well to those who are *free,* as to those who are slaves. This being the case, I shall briefly discuss the propriety of it, in its whole compass.* . And first, let us see upon

* In *Virginia,* a very early statute places the exclusion on the ground that none but Christians should be witnesses; and even among those, a certain description of persons were excluded. The statute I allude to, runs thus:

what reason it is founded, in its application to slaves. It has been said, the admission of such testimony is dangerous to the lives and fortunes of the whites. This charge, if adopted in its most obvious sense, would seem to imply the total destitution of veracity in the slave. But this conclusion must be too comprehensive, since even slaves are competent witnesses, not only against each other, but against free persons of colour, without any restriction. *Law of Virginia*, 1 *Rev. Code*, already cited; *Prince's Digest*, 446; *Haywood's Manual*, 523; *Maryland Laws, act of* 1751, *chap.* 14, § 4, *&c. &c.*

If the objection is restrained to the testimony of the slave against *his master*, it presumes the predominance of the utmost depravity of heart in the slave—a depravity, which, in the gratification of a spirit of revenge,* would disregard the strongest moral sanctions. To concede this, is to impute a highly criminal negligence to the master—for having the absolute dominion of the slave, the dictates of humanity, as well as the plain precepts of the gospel, demand the bestowal of such attention to the religious instruction of the slave, as, in ordinary cases, would prevent or extirpate such excessive malignity.

But, it is said, "the hope of gain," or "the fear of punish-

"*Popish recusants convict*, negroes, mulattoes and Indian servants and others not *being Christians*, shall be deemed and taken to be persons incapable in law, to be witnesses in *any case* whatsoever." *See* 3 *Henning's Statutes* (*of Virginia*) *at large*, 298, *act of October*, 1705, (*4th Anne*) *sect.* 31. In *Maryland*, papacy, of course, is not subjected to the ban, but the like intolerance is nevertheless evinced: "No negro or mulatto slave, free negro or mulatto born of a white woman, during his time of servitude by law, or any Indian slave or free Indian natives of this or the neighbouring provinces, (shall) be admitted and received as good and valid evidence in law, in any matter or thing whatsoever depending before any court of record, or before any magistrate within this province, wherein any *Christian white* person is concerned." *Acts of* 1717, *chap.* 13, § 2.

* And yet revenge does not seem to be more prevalent with blacks than with whites. Clarkson, whose labours on behalf of the negro are so well known, makes the following memorable declaration: "That he had not, after a diligent and candid investigation of the conduct of *emancipated* slaves, under a great variety of circumstances, comprising a body of more than five hundred thousand, a considerable proportion of whom had been suddenly enfranchised, found a *single* instance of *revenge* or abuse of liberty."

ment," would probably induce the slave to testify falsely. "The hope of gain" will be felt chiefly, if not exclusively, in investigations touching the master's interest; an objection, which, if it be a valid one, degrades the master far below the level of the *suborned* slave. "The fear of punishment" is a more embarrassing difficulty—so much so, indeed, that it would perhaps be proper, as a general rule, to exclude such testimony when offered *on behalf of the master.*

To every other objection, except the last, *under the peculiar restriction there mentioned,* TRIAL BY JURY is an ample refutation. It is scarcely conceivable, that a being so degraded as is a slave in the eyes of those who usually compose juries in the slave-holding states, should, as a witness, operate serious injustice to a *white man.* Labouring under the prejudice with which he is likely to be viewed by *slave owners,* it is fair to infer, that unless fortified by other *unexceptionable* witnesses, or by strong circumstances, a slave's testimony would ordinarily go for nothing. But, as has been well remarked by Mr. Stephen, "how many instances are there in which the evidence of a witness, who is liable in a much higher degree to distrust, is essential to the interests of justice, and may furnish a satisfactory ground of decision, even for the purposes of conviction in capital cases. Often is a necessary link in the chain of circumstantial evidence wanting, which the vilest man on earth might credibly supply, because the other circumstances have previously raised the highest presumption of its truth, and of its being a truth too within the knowledge of that witness. Sometimes also testimony, which is very low in credit, may justly derive great weight from the consideration, that if untrue, the opposite party possessed the means of refuting it by satisfactory proof, which he has not produced; and sometimes it is satisfactory, because it is strongly corroborated by other evidence, though neither would have separately sufficed." The examination of *accomplices in crime* against each other, instances of which are of daily occurrence in criminal courts, is an illustration of these principles.

In the ruder ages of society, courts of law, viewed the *competency* of witnesses with great jealousy. Persons were pre-

vented from giving testimony then, on objections which are now treated as of insufficient validity. For this improvement in judicial administration we are principally indebted to the ascertained practical excellence of trial by jury. Besides, husband and wife, who, *in general*, from motives of public policy and humanity are forbidden or *excused* from testifying for or against each other, may, under some circumstances, from *necessity*, in legal contemplation, i. e. *to prevent an entire failure of justice*, be heard even in their own behalf. Such is the case where *personal* violence has been offered by the one to the other. The grant of a like privilege to the slave against his master, in particular, may be supported by reasons, *at least*, equally forcible. And such a right it seems probable obtained in *Massachusetts*, as far as we are informed, without inconvenience—on the contrary, I have no doubt, with decisive public advantage.—See *supra, note to page* 23.

If trial by jury is a sufficient answer to the several objections against the admission of a slave's testimony, with much greater force may it be urged in reference to the competency of the *free negro*. Indeed, it is to me inconceivable, upon what plausible ground the unqualified and universal rejection of the latter as a witness, can be supported. It is without the precedent of any other country, it is believed, whether civilized or savage. The freedman was a competent witness by the civil law. He might even give evidence of what came to his knowledge before his enfranchisement; a privilege not allowed by the same law to the man of full age, in respect to what he learnt during his nonage. *Stephen*, 181–2, *citing Voetius ad pand. Lib.* xxii. *Tit.* 5. § 2. In the West Indies, free negroes are received as witnesses in *civil actions* against *white* persons. *Stephen*, 182; a distinction of immense advantage, especially in a trial for freedom, where it can hardly be expected a white person would be able to testify as to the pedigree of a black.

While *this unqualified and universal exclusion* of the evidence of coloured persons prevails, it can be of but little use to enact severe penalties against kidnapping. *Secrecy* in this crime, in particular, will, as far as it is in the power of the perpetrator, be

preserved; and if the free negro,—the injured party,—cannot be heard against the offender, from what other source can satisfactory evidence be expected? But change the law, *admit him* as a witness, *and kidnapping of all crimes would be* THE EASIEST OF DETECTION.*

Confessedly great as are the evils of this harsh regulation, it will naturally be asked, if a remedy of some description has not been attempted. To this it may be answered, that a preposterous and wholly inefficacious one, as may be easily demonstrated, has been devised in South Carolina and imitated in Louisiana. Having thus characterized it, it is fit, I should exhibit it to the reader that he may judge for himself; and for this purpose, I give the section of the act of assembly, in which it is found, without abridgment: "Whereas, by reason of the extent and distance of plantations in this province, the inhabitants are far removed from each other, and many cruelties may be committed on slaves because no white person may be present to give evidence of the same, unless some method be provided for the better discovery of such offence, and as slaves are under the government, so they ought to be under the protection of masters and managers of plantations, *Be it enacted*, That if any slave shall suffer in life, limb or member, or shall be maimed, beaten or abused contrary to the directions and true intent and meaning of this act when no *white person* shall be present, or being present shall neglect or refuse to give evidence, or be examined upon oath concerning the same; in every such case the owner or other person who shall have

* Too much force cannot be given to this argument. Remote as is the city of Philadelphia from those slave-holding states in which the introduction of slaves from places within the territory of the United States is freely permitted and *where also the market is tempting*, it has been ascertained that *more than thirty* free coloured persons, mostly children, have been kidnapped here and carried away, within the last two years. Five of these, through the kind interposition of several humane gentlemen, have been restored to their friends, though not without great expense and difficulty; the others are still retained in bondage, and if rescued at all, it must be, by sending *white* witnesses a journey of more than a thousand miles. The costs attendant upon law-suits under such circumstances, will probably fall but little short of the estimated value, *as slaves*, of the individuals kidnapped.

the care and government of such slave, and in whose possession or power such slave shall be, shall be deemed, taken, reputed and adjudged to be guilty of such offence, and shall be proceeded against accordingly without further proof, *unless* such owner or other person as aforesaid can make the contrary appear by good and sufficient evidence, *or shall by* HIS OWN OATH *clear and exculpate himself;* which oath every court where such offence shall be tried, is hereby empowered to administer, and *to acquit the offender* if clear proof of the offence be not made by *two* witnesses at least." 2 *Brevard's Digest*, 242.

The reader has probably anticipated my objections to the extraordinary provisions of this law. That the slave population, were subjected to many cruelties, as is set forth in the preamble, in consequence of the exclusion of their testimony against their oppressors, I have no doubt, and that the legislatures were fully convinced of this I consider to be equally clear. But it is by no means clear, that a remedy of the mischief was *intended* by the enactment of this section. It would detract from the *intellectual* character of the legislature to suppose so. Could it be reasonably expected, that the presumption of guilt, which the act authorizes to be made, would lead to a conviction, when the party could purge himself of the accusation brought against him by his *own* oath? Of a crime which could be satisfied by a small pecuniary fine, *perhaps* it *sometimes* might;—such instances, however, *one white person only in general being on the plantation*, would seldom be brought to the knowledge of the magistrate. But would the man, *wicked* enough to commit murder, hesitate to screen himself from its penalties, by a crime not *more* heinous certainly, than that which he would thus conceal?* But this is a view of the law far more favourable than its true construction authorizes. For it is in terms, declared,

* No one, I believe, will question the truth of this as a general remark. It is not, therefore, for the purpose of fortifying it, that I refer to a case, reported in the South Carolina reports of judicial decisions, in which the *exculpatory* oath was offered to be made, by a person, whom the court decided not to be within the *benefit* of the act, and who was, *immediately afterwards, upon good evidence, found guilty of manslaughter. See The State vs. Welch*, 1 *Bays' Reports*, 172.

that the offender *shall be acquitted,* upon his own oath of innocence, *if clear proof of his guilt be not made by* TWO *witnesses at least;* thus, in fact, introducing a modification of the former law, *not for the protection of the slave,* BUT FOR THE ESPECIAL BENEFIT OF ACRUEL MASTER OR OVERSEER!!!

II. A SLAVE CANNOT BE A PARTY TO A CIVIL SUIT.

It has been shown in a preceding part of the sketch, that a slave can neither acquire nor retain property, as his own, contrary to the will of his master. It results, therefore, that he cannot be a party to a civil suit, for there is no species of civil suit which does not, in some way, affect property.

There is, however, an authority, which for the purpose of convenient investigation may be classed as an *exception* to the above rule, given by the laws of all the slave-holding states, to persons *held as slaves,* BUT CLAIMING TO BE FREE, *to prosecute their claims to freedom before some judicial tribunal.* I design, therefore, in this place to bring into view whatever relates to this subject.

The oldest law of this description, appears to have been adopted by South Carolina in the year 1740. It begins with what has been already extracted, but which for the sake of perspicuity, it will be proper to repeat, "Be it enacted, That all negroes, Indians, (free Indians in amity with this government, and negroes, mulattoes and mestizoes *now* free, excepted,) mulattoes and mestizoes who now are or shall hereafter be in this province, and all their issue and offspring born or to be born, shall be and they are hereby declared to be and remain for ever hereafter absolute slaves, and shall follow the condition of the mother, &c. &c. Provided, that if any negro, Indian, mulatto, or mestizo, claim his or her freedom, it shall and may be lawful for such negro, Indian, mulatto or mestizo, or any person or persons whatsoever, on his or her behalf to apply to the judges of his majesty's court of common pleas, by petition or motion, either during the sitting of the said court, or before any of the justices of the same court, at any time in vacation. And the said court, or any of the justices thereof, shall, and they are hereby fully empowered to admit any person so applying to be guardian

for any negro, Indian, mulatto or mestizo claiming his or her or their freedom, and such guardian shall be enabled, entitled and capable in law to bring an action of trespass, in the nature of ravishment of ward, against any person who shall claim property in, or who shall be in possession of any such negro, Indian, mulatto or mestizo, and the defendant shall and may plead the general issue in such action brought, and the special matter may and shall be given in evidence, and upon a general or special verdict found, judgment shall be given, according to the very right of the cause, without having any regard to any defect in the proceedings, either in form or substance. And if judgment shall be given for the plaintiff, a special entry shall be made, declaring, that the ward of the plaintiff is free, and the jury shall assess damages which the plaintiff's ward hath sustained, and the court shall give judgment and award execution against the defendant for such damages, with full costs of suit; *but in case judgment shall be given for the defendant, the said court is hereby fully empowered to inflict* SUCH CORPORAL PUNISHMENT, NOT EXTENDING TO LIFE OR LIMB, *on the ward of the plaintiff, as they in their discretion shall think fit.* Provided, that in any action or suit to be brought in pursuance of the direction of this act, THE BURTHEN OF THE PROOF *shall lay upon the plaintiff, and it shall be always presumed that every negro, Indian, mulatto and mestizo, is a slave, unless the contrary be made to appear,* (the Indians in amity with this government excepted, in which case, the burthen of the proof shall be on the defendant.)" 2 *Brevard's Digest*, 229-30.

In Georgia, the act of assembly of May 10, 1770, is almost literally a copy of this of South Carolina. *See Prince's Digest*, 446.

It is impossible for any humane and reflecting person to examine the provisions of the above law, without the conviction of its injustice and cruelty. The negro, &c. claims to be free, and yet he can bring no suit to investigate his master's title to restrain him of his liberty, unless some one can be found merciful enough to become his guardian, subject in any event, to the expense and trouble of conducting his cause, and in case of a

failure, to the costs of suit.* His judges and jurors will in all probability be slave-holders, and interested, therefore, in some measure, *in the question* which they are to try. The whole community in which he lives may, so few are the exceptions, be said to be hostile to his success. Being a negro, &c. by the words of the act, the *burthen of proof* rests upon him, and he is *presumed* to be a slave till he make the contrary appear. This is to be effected through the instrumentality of *white* witnesses, as has been just shown, exclusive of the testimony of those who are *not* white, even though they may be free and of the fairest character. And, lastly, notwithstanding all these obstacles to the ascertaining of the truth of his allegations, the terror is superadded, should he not succeed in convincing

* In South Carolina, by an act passed in 1802, "the guardian" (in a trial for freedom) "of a slave," (who may have been *illegally* imported into the state, and is, on *that account*, by the same law, declared to be *free*,) "claiming his freedom, shall be liable to *double* costs of suit, if his action shall be adjudged groundless; and shall be liable to pay to the bona fide owner of such slave, all such damages as shall be assessed by a jury and adjudged by any court of common pleas." 2 *Brevard's Digest*, 260. And in Maryland, the attorney, in a trial for freedom, must pay all costs, if unsuccessful, unless the court shall be of opinion that there was probable cause for supposing that the petitioner had a right to freedom. *Act of Nov.* 1796, *chap.* 67, § 25. And, on such a trial, *the master* (the defendant) is allowed *twelve* PEREMPTORY challenges as to the jurors. *Ibid.* § 24. The same spirit of hostility to the claimant for freedom is manifested in Virginia, where, "for *aiding and abetting* a slave in a trial for freedom, if the claimant shall fail in his suit, a fine of one hundred dollars is imposed. 1 *Rev. Code*, 482. Missouri has concocted a strange mixture of lenity and rigour, in a law on this subject. A person claiming his freedom, may petition the court, &c. praying that he may be permitted to sue as a *poor* person, and *stating the ground upon which his or her claim to freedom is founded:* and "*if in the opinion of the court, &c. the petition contains sufficient matter* to authorize the commencement of a suit, the court, &c. *may* make an order that such person be permitted to sue as a poor person, and may assign the petitioner counsel, &c. 1 *Missouri Laws*, 404. The privileges of suing as a *poor* person, and of having counsel assigned by the court, are worthy of great commendation, and present an enviable contrast to the ferocious spirit of the South Carolina and Georgia acts; *yet it is made to depend upon the arbitrament of the court, or even of a single judge, whether the petitioner shall be heard by a jury at all.* In *Alabama*, the legislature have adopted the *objectionable* parts of the Missouri law, while the *beneficial* provisions have been OMITTED!! *Toulmin's Digest*, 632.

the judge and jury of his right to freedom, *of an infliction of corporal punishment to any extent short of capital execution, or the deprivation of a limb!!!* And in *Georgia*, "should death happen by accident in giving this legal (moderate) correction," according to the terms of the constitution already quoted,* it will be no crime! Such legislation forcibly reminds us of the feast of Damocles—though, in all soberness, it may be said, the conduct of Dionysius was supreme beneficence, compared with the *terms of mercy* contained in this act.

The harsh and unreasonable doctrine which *presumes* every negro, &c. to be a slave, obtains, I believe, with the single exception which will be hereafter noticed, in all the slave-holding states. In Virginia, there is no statute to this effect, yet so is the law as established by judicial decisions. Thus, where in suits for freedom, brought by several persons, whose descent was traced to a free *Indian* woman, and where, as the reporters say, "On the hearing, the late chancellor,† perceiving from his own view, that the youngest of the appellees was *perfectly white*, and that there were gradual shades of difference in colour between the grand-mother, mother and grand-daughter, (all of whom were before the court,) and considering the evidence in the cause, determined that the appellees were entitled to their freedom, and moreover, on the ground that freedom is the birthright of every human being, which sentiment is strongly inculcated by the first article of our political catechism, the bill of rights—*he laid it down as a general position, that whenever one person claims to hold another in slavery, the onus probandi (burthen of proof) lies on the claimant.*" The supreme court of appeals, to which the case was afterwards carried, thought fit, in reviewing the decision of the chancellor, to go beyond the accustomed line of its duty, in order to cast a stigma upon the just position which had been asserted by him. The following is a copy of the final judgment: "This court, not approving of the chancellor's *principles and reasoning* in his decree made in this cause, except so far as the same relates to *white persons*

* See, supra, page 37.

† The Honourable George Wythe, one of the *signers of the Declaration of our Independence.*

and native American Indians, BUT ENTIRELY DISAPPROVING *thereof, so far as the same relates to native Africans and their descendants,* who have been and now are held as slaves by the citizens of this state; and discovering no other error in the said decree, affirms the same." *See the case, Hudgins vs. Wright,* 1 *Henning & Munford's Reports,* 133 *to* 143. In Maryland, a similar decision has been made, 3 *Harris & M'Henry's Reports,* 501-2, *case of negro Mary vs. the Vestry of William and Mary's Parish, &c.;* so, in Kentucky, 2 *Bibb's Reports,* 238, *Davis vs. Curry;* and, in New Jersey, 2 *Halsted's Reports,* 253, *Gibbons vs. Morse,* (*decided November,* 1821.)

In *North Carolina,* this doctrine is received with some limitation, the presumption being confined to negroes of *the whole blood;* while those of *mixed* blood, *mulattoes, mestizoes, &c.* are presumed free, until the contrary is proved. The report of the case, in which this principle is recognised, is given in 1 *Taylor's Reports,* 164, *Gobu vs. Gobu.* The case itself is *unique,* and on this account, as well as to display the sound reasoning (as far as respects the *mixed* blood) of *Chief Justice Taylor,* is transcribed at large.

"Gobu vs. Gobu } Trespass and false imprisonment. Plea, that the plaintiff is a slave, &c.

"It appeared in evidence, that the plaintiff, *when an infant apparently about eight days old,* was placed in a barn, by some person unknown, and that the defendant, *then a girl of about twelve years of age,* found him there and conveyed him home, and had kept possession of him ever since, treating him with humanity, *but claiming him as her slave.* The plaintiff was of an *olive colour, between black and yellow, had long hair and prominent nose.*" These facts were ascertained by the court, by proof and inspection; upon which the judge gave the following charge: "I acquiesce in the rule laid down by the defendant's counsel, with respect to the presumption of every *black* person being a slave. It is so, because the negroes originally brought into this country were slaves, and their descendants must continue slaves until manumitted by proper authority.

If, therefore, a person of that description claims his freedom, he must establish his right to it by such evidence as will destroy the force of the presumption arising from colour. But I am not aware, that the doctrine of presumption against liberty has been urged, in relation to persons of *mixed* blood, or to those of any colour between the two extremes of black and white, *and I do not think it reasonable that such a doctrine should receive the least countenance:* such persons may have descended from Indians in both lines, or at least in the maternal; they may have descended from a white person in the maternal line, or from mulatto parents originally free; in all which cases, the offspring following the condition of the mother, is entitled to freedom. Considering how many probabilities there are in favour of the liberty of these persons, they ought not to be deprived of it upon mere presumption; more especially, as the right to hold them in slavery, if it exists, is in most instances capable of being satisfactorily proved."*

While I freely subscribe to the soundness of the views of this distinguished jurist, in relation to persons of *mixed blood*, I cannot but dissent from the specious reasoning, by which it is inferred, that every *black* person should be presumed to be a slave. Slavery is an institution which all *profess* to disapprove. It violates every man's sense of right: it is at variance with the genius of our government. Its existence, therefore, in no case ought to be *presumed.* But, more than this—it is well known that a large number of *black* persons is entirely free, even in the slave-holding states—the laws of our country recognise their right to freedom, and the power of the government has been wielded for their protection, as citizens, whenever a fit case has been brought to public notice. With what propriety of reasoning, then, can it be urged, that their colour should, in legal contemplation, raise a presumption against their liberty. Even those who think it desirable to perpetuate slavery—who think it no evil to degrade and brutify a being endowed by his Creator with reason—need apprehend no violation of their legal

* The doctrine of this case was afterwards confirmed, so that it may be considered as the settled law of North Carolina. *See* 2 *Haywood's Reports*, 170.

rights of property, by a contrary doctrine. What greater difficulty can exist, to satisfy the requisitions of the law, in regard to the ownership of a slave, than obtains in regard to the ownership of ordinary chattels. Will it be alleged, that fraud may be perpetrated by transferring a freeman as a slave? But, is not an intelligent creature, endowed with the faculty of speech, at all times, capable of admonishing a *purchaser*, against such a deception? and, when a communication of this nature is made, ought it not to be heeded?

I am the more strenuous in opposition to this doctrine of presumption against liberty, because it is obviously the fruitful source of the abominable crime of *man-stealing*—a crime which, in all nations, seems to have been viewed with abhorrence, and visited with severe penalties. The wretch who, by art or force, is enabled to exhibit a person of African extraction—" with a colour not his own"—in his custody, and within the limits of a slave-holding state, is exempted from the necessity of making any proof how he obtained him, or by what authority he claims him as a slave. Inspection notifies to every beholder, that the unhappy person *said* to be a slave, is *presumed* so to be, by the law of the land! Supplemental evidence is unnecessary—a forged bill of sale *may* be a convenience to satisfy the timid and over-cautious, but the law—the supreme wisdom of man—deems any thing more than *colour* quite superfluous. Is this *just?* Does it become a free and enlightened people thus to decree—*thus to injure?*

By the laws of several of the slave-holding states, *manumitted* and other free persons of colour, however respectable their characters, may be arrested when in the prosecution of lawful business, and if *documentary evidence* of their right to freedom cannot be immediately produced by them, they are thrown into prison, and advertised as *runaway slaves.* Should no owner, as must always be the case, unless injustice is done, appear within a time limited by law for the purpose, the jailer is directed to dispose of them, at public auction, as *unclaimed fugitive slaves,* in order to derive from the proceeds of the sale, the means of defraying the expenses of their detention in prison. The unrighteous doctrine of *presumption* from colour, steps in

and consummates the iniquity, and the freeman and his posterity are doomed to hopeless bondage. *See* 2 *Brevard's Digest*, 235-6-7; *Mississippi Rev. Code*, 376-7; *Laws of Maryland*,*

* The laws of Maryland here referred to, having excited much attention, in consequence of the arrest and imprisonment, in the District of Columbia, of a free black man, a citizen of the state of New York, named Gilbert Horton, I am induced to transcribe them in this place. The *sixth* section of the act of 1715, chap. 44, reads thus: "And for the better discovery of runaways, it is hereby enacted, &c. that *any person or persons whatsoever* within this province, travelling out of the county where he, she or they shall reside or live, *without a pass* under the seal of the said county, for which they are to pay ten pounds of tobacco, or one shilling in money, such person or persons, if apprehended, *not being sufficiently known or able to give a good account of themselves, it shall be left to the discretion and judgment of such magistrate or magistrates before whom such person or persons as aforesaid shall be brought*, to judge thereof, and if, before such magistrate, such person or persons so taken up, shall be deemed and taken as a runaway, he, she or they, shall suffer such fines and penalties as are hereby provided against runaways." *Section* 7. "And for the better encouragement of all persons to seize and take up all runaways, &c. all and every such person or persons as aforesaid, seizing or taking up such runaways, *travelling without passes as aforesaid*, not being able to give a sufficient account of themselves as aforesaid, shall have and receive *two hundred pounds of tobacco*," (by act of 1806, chap. 81, § 5, commuted for SIX dollars,) "to be paid by the owner of such runaway servant, negro or slave, so apprehended and taken up; *and if such suspected runaway or runaways be not servants, and* REFUSE TO PAY THE SAME, *he, she or they shall* MAKE SATISFACTION BY SERVITUDE OR OTHERWISE, as the justices of the provincial and county courts, where such person shall be so apprehended and taken up, shall think fit." *Section* 9. "That at what time soever, any of the *said persons*, runaways, shall be seized by any person or persons within this province, such person or persons so apprehending or seizing the same, shall bring or cause him, her or them, to be brought before the next magistrate or justice of the county where such runaway is apprehended, who is hereby empowered to take into custody or otherwise, him, her or them, to secure and dispose of, as he shall think fit, until such person or persons so seized and apprehended, shall give good and sufficient security to answer the premises the next court that shall first ensue in the said county, which court shall secure such person or persons till he or they can make satisfaction to the party that shall so apprehend or seize such runaways or *other persons*, as by this act is required, except such person shall make satisfaction as aforesaid before such court shall happen; and that notice may be conveniently given to the master, mistress, dame or overseer of runaways taken up as aforesaid, the commissioners of the counties shall forthwith cause a note of the runaway's name, so seized and apprehended as aforesaid, to be set up at the next adjacent county courts, and at the provincial court and secretary's office, that all per-

act of 1715 (*April session*) *chap.* 44, § 6, 7 & 9—*act of* 1719 (*May session*) *chap.* 2, § 2—*act of* 1802 (*November session*) *ch.* 96, § 2.

sons may view the same, and see where such their servants are, and in whose custody."

The foregoing sections apply *equally* to the cases of all persons, whether *white* or *black*, who may be found travelling *without* passes, out of the county where their residences are; and all such, at the *discretion* of a magistrate, may be subjected to imprisonment and amercement. But the last section of the same act, while it bears, with a severity altogether at variance with the spirit of a free government, upon *whites* unhappily circumstanced so as to come within the terms of the previous enactments, introduces a provision by which they *may* be restored to freedom, if entitled to be free; and yet *negroes and mulattoes, with the same rights*, are left without relief. "When any person or persons (*except negroes and mulattoes*) shall be found travelling without passes *as aforesaid*, and shall be taken up as suspected runaways, and by any justice of the peace committed to the custody of any sheriff or gaoler within this province, it shall not be lawful for any such sheriff or gaoler to hold such person in custody *longer than six months;* and if such person can, at any time within the said six months, procure a certificate or other justification that he or she is no servant, he or she shall and may, by order of any two justices of the county where such person is committed to prison, *be discharged* from any further imprisonment, *he or she serving such sheriff or gaoler or his assigns, so many days as he, she or they were in custody of such sheriff or gaoler, or otherwise paying ten pounds of tobacco per day to such sheriff or gaoler for* THEIR IMPRISONMENT FEES, and no more; and paying unto such person or persons who took up such person *two hundred pounds of tobacco, or serving him, her or them twenty days in lieu thereof;* and if any such sheriff or gaoler shall detain such person in prison after such order of the justices aforesaid, or the expiration of six months, and payment of ten pounds of tobacco per day as aforesaid, such sheriff or gaoler shall be liable to an action of false imprisonment." Iniquitous as this law is, it is obvious that the object of the legislature could not be reached by it. It offered, indeed, a bounty to the sheriff or gaoler, who, by neglecting to give notice of the imprisonment of a *suspected* runaway, might protract such imprisonment till the value of his services, even though an absolute slave for life, would not be equal to the gaol fees. And yet without some further legislation, the gaoler himself would, in case the person detained was not a runaway, or if a runaway should not be demanded by his master, be made to suffer the loss of such expense as might be incurred for the sustenance of the suspected runaway during his imprisonment. The lure held out by the act to the gaoler, probably produced the abandonment of the slave in some instances by the master; and it became necessary, therefore, for the legislature to repeal the act, or to supply its defects. The latter part of the disjunctive was naturally preferred; and, on the eighth day of June, 1719, after reciting, that "Whereas by the act of assembly re-

III. The benefits of education are withheld from the slave.

In no country is education more highly valued, or its benefits

lating to servants and slaves, there is not any provision made what shall be done with such runaway servants or slaves that now are or hereafter shall or may be taken up and committed to the custody of any sheriff within this province, where the master or owner of such servant or slave, having due notice of such servant's or slave's being in the custody of such sheriff, refuses or delays to redeem such servant or slave, by paying their imprisonment fees, and such other charge as has or may accrue for taking up such servant or slave;" enacted, "That, &c. every sheriff that now hath, or hereafter shall have, committed into his custody, any runaway servants or slaves, after one month's notice given to the master or owner thereof, of their being in his custody, if living in this province, or two months' notice if living in any of the neighbouring provinces, if such master or owner of such servants or slaves do not appear within the time limited as aforesaid, and pay or secure to be paid all such imprisonment fees due to such sheriff from the time of the commitment of such servants or slaves, and also such other charges as have accrued or become due to any person for taking up such runaway servants or slaves, such sheriff is hereby authorized and required (such time limited as aforesaid, being expired) immediately to give public notice to all persons, by setting up notes at the church and court-house doors of the county where such servant or slave is in custody, of the time and place for sale of such servants or slaves, by him to be appointed, not less than ten days after such time limited as aforesaid being expired, and at such time and place by him appointed as aforesaid, *to proceed to sell and dispose of such servant or slave to the highest bidder*, and out of the money or tobacco which such servant or slave is sold for, *to pay himself* all such IMPRISONMENT FEES as are his just due, for the time he has kept such servant or slave in his custody, and also to pay such other charges, fees or reward as has become due to any person for taking up such runaway servant or slave, and after such payments made, if any residue shall remain of the money or tobacco such servant or slave was sold for, such sheriff shall only be accountable to the master or owner of such servant or slave for such residue or remainder as aforesaid, and not otherwise." *Laws of Maryland, act of* 1719, (*May session,*) *chap.* 2.

Upon the enactment of this law, the most unprincipled sheriff should have been content. It became, indeed, not only *his* interest, but the interest of *all other persons*, to apprehend and to commit to prison *coloured persons* especially—for these might be detained for a longer period than six months, whether free or not; the right of the *taker up* to his legal reward and other charges was secured to him by a LIEN ON THE BODY OF THE PRISONER, and the sheriff or gaoler *was indemnified in the same manner against the loss of his imprisonment fees.* And by prolonging the imprisonment until the fees should be swelled to nearly the value of the prisoner, if *a slave*, the master, in many instances, might be unable or unwilling to redeem him, and the sheriff's sale, which in such case is autho-

more generally diffused, than in the United States. The constitutions of nearly all the states, make it the duty of the respec-

rized, could easily be turned to the account of some *favourite* of that officer, and eventually, by collusion, to his own pecuniary advantage. And should the *suspected runaway not* be a slave, yet, in a land where, from his colour, he is *presumed* to be so, and where others *like him* are daily "made merchandise of," the facility with which his imprisonment, aided by the provisions of this act, might be rendered profitable to the sheriff, would be greatly increased. But whatever may have been the true cause, the prevalence of a practice on the part of sheriffs, *of prolonging the imprisonment of persons apprehended as runaways*, is evidenced by an act of assembly, passed *the twenty-second day of December*, 1792, entitled "*An act to restrain the ill practices of sheriffs, and to direct their conduct respecting runaways.*" The act sets forth, that "Whereas it is represented to this general assembly, that the sheriffs of the respective counties have *neglected to advertise runaways, to the great injury of the owners;* therefore, &c. That it be the duty of the several sheriffs, &c. upon any runaway being committed to their custody, to cause the same to be advertised in some public newspaper within twenty days after such commitment, and to make particular and minute description of the person, clothes *and bodily marks* of such runaway." "And if no person shall apply for such runaway, within the space of thirty days from such commitment, then it shall be the duty of such sheriff, if residing on the Western Shore, to cause the runaway to be advertised as heretofore directed, in the Maryland Journal and Georgetown Weekly Leger; and, if residing on the Eastern Shore, to cause the same to be advertised in the Maryland Herald and Maryland Journal, within sixty days from such commitment, and to continue the same therein until the said runaway is released by due course of law." *Maryland's Laws of* 1792, (*November session,*) *chap.* 72.

In that part of the District of Columbia which was ceded by the state of Maryland to the federal government, the whole of these laws are still in force. Shortly after the date of *the cession*, however, the legislature of Maryland repealed the *act of* 1719, *ch.* 2, and the *act of* 1792, *ch.* 72, supplying their place by the following regulations, which, as it will be perceived, are in *principle* the same as the repealed acts. "That it shall be the duty of the sheriffs (respectively) of the several counties of this state, &c. upon any runaway servant or slave being committed to his custody, to cause the same to be advertised in some public newspaper or papers printed in the city of Baltimore, the city of Washington, and the town of Easton, and in such other public manner as he shall think proper, within fifteen days after such commitment, and to make particular and minute description of the clothing, person and *bodily marks* of such runaway." "If the owner or owners, or some person in his, her or their behalf, shall not apply for such runaway within the space of sixty days from the time of advertising as aforesaid, and pay or secure to be paid all such legal costs and charges as have accrued by reason of apprehending, imprisoning and advertising such servant or slave, it shall be the duty of such sheriff and he is hereby

tive legislatures to establish and support seminaries for learning, adequate to the wants of the citizens. *Common* schools are,

required and directed *to proceed to sell such servant* or slave, and immediately to give public notice by advertisements, to be set up at the court-house door and such other public places as he shall think proper, in the county where such servant or slave is in custody, of the time and place for sale of such servant or slave, by him to be appointed, not less than twenty days after the time limited as aforesaid has expired, and at such time and place shall proceed to sell and dispose of such servant or slave to the highest bidder." *Laws of Maryland, of* 1802, (*November session,*) *chap.* 96, § 1 & 2, (passed 8th of January, 1803.)

By recurring to the sections of the law of 1715, above transcribed, it will be seen that magistrates were empowered to decide, *in their discretion,* whether the person apprehended *as* a runaway should be deemed such, and be accordingly committed to prison. Whether such power had been abused, or whether a *proper exercise* of it, had been found *inconvenient* to *takers-up* and *sheriffs,* I will not presume to conjecture, but, in 1810, (*chap.* 63, § 1,) legislative interposition was called into action in the following extraordinary measure: "Any court or any judge or justice of this state, before whom any negro or mulatto shall be brought as a runaway, shall be satisfied, by *competent testimony,* that the said negro or mulatto is *not* a runaway, before it shall be lawful for the said court, judge or justice to discharge the said negro or mulatto from the custody of the person or persons detaining the said negro or mulatto as a runaway, otherwise than by a commitment to the gaol of the county of which he is a judge or justice."

The barbarous severity to coloured persons which pervades the whole of the laws of Maryland on this subject, has at length been somewhat softened by an act passed February third, 1818. It is in these words: "Hereafter, when any servant or slave shall be committed to the gaol of any county in this state, as a runaway, agreeably to the laws now in force, and the notice required to be given by law by the sheriff shall have been given, and the time for their detention expired, and no person or persons shall have applied for and claimed said suspected runaway, and proved his, her or their title to such suspected runaway, as is now required by law, it shall be the duty of the sheriff forthwith to carry such *slave or slaves* before some judge of the county court or judge of the orphans' court, with his commitment, and such judge is hereby required to examine and inquire, *by such means as he may deem most advisable,* whether such suspected runaway be a slave or not, and if he shall have reasonable grounds to believe that such suspected runaway is a slave, he may remand such suspected runaway to prison, to be confined for such further or additional time as he may judge right and proper; and if he shall have reason to believe that such suspected runaway is the slave of any particular person, he shall cause such notice to be given by the sheriff to such supposed owner, as he may think most advisable; *but if said judge shall not have reasonable ground to believe such suspected runaway to be a slave, he shall forthwith order such suspected runaway to be released;* and if no person shall apply for such suspected runaway after

also, provided "for the education of the poor gratis." In several, perhaps in all of the free states, no distinction is made in the distribution of the public bounty towards this object, between white and coloured children; but schools are constantly maintained for the reception and instruction of poor children of every class and complexion.

A different policy began very early in the slave-holding states. In none of these do the laws interpose to afford any aid or facility for the acquisition of learning to persons of colour, whether slaves or freemen. On the contrary, the extracts which I shall make from the laws of these latter states, will satisfactorily demonstrate the truth of the proposition at the head of this section, namely, that the benefits of education are *withheld* from the slave—and, I might add, from the free negro also.

South Carolina may lay claim to the earliest movement in legislation on this subject. In 1740, while yet a province, she enacted this law: "Whereas the having of slaves taught to write, or suffering them to be employed in writing, may be attended with great inconveniences, Be it enacted, That all and every person and persons whatsoever, who shall hereafter teach or cause any slave or slaves to be taught to write, or shall use or employ any slave as a scribe in any manner of writing whatsoever hereafter taught to write, every such person or persons shall, for every such offence, forfeit the sum of one hundred pounds current money." 2 *Brevard's Digest*, 243; similar in Georgia, *by act of* 1770, except as to the penalty, which is twenty pounds sterling. *Prince's Digest*, 455.

Virginia has attained the same end, though in a less direct manner. Her Revised Code of 1819, reiterates an enactment, "That all meetings or assemblages of slaves or free negroes or mulattoes mixing and associating with such slaves at any meeting house, or houses, or any other place, &c. in the night, *or at*

he may be so remanded, within the time for which he may be remanded, and prove his, her or their title as the law now requires, *the said sheriff shall, at the expiration of such time, relieve and discharge such suspected runaway;* and in either case, *when such suspected runaway shall be discharged, the expense of keeping such runaway in confinement shall be levied on the county, as other county expenses are now levied.*" *Laws of Maryland, December session of* 1817, *chap.* 112, § 6.

any school or schools for teaching them reading or writing either in the day or night, under whatsoever pretext, shall be deemed and considered an *unlawful assembly;* and any justice of a county, &c. wherein such assemblage shall be, either from his own knowledge or the information of others, of such unlawful assemblage, &c. may issue his warrant directed to any sworn officer or officers, authorizing him or them to enter the house or houses where such unlawful assemblages, &c. may be, for the purpose of apprehending or dispersing such slaves, and *to inflict corporal punishment on the offender or offenders* at the discretion of any justice of the peace, *not exceeding twenty lashes.*" 1 *Rev. Code*, 424-5.

So in South Carolina, in addition to the highly penal restraint upon the education of a slave, contained in the law already cited, an act of assembly was passed in 1800, enacting, "That assemblies of slaves, free negroes, mulattoes and mestizoes, whether composed of all or any of such description of persons, or of all or any of the same and of a proportion of white persons, met together for the purpose of *mental instruction* in a confined or secret place, &c. &c. is (are) declared to be an unlawful meeting, and magistrates, &c. &c. are hereby required, &c. to enter into such confined places, &c. &c. to break doors, &c. if resisted, and to disperse such slaves, free negroes, &c. &c. and the officers dispersing such unlawful assemblage, *may inflict such corporal punishment, not exceeding twenty lashes, upon such slaves, free negroes, &c. as they may judge necessary for* DETERRING THEM FROM THE LIKE UNLAWFUL ASSEMBLAGE IN FUTURE." 2 *Brevard's Digest*, 254. And another section of the same act declares, "That it shall not be lawful for any number of slaves, free negroes, mulattoes or mestizoes, even in company with white persons, to meet together for the purpose of *mental instruction,* either before the rising of the sun or after the going down of the same." 2 *Brevard's Digest*, 254-5.

But besides *acts of assembly*, which in general apply to the whole territory of the particular state, many of the towns and cities are invested with authority to make *ordinances* which have the force of law within their respective corporate limits. These ordinances seldom meet the eye of the inhabitants of other

states; I find, however, in the *Port Folio for April*, 1818, *page* 325, a brief notice of one, having relation to the subject in hand, adopted by the councils of the city of Savannah, in Georgia. Probably the editor of the Port Folio copied the language of a Savannah paper, and I shall therefore transfer it without alteration. "The city has passed an ordinance, by which any person that *teaches any person of colour, slave or free, to read or write,* or causes such persons to be so taught, is subjected to a fine of thirty dollars for *each* offence; and every person of colour who shall keep a school to teach reading or writing is subject to a fine of thirty dollars, or to be imprisoned ten days and whipped thirty-nine lashes!!!" This ordinance, it will be perceived, extends its prohibitions beyond the *law of the state*, inasmuch as it places under the ban, *reading* as well as writing, and embraces not the case of the slave merely, but also that of the *free* negro.

With such legislative obstacles to his mental improvement, it ought to excite no surprise, if a slave having the ability to read or write, could not be found within a slave-holding state. But apart from these obstacles of *law*, the condition of slavery is such, that a slave capable of reading, must be, in most of the states, a prodigy indeed. His life is ordinarily passed in incessant toil. The laws, as I have already shown, secure to him no portion of time in which he may employ himself at his pleasure. He is awaked from his slumbers, at the call of his master, often before the dawn of day—he continues his heartless labour, with but slight intermissions for rest and food, till night has closed around him. Hard-worked, and scantily fed, his bodily energies are exhausted—without an instructer and without books, (for he has not the means to procure them,) he must of necessity remain for ever ignorant of the benefits of education.

IV. THE MEANS FOR MORAL AND RELIGIOUS INSTRUCTION ARE NOT GRANTED TO THE SLAVE; ON THE CONTRARY, THE EFFORTS OF THE HUMANE AND CHARITABLE TO SUPPLY THESE WANTS ARE DISCOUNTENANCED BY LAW.

One of the plain dictates of the Christian religion, is a regard for the well-being of our fellow creatures. It is, indeed, largely

insisted upon as a *duty*, both in the Old and New Testament. No believer in the Christian religion can doubt, that the knowledge of its precepts and promises will promote the happiness both here and hereafter of every accountable creature; nor will such a one deny, that a negro, though a slave, is a member of the human family—is endowed with reason—has a soul which is immortal, and must be deemed accountable unto GOD, "for the deeds done in the body." How can such a belief be reconciled with a practice which forbids to the slave access to the gospel; which, *as far as the master's power, so to do, extends*, shuts out from him the knowledge of the means of his salvation.

It has been shown, in the last chapter, that one of the means to which allusion is here made, namely, *mental instruction*, is in general entirely withheld from the slave. He cannot be expected, therefore, to learn the scriptures, except as an *auditor*. And yet in none of the slave-holding states are any facilities afforded for this purpose. No time is secured to the slave by law; no place provided where he can assemble with his fellows to hear "the glad tidings of salvation" preached.

It is idle to talk of *accompanying his master* to church—such a spectacle, I apprehend, is rarely exhibited, except *for the special convenience of the master*. The paucity of places for worship, in the slave-holding states, compared with the number of *white* inhabitants, prevents the exercise of this privilege to an extent, at all commensurate with the religious wants of the slaves.

Besides, if no other impediment existed, the rude mind of the slave could not comprehend a discourse designed for the refined taste and enlarged capacity of the master. Christianity demands that these unfortunate beings should be taught to read—that buildings should be erected for their assembling together to worship their Creator—that teachers who are willing and qualified to administer to their spiritual necessities, should be encouraged to dedicate their time and their talents to the pious service—that rest should be allowed to the slave at the seasons usually allotted among Christians for religious worship, and especially that laws should be made and *enforced* to prevent the exaction of labour

from the slave to such a degree, that his senses are overpowered by sleep, the moment his body ceases to be active.*

If the *practice* of the slave-holding states is in accordance with the *laws*, the reverse of this picture will, it is believed, be found true in most respects. In a law enacted by the state of Georgia, December 13, 1792, with the title "To protect religious societies in the exercise of their religious duties," it is required of every justice of the peace, &c. and every civil officer of a county being present, &c. &c. to take into custody any person who shall interrupt or disturb a congregation of *white persons* assembled at any church, &c. and to impose a fine on the offender, and in default of payment, he may be imprisoned, &c. &c.; yet the *same law* concludes in these words—"no congregation or company *of negroes* shall, under *pretence of divine worship*, assemble themselves contrary to the act regulating patrols." *Prince's Digest*, 342. I have not been able to discover the law here referred to as the *act regulating patrols*, but the *editor of the Digest*, whom I presume to be fully competent to resolve the difficulty, quotes the seventh section of an act passed May 10, 1770, "for ordering and governing slaves, &c." as that intended to be designated by the legislature. This section begins with a recital, "Whereas the frequent meeting, &c. of slaves under the *pretence of feasting* may be attended with dangerous consequences," and proceeds to enact, "That it shall be lawful for every justice of the peace, &c. upon his own knowledge or information received, either to go in person,

* Mr. Jefferson, in his Notes on Virginia, speaking of slaves, makes the following remarks: "In general, their existence appears to participate more of sensation than reflection. To this must be ascribed their disposition to sleep when abstracted from their diversions and unemployed in labour. An animal whose body is at rest and who does not reflect, must be disposed to sleep of course." *See Answer to Query* 14. I do not dissent from this doctrine. It is philosophically true. But with the accurate knowledge which Mr. Jefferson possessed as to the actual condition of the slave, it seems strange, that he should have omitted to include as a reason why the slave, when "abstracted from his diversions and unemployed in labour," should be disposed to sleep, the fatigue induced by the severity of his labour. The disposition to sleep which is thus indicated as characteristic of the *black*, is equally observable, as far as I am able to ascertain, among *the labouring class* of whites.

or by warrant, &c. directed to any constable, &c. to command to their assistance any number of persons as (*which*) they shall see convenient, to disperse ANY *assembly or meeting of slaves* which *may* disturb the peace or endanger the safety of his majesty's subjects, and every slave which shall be found and taken at such meeting as aforesaid, shall and may by order of such justice, immediately be corrected WITHOUT TRIAL, *by receiving on the bare back twenty-five stripes with a whip, switch or cowskin,*"* &c. *Prince's Digest*, 447. The terms of this prohibition in relation to the meeting of slaves for divine worship, are, it must be admitted, not a little enigmatical; yet, with the aid of the twenty-five lashes of the cowskin, the most stupid negro will be rendered apt enough to comprehend their meaning.

In South Carolina, by a section already in part extracted, a prohibition though not absolute in its terms, yet in effect, I suspect, it must have been nearly so, was made in 1800. The section reads thus: "It shall not be lawful for any number of slaves, free negroes, mulattoes or mestizoes, *even in company* with white persons, to meet together and assemble for the purpose of mental instruction or *religious worship*, either before the rising of the sun or after the going down of the same. And all magistrates, sheriffs, militia officers, &c. &c. are hereby vested with power, &c. for dispersing such assemblies," &c. 2 *Brevard's Digest*, 254-5. Three years afterwards, upon the petition, as the act recites, of certain religious societies, the rigour of the act of 1800 was *slightly* abated by a modification, which forbids any person, before nine o'clock in the evening, "to break into a place of meeting, wherein shall be assembled the members of any religious society of this state, *provided a majority of them shall be white persons*, or otherwise to dis-

* And while in Georgia slaves are thus discouraged from assembling together for the purpose of divine worship, the same state, in a spirit which I by no means condemn, has adopted the following as a standing rule for the government of the *penitentiary*. "It shall be the duty of the keeper, &c. to furnish them (i. e. the convicts) with such moral and religious books as shall be recommended by the inspectors—to procure the performance of *divine service* on Sundays, as often as may be." *See rule 13th for the internal government of the penitentiary of Georgia. Prince's Digest*, 386-7.

turb their devotion, unless such person, &c. so entering the said place (of worship) shall have first obtained from some magistrate appointed to keep the peace, &c. a warrant, &c. in case a magistrate shall be then actually within the distance of three miles from such place of meeting, otherwise the provisions, &c. (of the act of 1800, above cited) to remain in full force." 2 *Brevard's Digest*, 261. If this *latter* act yields to the slave a privilege in assembling for divine worship beyond what he possessed before, it must consist, it appears to me, chiefly in preventing interruptions by persons, who, acting from a sense of *official* obligation, might deem themselves compelled, by the provisions of the *former* act, to hunt out and disperse the congregations of negro worshippers wherever they might be found. For it must happen, I apprehend, *very frequently*, that the *quorum* of *white* persons cannot, with much certainty, be depended upon. And, in such case, the poor slave, disappointed in his expectations of the *quorum*, will be at once subjected to the terrible penalty of the twenty-five lashes of the cowskin on his bare back, well laid on!!

In Virginia, it will be remembered, that "all meetings, &c. of slaves, free negroes and mulattoes mixing, &c. with such slaves at any *meeting house*, &c. or any other place, &c. in the night, under any pretext whatsoever, are declared to be *unlawful assemblies*, and the civil power may disperse the same, and inflict corporal punishment on the offenders." Slaves may, however, attend at church on any day of public worship.

Mississippi has adopted the law of Virginia, with a proviso, that the master or overseer of a slave *may*, in writing, grant him permission to attend a place of religious worship, at which the minister may be white and regularly ordained or licensed, or, at least, two discreet and reputable white persons appointed by some regular church or religious society, shall attend. *Mississippi Rev. Code*, 390.

An opinion seems, at one period, to have obtained in many of the states, that by consenting to the *baptism* of his slave, the master virtually enfranchised him. To remove the pretext which was thus furnished, for withholding the administration of a rite so commonly practised among christians, the following

brief section was enacted in Maryland. "Forasmuch as many people have neglected to baptize their negroes, *or suffer them to be baptized*, on a vain apprehension that negroes by receiving the sacrament of baptism, are manumitted and set free, *Be it enacted, &c.* That no negro or negroes, by receiving the holy sacrament of baptism, is thereby manumitted or set free, nor hath any right or title to freedom or manumission, more than he or they had before, any law, usage or custom to the contrary notwithstanding. *Act of* 1715, *chap.* 44, § 23. So in the year 1711, the legislature of South Carolina, deemed a similar act necessary. "Since," according to the language of the preamble, "charity and the christian religion which we profess, oblige us to wish well to the souls of all men; and that religion may not be made a pretence to alter any man's property and right, and that no persons may neglect to baptize their negroes or slaves, or suffer them to be baptized, for fear that thereby they should be manumitted and set free, *Be it, &c. enacted*, That it shall be, and is hereby declared lawful, for any negro, or Indian slave, or any other slave or slaves whatsoever, to *receive and profess* the Christian religion, and be thereunto baptized." 2 *Brevard's Digest*, 229. The section then provides, that such profession of religion and submission to baptism, shall not be construed to effect an emancipation of any slave, &c.*

* The doubts which gave rise to these laws of Maryland, and South Carolina, probably originated in two judicial investigations which had occurred in England, a short time previously. The first of these, is reported in 3 *Modern Reports*, 120-1. (A. D. 1686-7) and is there thus stated: "Sir Thomas Grantham bought a monster in the Indies, which was a man of that country, who had the perfect shape of a child growing out of his breast, as an excrescency, all but the head. This man he brought hither, (i. e. to England) and exposed to the sight of the people for profit. The *Indian* turns *Christian* and was *baptized*, and was detained from his master, who brought a *homine replegiando*, (i. e. a writ by which his title to retain the man as property might be legally tested.) The sheriff returned, that he had replevied the body, &c.: *And then the Court of Common Pleas*, BAILED HIM." How the case was ultimately disposed of, does not appear, but the proceeding even thus far, was calculated to excite a fear, lest the profession of Christianity and the administration of baptism, might be decided to entitle the slave to the privileges of a free man.

I know of no exception to the general bearing of the foregoing laws and observations, unless the following concise enactment of the legislature of Louisiana, may be thought to form one. "It shall be the duty of every owner, to procure to his *sick* slaves, all kinds of temporal and *spiritual* assistance which their situation may require." 1 *Martin's Digest*, 610. Giving to this provision, the most favourable interpretation, it is but a kind of *death-bed* charity.

V. SUBMISSION IS REQUIRED OF THE SLAVE NOT TO THE

In 1696, The question, *whether the baptism* of a *negro slave*, WITHOUT THE PRIVITY OR CONSENT OF HIS MASTER, emancipated the slave, underwent an elaborate discussion, before the judges of the King's Bench. Owing to a misconception of the *form* of the action, a final decision was not given, and the plaintiff, being, of course, unsuccessful on that occasion, the doubts which had resulted from the former case, were strengthened rather than impaired.

The arguments of the counsel for the defendant, are sufficiently curious to deserve transcription: "Being baptized, according to the use of the church, he (the slave) is thereby made a christian, and christianity is inconsistent with slavery. And this was allowed even in the time when the Popish religion was established, as appears by Littleton, for in those days, if a villain, had entered into religion, and was professed, as they called it, the lord could not seize him; and the reason there given is, because he was dead in law, and if the lord might take him out of his cloister, then he could not live according to his religion. The like reason may now be given for baptism, being incorporated into the laws of the land; if the duties which arise thereby cannot be performed in a state of servitude, the baptism must be a manumission. That such duties cannot be performed, is plain, for the persons baptized are to be confirmed by the diocesan, when they can give an account of their faith, and are enjoined by several acts of parliament, to come to church. But if the lord hath still an absolute property over him, then he might send him far enough from the performance of those duties, viz. into Turkey, or any other country of infidels, where they neither can or will be suffered to exercise the Christian religion." In conclusion, the counsel remarks, "It is observed among the *Turks*, that they do not make slaves of those of their own religion, though taken in war; and if *a Christian be so taken, yet if he renounce Christianity and turn Mahometan, he doth thereby obtain his freedom.* And if this be a custom, allowed among infidels, then baptism, in a christian nation, as this is, should be an immediate enfranchisement to them, as they should thereby acquire the privileges and immunities enjoyed by those of the same religion, and be entitled to the laws of England." *See 5 Modern Reports*, 190-1. *Chamberline vs. Hervey,*

WILL OF HIS MASTER ONLY, BUT TO THE WILL OF ALL OTHER WHITE PERSONS.

While the institution of slavery exists, every thing like resistance to the master's lawful authority should be decisively checked. Strict subordination must be exacted from the slave, or bloodshed and murders will unavoidably ensue. The laws of the slave-holding states demand, however, a much larger concession of power to the master, than is here granted—they demand that the life of the slave shall be in the master's keeping—that the slave having the physical ability to avoid the infliction of a barbarous and vindictive punishment by his master, shall not be permitted to do so. They go indeed, *even beyond this*—they place the slave under the like restriction, in relation to *every white* person, without discrimination as to character, and with but little consideration as to motives. Thus it is enacted in Georgia—"If any slave shall *presume* to strike *any white* person, such slave, upon trial and conviction before the justice or justices, according to the directions of this act, shall for the *first* offence, suffer such punishment as the said justice or justices shall, in his or their discretion think fit, not extending to life or limb; and for the *second* offence, suffer DEATH."—*Prince's Digest*, 450. The law of South Carolina, 2 *Brevard's Digest*, 235, is in the same words, except that *death* is not made the punishment of the *second*, but of the *third* offence. In both of these states, a proviso is annexed to this law, which shows plainly, that however wanton, or dangerous may be the attack upon the *slave*, he is still compelled to submit. "Provided always, that such striking, &c., be not done by *the command, and in the defence of the person or property of the* OWNER, OR OTHER PERSON *having the care and government of such slave*, in which case, the slave shall be wholly excused, and the owner or other person, &c., shall be answerable as if the act had been committed by himself."

In Maryland, *act of* 1723, *chap.* xv. § 4, a justice of the peace, for this offence, may direct the offender's ears to be cropt—and this, though he be a *free black*. In Kentucky, the same general principle is recognized, though enforced by penalties much less severe; yet there, as in Maryland, free coloured

persons are included. "If any negro, mulatto, or Indian, bond or *free*, shall at any time, lift his or her hand, in opposition to any person, not being a negro, mulatto, or Indian, he or she so offending, shall for every such offence, proved by the oath of the party, before a justice of the peace of the county where such offence shall be committed, receive thirty lashes on his or her bare back, well laid on, by order of such justice." 2 *Litt. and Swi. Digest*, 1153. Nearly similar to this law of Kentucky, was that of Virginia, from the year 1680, to the year 1792, at which latter date, the following exception was added, "except in those cases where it shall appear to such justice, that such negro or mulatto, was *wantonly* assaulted, and lifted his or her hand in his or her defence." 1 *Rev. Code*, 426-7.

There is a section of a law in Louisiana, which, though in terms, applying to *free* persons of colour only, may be properly cited to evidence the sentiments which are entertained there on this subject. The gravity with which the strange principle it asserts, is declared, will of itself, excuse its introduction here, though not altogether congruous with the main object of this sketch.—"Free people of colour ought never to insult or strike white people, nor presume to conceive themselves equal to the whites; but on the contrary, they ought to *yield to them on every occasion*, and never speak or answer them, but with respect, under the penalty of imprisonment, according to the nature of the offence." 1 *Martin's Digest*, 640-42.

My chief objection to these laws, is, that they furnish a *pretext*, and may I not say, *an inducement* to an ignoble mind, to oppress and to tyrannise over the defenceless slave. He must patiently endure every species of personal injury, which a white person, however brutal and ferocious his disposition,—be he a drunkard, or even a maniac,—may choose to offer.

Several of the slave-holding states have adopted laws, which are highly objectionable for the reason just given. The subjoined may be taken as a specimen: "If any slave shall *happen* to be slain for refusing to surrender him or herself,

contrary to law, or in unlawful resisting any officer or *other person*, who shall apprehend or endeavour to apprehend, such slave or slaves, &c., such officer or *other person so killing such slave as aforesaid*, making resistance, shall be, and he is by this act, *indemnified* from any prosecutiou for such killing aforesaid, &c." *Maryland Laws, act of* 1751, *chap.* xiv. § 9.

And by the negro act of 1740, of South Carolina, it is declared, "if any slave, who shall be out of the house or plantation where such slave shall live, or shall be usually employed, or without some white person in company with such slave, shall *refuse to submit* to undergo the examination of *any white* person, it shall be lawful for any such white person to pursue, apprehend and moderately correct such slave; and if such slave shall assault and strike such white person, such slave may be *lawfully killed!!*" 2 *Brevard's Digest*, 231.

VI. THE PENAL CODES OF THE SLAVE-HOLDING STATES BEAR MUCH MORE SEVERELY UPON SLAVES, THAN UPON WHITE PERSONS.

A being, ignorant of letters, unenlightened by religion, and deriving but little instruction from good example, cannot be supposed to have right conceptions as to the nature and extent of moral or political obligations. This remark with but a slight qualification, is applicable to the condition of the slave. It has been just shown, that the benefits of education are not conferred upon him, while his *chance* of acquiring a knowledge of the precepts of the gospel is so remote, as scarcely to be appreciated. He may be regarded, therefore, as almost without the capacity to comprehend the force of laws, and, on this account, such as are designed for his government should be recommended by their simplicity and mildness.

His condition suggests another motive for tenderness on his behalf in these particulars. *He is unable to read,* and holding little or no communication with those who are better informed than himself; how is he to become acquainted with the *fact*, that a law for his observance has been made. To exact obedience to a law which has not been promulgated,—which is unknown to the subject of it—has ever been deemed, most unjust

and tyrannical. The reign of Caligula, were it obnoxious to no other reproach than this, would never cease to be remembered with abhorrence.

The lawgivers of the slave-holding states, seem, in the formation of their penal codes, to have been uninfluenced by these claims of the slave, upon their compassionate consideration. The *hardened convict* moves their sympathy, and is to be *taught* the laws *before* he is expected to obey them;* yet, the *guiltless slave*, IS SUBJECTED TO AN EXTENSIVE SYSTEM OF CRUEL ENACTMENTS, OF NO PART OF WHICH, PROBABLY, HAS HE EVER HEARD.

Parts of this system apply to the slave exclusively, and for every infraction a large retribution is demanded—while with respect to offences for which whites as well as slaves, are amenable, *punishments of much greater severity are inflicted upon the latter* than upon the former.

With very few exceptions, the penal laws, to which slaves *only* are subject, relate not to violations of the moral or divine laws;—positive institution, is their only sanction. Thus, if a slave is found beyond the limits of the town in which he lives, or off the plantation where he is usually employed, without the company of a white person, or without the written permission of his master, employer, &c., *any person* may apprehend him and punish him, with whipping on the bare back, not exceeding twenty lashes." 2 *Brevard's Dig.* 231. *Prince's Dig.* 447. In Mississippi, a similar punishment, by direction of a justice of the peace. *Mississippi Rev. Code*, 371. So, also, in Virginia, and Kentucky, at the discretion of the justice, both as to the imposition of the punishment, and the number of stripes.—1 *Virg. Rev. Code*, 422. 2 *Litt. and Swi. Dig.* 1150, *and see* 2 *Missouri Laws*, 741, § 2, *and ibid*, 614.

* "It shall be the duty of the keeper (i. e. of the Penitentiary,) on the receipt of each prisoner, *to read to him or her*, such parts of the penal laws of this state, as impose penalties for escape, and *to make all the prisoners* in the penitentiary *acquainted with the same.* It shall also be his duty, on the discharge of such prisoner, *to read to him or her, such parts of the said laws as impose additional punishments for the repetition of offences.*" *Rule* 12*th, for the internal government of the Penitentiary of Georgia—sec.* xxvi. *of the Penitentiary act of* 1816. *Prince's Digest*, 386.

And if a slave shall be out of the house, &c. or off the plantation, &c. of his master, &c. without some white person in company, &c. and shall refuse to submit to an examination of *any white person, &c.*, such white person may apprehend and *moderately correct* him, and if he shall assault and strike such white person, he may be lawfully killed. 2 *Brev. Dig.* 231. *Prince's Dig.* 447, § 5, *act of* 1770, *and page* 348, *No.* 43, *title, Penal laws.*

If a slave shall presume to come upon the plantation of any person, without leave in writing from his master, employer, &c. not being sent on lawful business, *the owner* of the *plantation* may inflict ten lashes for every such offence. 1 *Virg. Rev. Code*, 422-3. *Mississippi Rev. Code*, 371. 2 *Litt. and Swi. Dig.* 1150. 2 *Missouri Laws*, 741, § 3. *and see Maryland laws, act of* 1723. *chap.* 15, § 1 *and* 5.

It shall be lawful *for any person* who shall see more than seven men slaves, without some white person with them, travelling or assembled together, in any high road, to apprehend such slaves, and to inflict a whipping, on each of them, not exceeding twenty lashes a piece.* 2 *Brev. Dig.* 243. *Prince's Dig.* 454. In Delaware, more than *six* men slaves meeting

* It is with extreme regret, I have been apprized by the newspapers, that this law has been recently introduced into the Floridas, by our territorial government there. The humanity which the Spaniards manifest towards their slaves, rendered such a measure unnecessary during the many years in which these provinces were under their dominion. Scarcely is the power of our republic recognized there by the *free*, when a more galling oppression proclaims its existence to the *slave*. Well, indeed, might even the inhabitant of our slave-holding states, blush with shame, when a sense of justice wrung from him the humbling confession which he thus recorded: "The indulgent treatment of their slaves, by which the Spaniards are so honourably distinguished, and the ample and humane code of laws which they have enacted, and also *enforce*, for the protection of the blacks, both bond and free, occasioned many of the Indian slaves (i. e. of East Florida,) who were apprehensive of falling into the power of the Americans, (i. e. citizens of the United States,) and also most of the free people of colour who resided in St. Augustine, to transport themselves to *Havanna, as soon as they heard of the approach of the American authorities.*" See "*Notices of East Florida, with an account of the Seminole nation of Indians, by a recent traveller in the Province,*" page 42. From the tenor of many of his remarks, the writer is evidently an inhabitant of one of our slave-holding states.

together, not belonging to one master, unless on lawful business of their owners, may be whipped to the extent of twenty-one lashes, each. *Delaware Laws*, 104.

If a slave or Indian shall *take away* or *let loose*, any boat or canoe from a landing or other place where the owner may have made the same fast, for the *first* offence he shall receive thirty-nine lashes on the bare back, and for the *second* offence *shall forfeit and have cut off from his head* ONE EAR.* 2 *Brev. Dig.* 228. So, as to the first offence, in North Carolina and Tennessee. *Haywood's Manual*, 78, *act of* 1741, *chap.* 13.

For keeping or carrying a gun, or powder, or shot, or a *club*, or *other weapon whatsoever*, offensive or defensive, a slave incurs, for each offence, thirty-nine lashes, by order of a justice of the peace. 2 *Litt. & Swi.* 1150; 1 *Virg. Rev. Code*, 423; 2 *Missouri Laws*, 741, § 4; and in North Carolina and Tennessee, twenty lashes, by the nearest constable, *without* a conviction by the justice. *Haywood's Manual*, 521.

For having *any article* of property for sale, without a ticket of permission from his master, *particularly specifying* the same, and authorizing it to be sold by the slave, ten lashes, by order of the captain of the patrol*lers*, 2 *Litt. & Swi.* 981; and if the slave be taken before a magistrate, thirty-nine lashes may be ordered. *Ibid.* So, in North Carolina and Tennessee, *Haywood's Manual*, 529; *and see Mississippi Rev. Code*, 390.

A slave being at an *unlawful assembly*,† the captain of pa-

* To take away a canoe, &c. for the temporary accommodation of the taker, with the intention of returning it again in a few minutes, is a very common practice in countries, (such as South Carolina was, at the date of this law, i. e. 1695-6,) where, from the paucity or poverty of the inhabitants, few bridges have been erected. The offence, however, of the poor slave or Indian would be consummated even though the owner should not make the discovery, and of course suffer no inconvenience, till after the canoe, &c. had been returned.

† The augmentation of crimes, under the name of *unlawful assemblies*, is a favourite measure of despotic governments for the suppression of liberal principles. In this country, the experiment has never been tried by statutory provisions, except in reference to the black population. The reader will recollect, that in the chapter treating of education and religious privileges, several acts of the slave-holding states were given, in which these *unlawful assemblies* were spoken of. A complete enumeration of the *crimes* thus created (for all

trol*lers* may inflict ten lashes upon him. 2 *Litt. & Swi.* 981; 2 *Missouri Laws*, 741, § 2, *and ibid*, 614. If taken before a magistrate, he may direct thirty-nine lashes. 2 *Litt. & Swi.* 981.

For travelling by himself from his master's land to any other place, unless by the most usual and accustomed road, the owner of the land on which such slave may be found is authorized to inflict forty lashes upon him. *Haywood's Manual*, 518, (*act of* 1729.) For travelling in the night, without a pass, forty lashes, *ibid;* or being found in another person's negro quarters or kitchen, forty lashes, *ibid; and every negro in whose company such vagrant slave shall be found, incurs also twenty lashes. Ibid.*

Any person may lawfully kill a slave who has been *outlawed** for running away and lurking in swamps, &c. &c. *Haywood's Manual*, 521-2, (*act of* 1741.)

For hunting with dogs, in the woods even of his master, the slave is subjected to a whipping of thirty lashes. *Haywood's Manual*, 524, (*act of* 1753.)

A slave *endeavouring*† to entice another slave to run away,

of which slaves are severely punished) would swell this branch of the subject beyond its appropriate limits.

* Such was once the law of Virginia also. "In 1705, two justices of the peace were authorized, by proclamation to *outlaw* runaways, who might thereafter be *killed* and destroyed by any person whatsoever, by *such ways and means* as he might think fit, without accusation or impeachment of any crime for so doing." Speaking of this law and some others of a kindred nature, Judge Tucker, professor of law in the university of William and Mary, Virginia, observes—"Such are the cruelties to which a state of slavery gives birth; such the horrors to which the human mind is capable of being reconciled by its adoption." And, again, says the same respectable writer—"In 1772 some restraints were laid upon the practice of *outlawing* slaves; requiring that it should appear to the *satisfaction* of the justices, that the slaves were out-lying and *doing mischief. These loose expressions of the act left too much in the discretion of men not much addicted to weighing their import.* In 1792, every thing relative to the outlawry of slaves was *expunged* from our code, and *I trust will never again find a place in it.*" *See Appendix to Blackstone's Commentaries, second part, page* 56-7. How long will it be before such sentiments prevail in North Carolina?

† The original section creating this *crime* was in these words: "Every slave who shall endeavour to delude or entice any slave to run away and leave this province, every such slave and slaves, and his and their accomplices, aiders and

if provisions, &c. be prepared for the purpose of aiding in such running away, shall be punished with DEATH. 2 *Brevard's Digest*, 233 & 244. And, a slave who shall aid and abet the slave so endeavouring to entice another slave to run away, shall also suffer DEATH. *Ibid.*

If a slave harbour, conceal or *entertain* another slave being a runaway, in South Carolina and Georgia, he is subjected to corporal punishment, to any extent not affecting life or limb. 2 *Brevard's Digest*, 237; *Prince's Digest*, 452. In Maryland, thirty-nine stripes is the penalty for harbouring *one* hour. *Act of* 1748, *chap.* 19, § 4.

A slave for being on *horseback* without the *written* permission of his master, incurs twenty-five lashes, 1 *Martin's Digest*, 622; *for keeping a dog*, the like punishment, 1 *Rev. Code*, (*Mississippi*) 379; *for killing a deer*, though by the command of his master, overseer, &c. unless such command can be proved by a ticket in *writing*, twenty lashes, 2 *Brev. Dig.* 246; "*for being guilty of rambling, riding or going abroad in the*

abettors, shall, upon conviction as aforesaid, suffer death." 2 *Brevard's Digest*, 233, *act of* 1740. After an experiment of eleven years' duration, the legislature relented so far as to declare, "That whereas by, &c. of the act entitled, &c. it is (among other things contained) enacted, 'That every slave who shall endeavour to delude or entice any slave to run away and leave this province, shall upon conviction suffer death,' which is a punishment too great for the nature of the offence, as *such offender might afterwards* alter his intentions, Be it therefore enacted, That such part of the said paragraph as relates only to slaves endeavouring to delude or entice other slaves to run away and leave this province, shall not operate or take effect, unless it shall appear that such slave (so endeavouring to delude or entice other slaves to run away and leave this province) shall have actually prepared provisions, arms, ammunition, horse or horses, or any boat, canoe or other vessel *whereby their intention shall be manifested.*" 2 *Brev. Dig.* 244, *act of* 1751. It is hardly necessary to remind the intelligent reader, that the *principle* upon which the act of 1740 was founded, is retained in the amendment of 1751. The *endeavour* on the part of a slave to entice another to run away, is, in both laws, regarded as a *crime worthy of death.* What shall constitute the *evidence* of this *endeavour*, is defined in the amendment, namely, "the preparing provisions, &c. *whereby the intention shall be manifested.*" And this is the only melioration of a law, which it is acknowledged, in the same breath, imposed a punishment too severe for the offence!! And such is still the law, after the lapse of three-fourths of a century.

night, or riding horses in the day time without leave, a slave may be whipt, *cropt,* or branded on the cheek with the letter R, or otherwise punished, *not extending to life,* or so as to render him unfit for labour." *Act of Maryland of* 1751, *chap.* 14, § 8.

If a slave *beat the Patuxent* river, (which is sometimes done for the purpose of taking fish) ten lashes. *Maryland Laws, act of* 1796, *chap.* 32, § 3. And if he *place a seine* across the Transquakin and Chickwiccomico creeks, a justice of the peace may order him to receive *thirty-nine lashes. Ibid. act of* 1805, *chap.* 31, § 3.

In conclusion of this branch of the present section, may be added a recent act of assembly of the state of Mississippi, of great cruelty, relating to runaway slaves. It is entitled an act to *amend* an act, entitled "An act to reduce into one, the several acts concerning slaves, free negroes and mulattoes," and may be found among the laws of the session of 1824. The first section is in these words: "When any slave or slaves shall be committed to any jail in this state, as a runaway or runaways, it shall be the duty of the jailer of said county to interrogate him, her or them as to his, her or their owner or owners' name or names and place of residence, and the account thus received, together with a description of the slave or slaves, the jailer shall forthwith transmit *by mail* to the owner or owners named by the slave; and if the statement made by said slave or slaves shall prove to be false, it shall be the duty of the jailer, without delay, to give the said slave or each of them twenty-five lashes, well laid on, and interrogate him, her or them anew, and transmit the intelligence obtained, together with a description as aforesaid, to the owner or owners again named, and whip as before directed, if a second false account is given; *and, so on, for the space of six months,* it shall be the duty of the jailer alternately to interrogate and whip as aforesaid, whenever the said slave or slaves may give a false account of his, her or their owner or owners' name and place of residence."

To appreciate fully the cruelty of this law, it should be noticed, that its entire administration, inquisitorial and punitive, is confined to a single person,—the jailer—who, from the nature

of his office, must have the slave wholly within his power; and yet for the abuse of this power, in a case within the meaning of the act, he may be regarded as altogether irresponsible to any one. Without any design on the part of the slave, either to pervert or to conceal the truth, it is highly probable that his statement will, in many instances, be false, and in many more *appear* to be so. For the state of Mississippi is, as to the greater part of it, uncultivated and uninhabited; it is divided into but few counties; the number of post offices which have been established there is very small, and the names of the *proper post town* must be frequently unknown even to *white* inhabitants, whose means of information are vastly superior to what the slave possesses. The master's place of residence, which is mentioned in the act, may be very remote from the post office, and should *it* be known to the slave, would afford but little assistance to the jailer, as to the *endorsement* of his letter to the master. As overseers are usually employed on plantations, it will not be thought strange, that the ignorant slave should not be acquainted with his master's name, especially his *christian* name. Proper names, both of men and places, are frequently spelled very differently from what the pronunciation would teach; and jailers are not ordinarily selected for good scholarship, or extensive information. Added to the whole, it should be recollected, that miscarriages of letters, even when carefully and correctly endorsed, occur not seldom, from the ignorance or inattention of post-masters. Notwithstasding all these considerations, the jailer may, *in his discretion*, determine when the slave's statement is false, and having inflicted the legal measure of flagellation, may repeat the same punishment, again and again, for the space of six months—or, to use the language of the act, so characteristic of that callousness to the slave's sufferings, which familiarity with cruelty begets—"and so on, for the space of six months, it shall be the duty of the jailer, alternately to interrogate and whip as aforesaid."

I come now to the exemplification of the second branch of this chapter, which may be stated in the following proposition: THE PENAL CODE OF THE SLAVE-HOLDING STATES INFLICTS

PUNISHMENTS OF MUCH GREATER SEVERITY UPON SLAVES THAN UPON WHITE PERSONS CONVICTED OF SIMILAR OFFENCES.

In treating of this proposition, I shall, in the first place, exhibit synopses of the penal codes of the states of Virginia and Mississippi, so far as may be necessary in order to comprise the offences which are punished *by death* in those states. This selection is recommended by the considerations, that one of these states is an *old*, and the other a *new* state—that the codes of both have been recently *revised*—and in some measure, by their relative geographical positions. Virginia will be first noticed. In this state, murder in the *first degree*—arson, at common law—wilfully setting fire to a house in a *town*, or aiding, abetting, assisting, counselling, hiring or commanding any person to do the same, are crimes severally punishable with death, whether the offender be white or black, bond or free. 1 *Rev. Code*, 616 & 587.*

The following table will place this subject in a clearer light; the reader bearing in mind, that the *numeral signs* PREFIXED *to the crimes* named in the *first* column of this table, are not designed to convey the idea, that they are *severally* EXPONENTS *of one crime* ONLY; but are used, *in connexion with similar numeral signs, occupying similar places in the second and third columns of the table*, merely as a convenient means of indicating *the correspondence of the crimes, and their specific punishments*. So far from having the former signification, it will be found, that the *table* comprises *at least* 71 crimes for which SLAVES are CAPITALLY punished, though *in none of these* are *whites* punished in a manner more severe than *imprisonment in the penitentiary*. Thus, No. 3 contains *at least* FIVE crimes; No. 11, TWO; No. 13, *at least* FOUR; No. 14, *at least* THIRTY; No. 15, *at least* FIVE; No. 16, *at least* TWELVE.

* As a *general remark* on the subject of the penal code of this state, it may be stated, that a conviction for a felony does not work a forfeiture of goods. 1 *Rev. Code*, 613.

CRIME.	*Punishment of Slaves.*	*Punishment of White Persons.*
1. Murder, in the *second* degree.	1. Death.* 1 *Rev. Code*, 427.	1. *Imprisonment* for not less than five, nor more than eighteen years. 1 *Rev. Code*, 617.
2. *Being accessary to arson.*	2. Death. 1 *Rev. Code*, 587.	2. Imprisonment for not less than ten, nor more than twenty-one years. 1 *Rev. Code*, 587.
3. Wilfully setting fire to a barn, a stable, corn house or *other* house, or for advising, counselling, aiding, abetting or assisting any person, whether bond or free, in the perpetration of either of these offences.	3. Death. 1 *R. C.* 588.	3. Payment of the value of the property burnt or destroyed, and imprisonment for not less than *two*, nor more than five years. 1 *R. C.* 587.
4. Wilfully setting fire to any stack or cock of wheat, barley, oats, corn or other grain, hay, straw or fodder, or advising, counselling, aiding, abetting, assisting in the perpetration of either of these offences.	4. Death, *within* the benefit of clergy. 1 *R. C.* 587.	4. Same punishment as No. 3. 1 *R. C.* 587.
5. Feloniously breaking, either in theday or night, into any warehouse or storehouse, &c. taking money, goods, &c. of the value of four dollars, or aiding, assisting, &c. &c.	5. Death. 1 *R. C.* 588.	5. Imprisonment for not less than one, nor more than ten years. 1 *R. C.* 588.
6. Stealing hogs, *third* offence.	6. Death. 1 *R. C.* 574.	6. Imprisonment for not less than five, nor more than ten years. 1 *R. C.* 617-18.
7. Embezzling a record of a court.	7. Death. 1 *R. C.* 572.	7. Imprisonment for not less than one, nor more than ten years. 1 *R. C.* 572.
8. Horse-stealing.	8. Death. 1 *R. C.* 575.	8. Restoration of property stolen, and imprisonment for not less than five, nor more than ten years. 1 *R. C.* 575.
9. Harbouring or concealing a horse thief, with knowledge of the theft.	9. Dath, *within* clergy. 1 *R. C.* 576.	9. Imprisonment for not less than six *months*, nor more than four years. 1 *R. C.* 575-6.
10. Counterfeiting or *assisting* to counterfeit any coin, or the note of a chartered bank.	10. Death. 1 *R. C.* 581.	10. Imprisonment for not less than ten, nor more than twenty years. 1 *R. C.* 578.
11. Passing, or attempting to pass, a counterfeit coin or note, knowing the same to be counterfeit.	11. Death, within Clergy, 1 *R. C.* 581.	11. Same as No. 10. 1 *R. C.* 578.

* Whenever *death* is noted as the punishment in this table, it is to be understood *without benefit of clergy*, unless otherwise mentioned; and *imprisonment* simply, means *at hard labour in the penitentiary.*

CRIME.	*Punishment of Slaves.*	*Punishment of White Persons.*
12. Counterfeiting the seal of any incorporated bank, &c.	12. Death, within Clergy, 1 *R. C.* 581.	12. Imprisonment for not less than five, nor more than fifteen years. 1 *R. C.* 579.
13. Forging, or altering, or assisting, or abetting, &c. &c. to forge a post note, or check, on an incorporated bank.	13. Death, within Clergy, 1 *R. C.* 581.	13. Imprisonment for not less then two, nor more than ten years. 1 *R. C.* 579.
14. Forging, or altering, or assisting so to do, a land warrant, or any paper bill of credit of the United States, or, a certificate or manifest or receipt of a public inspector of flour, hemp, tobacco, &c., or a loan officer's certificate, or a certificate of the stock of the State, or of the United States; or of any bank, or any other chartered company, or any vther certificate, issued under the authority of the State, or of the United States, or any record of a court, or public officer, or of any body politic, or corporate, &c. &c. &c.	14. Death, within Clergy, 1 *R. C.* 581.	14. Imprisonment for not less than one year, nor more than ten years. 1 *R. C.* 580.
15. Forging, or altering, or erasing, or procuring, to be forged, altered, or erased, or willingly assisting, &c. in forging, &c. any stamp, brand, or mark of an inspector of tobacco, with intent to defraud, &c.	15. Death, within Clergy, 1 *R. C.* 581.	15. Same as No. 14.
16. Cutting off the tongue of another, or disabling the same, by clipping, biting or wounding, putting out an eye, slitting, cutting off or biting off the nose, ear or lip; disabling or disfiguring the nose, ear or lip, or, disabling, by wounding any limb or member of another; shooting or stabbing, with intent to maim, disfigure, &c.	16. Death, within Clergy, 1 *R. C.* 582.	16. Imprisonment for not less than one year, nor more than seven years, and liable to the party injured in an action for damages. 1 *R. C.* 582.
17. Rape on a white woman.	17. Death, 1 *R. C.* 585.	17. Imprisonment for not less than ten, nor more than twenty-one years. 1 *R. C.* 585.
18. *Attempting* to commit a rape on a white woman.	18. Death—act of Assembly of 1823, chap. 34, § 3.	18. Not a statutable offence, but punishable as an assault and battery, according to the common law, which is fine and imprisonment, (not at hard labour,) at the discretion of the court.
19. Burglary.	19. Death—*see No. 5.*	19. Imprisonment for not less than five, nor more than ten years, and restitution of property, when any has been taken. 1 *R. C.* 617.

The penal code of Mississippi, though less sanguinary than that of Virginia, yet, as an illustration of *inequality*, with respect to the punishments imposed upon free white persons and slaves, it may be properly cited. The following crimes* are in that state, punished with death, whether the perpetrators are slaves, free negroes, or white persons: 1. Murder—2. Robbery—3. Rape—4. Burglary—5. Wilfully burning a dwelling house, a store, a cotton house or gin house, or any other out house or building, adjoining to a dwelling house or store—6. Horse stealing, *second* offence—7. Forgery—8. Being accessary *before* the fact to Rape—9. Being accessary before the fact to Arson, (as before defined,)—10. Being accessary before the fact to Robbery—11. Being accessary before the fact to Burglary—12. For rescuing a person convicted of a capital offence.

But with respect to a large catalogue of other offences, it will be seen by the subjoined table, that a wide difference is made, according as the offender is a slave, or free white person.

* The crime of High Treason, being inapplicable to the condition of a slave, is purposely omitted.

	CRIME.	*Punishment of a Slave.*	*Punishment of White Persons.*
1.	Wilfully burning a barn.	1. Death,* *R. C.* 381.	1. Imprisonment not exceeding six months and paying damages. *Rev. Code*, 298.
2.	Wilfully burning a stable.	2. Death, *ibid.*	2. Same punishment as No. 1, ibid.
3.	Atttempting to commit Murder.	3. Death, *ibid.*	3. A fine, at the discretion of the court, and imprisonment for not exceeding one year, and the exaction of surety of the peace.† *R. C.* 297.
4.	Atttempting to commit Rape.	4. Death, *ibid.*	4. Same as No. 3. *R. C.* 297.
5.	Atttempting to commit Burglary.	5. Death, *ibid.*	5. Same as No. 3. *ibid.*
6.	Atttempting to commit Robbery.	6. Death, *ibid.*	6. Not crimes either at common law, or by statute.
7.	Attempting to burn a dwelling house.	7. Death, *ibid.*	7.
8.	Attempting to burn a store.	8. Death, *ibid.*	8.
9.	Attempting to burn a cotton house adjoining a dwelling house or store.	9. Death, *ibid.*	9.
10.	Attempting to burn a gin house adjoining a dwelling house or store.	10. Death, *ibid.*	10.
11.	Attempting to burn any other out house or building adjoining a dwelling house or store.	11. Death, *ibid.*	11.
12.	Attempting to commit horse stealing, *second* offence.	12. Death, *ibid.*	12.
13.	Attempting to commit Forgery.	13. Death, *ibid.*	13.
14.	Being accessary *before* the fact to forgery.	14. Death, *ibid.*	14. Not provided for by statute.
15.	Being accessary *before* the fact to stealing a freeman.	15. Death, *ibid.*	15.
16.	Being accessary *before* the fact to stealing a slave.	16. Death, *ibid.*	16.
17.	Being accessary *before* the fact to stealing a horse, *second* offence.	17. Death, *ibid.*	17.

* The Benefit of Clergy is abolished by express law of this State, in all cases. *Revised Code*, 308.
† This is, in fact, the punishment of an offence better defined, i. e. an *assault* with intent to commit murder.

	CRIME.	*Punishment of Slaves.*	*Punishment of White Persons.*
18. 19.	Being accessary *before* the fact to the burning of { a barn. a stable.	18. 19.	18. 19. } Same punishment as No. 1.
20.	Being accessary *after* the fact to { Murder.	20.	20.
21.	Rape.	21.	21.
22.	Robbery.	22.	22.
23.	Burglary.	23.	23. } A fine not exceeding 300 dallars, and may, at the discretion of the court, receive 39 lashes. *Rev. Code*, 304.
24.	Forgery.	24.	24. Not provided for by statute.
25.	Horse stealing, *second* offence.	25.	25.
26. 27.	stealing { a free person. a slave.	26. 27.	26. 27. } Same as No. 20, 21, 22 & 23. *R. C.* 304.
28.	burning { a dwelling house.	28.	28.
29.	a store.	29.	29.
30.	a cotton house.	30.	30.
31.	a gin house.	31.	31. } Not provided for by statute.
32.	any out house or building.	32.	32.
33.	a barn.	33. } Death. *R. C.* 381.	33.
34.	a stable. }	34.	34.
35.	Manslaughter of any free person.	35.	35. Fine and imprisonment at the discretion of the Court, and being branded on the hand with the letter M.
36.	Maiming a free white person.	36.	36. Fine, not exceeding one thousand dollars—standing in the pillory for two hours per day, for a term not exceeding three days.
37.	Preparing for, or administering any medicine to, any person with an intent to kill.	37.	37. Not provided for by statute.
38.	The perpetration of a second* offence, in all felonies not punishable with death for the first offences.	38.	38. No distinction is in general made in the punishment of this class of offences, when committed by white persons, between the first and second offences.

* This definition comprehends several offences—as grand larceny, petit larceny, &c.

It would enlarge this chapter beyond its proper limits, to furnish *in extenso*, a similar view of the punishment of offences, in each of the slave-holding states. I shall content myself, therefore, by indicating the difference which is made, in the remaining states, as to the severity of the punishments, to which slaves and white persons are severally subjected, in a more general manner.

The penal codes of *Tennessee* and *Missouri*, are, compared with those of the other slave-holding states, distinguished for mildness, as respects the punishment of slaves. In *Tennessee*, the act of November 8, 1819, *chap.* 35, has reduced the number of capital felonies, when perpetrated by this unfortunate class of persons, to *five*. It is in these words: "*Murder*, *arson*, *burglary*, *rape* and *robbery*, shall, when committed by a slave or slaves, be deemed *capital* offences, and be punished *with death*, and all other offences shall be punished as before; Provided, *that the punishment in no case, shall extend to life or limb*, EXCEPT IN THE CASES ABOVE ENUMERATED." Not having in my possession, any part of the laws of this state, *except the slave code*, I am not able to say, for how many and for what offences, whites suffer death there.

In *Missouri*, *capital* offences, committed by slaves, are nearly as few in number as in Tennessee. But *six*, are thus punished —1, murder—2, arson—3 and 4, *preparing* or *administering* medicine, without his or her master's consent, &c., and when it cannot be shown to have been prepared, or administered, without an evil intent—5, conspiracy to rebel, and 6, a conspiracy to murder any person, in furtherance of such conspiracy to rebel, and by an *overt* act, attempting to execute such conspiracy. 1 *Missouri Laws*, 312. Treason and murder, when the offenders are *whites* are *capital*. Arson, by a white, is punished with imprisonment for not less than one year, nor more than seven years. For assaulting his master, a slave, on conviction before a justice, incurs but thirty-nine stripes, *ibid*, 309—though there can be no doubt, as to the master's power, to inflict as many more, as he may think fit, without the interposition of the civil authority. In general, it will be seen, the laws of this state, are unusually humane. Yet, under the fol-

lowing section of a law, passed July 4, 1825, great cruelty *may* be legally practised: "For all other offences, (except the above designated ones,) they (slaves,) shall be punished, at the *discretion* of the court, before whom the conviction shall be had, but no part of the punishment shall be fine or imprisonment, but in lieu thereof, the court may punish by *stripes at their discretion.*" 1 *Missouri Laws*, 312-13.

In *Kentucky*, whites forfeit life for four crimes only,* viz. 1, Murder—2, wilfully burning the penitentiary—3, being accessary thereto *before* the fact—4, the carnal abuse of a female child under ten years of age. 2 *Litt. & Swi.* 1006–1009. Slaves meet a similar punishment for *eleven* crimes. These are 1, Murder—2, arson—3, rape, on a white woman—4, robbery—5, burglary—6, conspiracy to rebel—7, administering poison with an intent to kill—8, manslaughter—9, *attempting* to commit a rape on a white woman—10, shooting at a *white* person with an intent to kill—11, wounding a white person with an intent to kill. *See* 2 *Litt. & Swi.* 1160-1-4.

All other offences, when perpetrated by slaves, are punishable with whipping only, not exceeding thirty-nine lashes, *except for advising the murder* of any person; for this offence one hundred lashes are authorized to be given, *ibid*, 1161-2.

Capital felonies abound in *South Carolina.* White persons suffer death there for *twenty-seven* offences; in *twenty-three* of which the Benefit of Clergy is not allowed. Slaves incur a similar fate for *thirty-six* offences. From most of these also, the Benefit of Clergy has been taken away. Simple larceny, to the value of one dollar and seven cents, whether perpetrated by a white person or by a slave, is a *capital* felony, without the benefit of clergy!!† *See James Digest, title, crimes and misdemeanors.*

* In this state, the Benefit of Clergy is taken away *entirely*, as to *white* persons. 2 *Litt. & Swi.* 985. Blacks and mulattoes, whether bond or free, are allowed a privilege *somewhat* resembling it, i. e. a commutation of capital punishment for "such corporal punishment short of life, as the court may direct." 2 *Litt. & Swi.* 1154.

† A distinction is made, by *express law*, in South Carolina, between males and females, convicted of *clergyable* offences. Both are to be marked in the

In *Georgia*, exclusively of High Treason, whites are punished capitally for three crimes only. Slaves, *for at least** nine. All other offences, committed by a slave, either against persons or property, or *against any other slave or person of colour*, to use the phraseology of the law, may be punished at the discretion of the court, before whom such slave may be tried,—the court keeping in view the principles of humanity in passing sentence, and in no case, extending the punishment to life or limb. *Prince's Digest*, 461. *Act of December* 16, 1816.

Haywood's Manual, which purports to be a complete digest of the laws of North Carolina, which were in force at the date of its publication, in 1818, contains no *general* penal code. I am, for the most part, unable to ascertain from it, whether crimes committed by whites, are at all punishable in that state. And in reference to slaves, with the exception of offences already noticed, for which whipping is commonly directed; some barbarous enactments to invite and sanction the murder of this defenceless class of beings, together with a few authorised sanguinary expiations of minor offences, conclude all the information which is to be derived from this source. Thus—a slave *outlawed* for running away, lurking in swamps, and doing mischief, may be *lawfully killed by* ANY PERSON. *Haywood's Manual*, 521.

hand, upon the brawn of the left thumb, with a *burning-hot* iron, having a Roman M or T upon it, according to the nature of the crime. But, a *male* is discharged *without further* punishment,—a *female*, may be *whipped, placed in the stocks, or imprisoned for the space of a year afterwards*, at the discretion of the court. *James Digest*, 97 & 99.

* I have used the words, *at least*, in this place, inasmuch as *arson*, which, in the enumeration of the *nine* offences I have given for which slaves are capitally punished, is ranked as but *one* offence, comprehends, according to the definition in the Georgia Code, a *considerable number, provided the offender be a slave.* The language of the code is, "arson is the malicious and wilful burning of the house or *out* house of another." *Prince's Digest*, 351. An *out house*, is a term of very loose and *extensive* import. For any such burning, a slave is put to death. But it is only for the wilful and malicious burning or setting fire to, or attempting to burn a house in a *city*, *town* or *village*, that a white person is similarly punished. *ibid.*

So to kill a slave, if the killing be done, by a white person, *in an effort to take from the slave any arms or ammunition, which he is by law prohibited from keeping*—or, if a *runaway* slave be *killed* in the *endeavour to apprehend him*—or, if a slave shall *happen* to die under correction, by order of the County Court,—the homicide in each of these cases, is justifiable. *See Haywood's Manual*, 522. For offering a forged pass, &c. any corporal punishment, not extending to life, may be inflicted. *ibid*, 531.

[A slave, convicted a *second* time, of killing a horse, or any cattle, or a *hog*, suffers death. *ibid*, 91. So, if he *misbrand* or *mismark* any of these animals—death is the penalty, *ibid.*

This last offence, when committed by a white person, is punished by a *fine* of ten pounds, *proclamation* money, over and above the value of the animal misbranded or mismarked. *ibid.**]

Of the spirit which *once* breathed in Maryland, against negroes, the reader will be instructed, by an act passed in 1729. (*chap.* iv.) in the following words. "Whereas several petit treasons and cruel and horrid murders have been lately committed by negroes; which cruelties they were instigated to commit, and hereafter may be instigated to commit, with the like inhumanity, because they have no sense of shame, or apprehension of future rewards or punishments; and that the manner of executing offenders, prescribed by the laws of England, is not sufficient to deter a people from committing the greatest cruelties, who only consider the rigour and severity of punishment; Be it enacted, &c., that when any negro or other slave, shall be convicted by confession or verdict of a jury, of any petit treason or murder, or wilful burning of dwelling houses, it shall and may be lawful for the justices before whom such conviction shall be, to give judgment against such negro or other

* An act of assembly, passed in 1822, *chap.* xxvii. provides, "that *any person* who shall knowingly, alter or deface the mark or brand of any other person's neat cattle, sheep or hog, or shall knowingly mismark or brand any unbranded or unmarked neat cattle, sheep or hog, not properly his own, with an intent to defraud any other person, such person or persons, on conviction, in a Court of Record, shall be liable to corporal punishment, in the same manner as on conviction of petit larceny." The same act repeals the laws in the text, comprised *within brackets*.

slave, *to have the right hand cut off, to be hanged in the usual manner, the head severed from the body, the body divided into four quarters, and the head and quarters set up in the most public places of the county where such fact was committed!!* The barbarous provisions of this law, it will be seen, were not made *compulsory* with the justices before whom the conviction might take place, but were entrusted to their *discretion.* And, as "the declaration of rights" prefixed to the constitution of Maryland, contains the following, among other just principles, "That sanguinary laws ought to be avoided, as far as is consistent with the safety of the state, and no law to inflict *cruel* and unusual pains and penalties ought to be made, in any case or at any time hereafter," no Justice, I presume, would venture, in the exercise of his *discretion,* to give in his sentence, full scope to the savage power confided to him. Yet it cannot but move our wonder, that the act itself has not been annulled. The last AUTHORIZED edition of the laws of this state, which I have examined, comprises it among the laws still in force.

It is apparent, from the views given in this chapter, that slaves offending against the laws are subjected *chiefly* to two species of punishment—*whipping and death.* Cropping and the pillory are seldom directed, unless in *conjunction* with whipping. In several of the states, *transportation* is authorized, upon certain conditions, as a commutation for the sentence of death. *See* 1 *Virg. Rev. Code,* 430; *Haywood's Manual,* 544; *Maryland Laws, act of* 1809, *ch.* 138, § 9, *and act of* 1819, *ch.* 159. *Putting in irons,* and thus made to labour for his master, is practised in Louisiana. 1 *Mart. Dig.* 688. As a mode of SECURING the person of a slave labouring under an accusation of crime, *previous to his trial,* from necessity, *imprisonment**

* The following provision is contained in a recent act of the legislature of *Virginia:* "*Whenever the master or owner of any slave shall desire to confine him in the jail of any county or corporation within this commonwealth,* it shall be lawful for any justice of the peace, in such county or corporation, upon application of such master or owner or his agent, to grant a warrant to the jailer, authorizing him to receive such slave into custody and to confine him in said jail, *provided,* such justice be of opinion that such slave may be so confined

is resorted to. But as a *punishment after conviction*, except in the state of *Louisiana*, where the laws have in *some* measure recognised its adoption, it appears to be utterly unknown. In an act of assembly of this last mentioned state, juries convoked for the trial of a slave on a charge *not capital*, may direct the slave to be imprisoned *not exceeding eight days*. 1 *Martin's Digest*, 688, *act of March* 19, 1816. *Imprisonment for life* is mentioned several times in the laws of the same state, as a known punishment for slaves; yet for what offences, and under what circumstances it is authorized, I have not been able to ascertain. *See ibid.* An act of assembly, posterior in point of time to the publication of the work just cited, vests the power in the governor and senate to *commute* the punishment of *death* into a *lesser* punishment in favour of slaves, upon the recommendation of the judge and jury by whom the offender has been tried, if the circumstances of the case shall be such as may be thought to entitle him to such commutation; and among these *lesser* punishments, perpetual *imprisonment* is named. *Act of March 5*, 1823. Maryland, Virginia, Kentucky and Georgia, have introduced the system of *penitentiary* confinement, as means for the reformation and punishment of criminals. Yet the first three* of these states have *expressly* restricted the application of this system to *white* convicts; and the like distinction is so strongly *implied* by the law of Georgia, that I have no doubt it exists there also.

This exclusion of imprisonment as a mode of punishment for slaves, has led, it is believed, to the multiplication of *capital*

without public inconvenience," &c. The duration of this confinement is made to depend on the master's will, unless the public convenience should require the slave's discharge. *Act of Assembly of February 25th*, 1824, § 4, entitled "An act concerning servants and slaves." A law of *Missouri*, nearly similar to this, though *less exceptionable*, I have noted in a previous page. The remarks there made may, with equal appositeness, be repeated here. *See supra, page* 43.

* In Maryland, by an act passed January 6, 1810, (*act of November session*, 1809, *chap.* 138,) slaves convicted of certain offences might be sentenced to confinement in the penitentiary. But, at a subsequent period, this provision was repealed. *Laws of Maryland, of December session*, 1818, *chap.* 197, § 1.

offences as to this class of people. *Dismemberment*, as it would in general diminish the value of the slave, and partakes so largely of savage ferocity, has probably at no period been *much* tolerated. For a solitary, offence, however, it is authorized in Missouri. 1 *Missouri Laws*, 312.

Corporal punishment, not extending to life or limb, (which is another name for excessive whipping,) though sanctioned in several cases, must be open, in a great degree, to the objections which apply to *dismemberment*. It is presumable, on this account, that it is not frequent in practice. In general, therefore, death has been resorted to, as the only punishment, according to the sentiments of slave-holders, adapted to a state of slavery, for all offences except those of a trivial nature.

VII. SLAVES ARE PROSECUTED AND TRIED UPON CRIMINAL ACCUSATIONS IN A MANNER INCONSISTENT WITH THE RIGHTS OF HUMANITY.

Trial by jury has been frequently and justly extolled as the palladium of civil liberty. As it existed in full vigour in England, when the settlement of this country began, by the principles of colonization it was imported by our ancestors, as part of the laws and customs of the mother country applicable to their new situation. But African slavery having originated in the foulest iniquity, it was natural that it should be sustained and perpetuated by consentaneous means. Accordingly, in but few, if in any, of the colonies, was trial by jury allowed to the slave. And thus it happens, that though the constitution of the United States, as well as most* of the constitutions of the individual members of the confederacy, secure to the citizen, impeached of crime, the benefit of this institution, yet, as this has been done, through the medium of language, which does not embrace the case of the slave, *but has reference to precedent usage*, he is left in this particular, in the like condition of exclusion, in which he stood under the colonial governments.

A considerable diversity, however, obtains on this subject, in the different states. In *Kentucky*, a slave charged with an

* The constitution of Virginia contains no provision as to trial by jury.

offence punishable *with death*, is entitled to the benefit as well of the *grand* as of the *petit* jury. He is to be "tried and prosecuted in the circuit courts only, and in the same manner, and under the same forms of trial, as are by law prescribed in the cases of free persons." *Act of Feb.* 10, 1819, 2 *Litt. & Swi.* 1164—.In *Georgia*, on *capital* charges, no provison is made for the interposition of the *grand* jury; yet the right of trial by a *petit* jury, with the privilege to the *master* of challenging seven persons on behalf of the slave, is expressly directed and sanctioned. *Prince's Digest*, 459.—By the constitution of *Mississippi*, it is declared, "In the prosecution of slaves for crimes, no inquest by a *grand* jury shall be necessary, but the proceedings in such cases shall be regulated by law, except that in *capital* cases, the general assembly *shall have no power* to deprive them of an impartial trial by a *petit* jury."—The act of assembly, which has been passed to carry into effect this article of the constitution, grants to the slave, on his trial for a *capital* offence, nearly all the advantages of a petit jury (except as to witnesses) which are possessed by whites. *Mississippi Rev. Code*, 382.—*Article* 3, § 27, *of the constitution of Missouri*, is in these words: "In prosecutions for crimes, slaves shall not be deprived of an impartial trial by jury; and a slave convicted of a *capital* offence shall suffer the same degree of punishment, and no other, that would be inflicted on a free white person for a like offence; and courts of justice before whom slaves shall be tried, shall assign them counsel for their defence."—In the constitution of *Alabama*, a provision is inserted, denying to the general assembly power to deprive slaves of an impartial trial by a *petit* jury, when prosecuted for a crime "*of a higher grade than petit larceny.*" *See constitution, title slaves*, § 2.—A declaration is comprised in the bill of rights which forms a part of the constitution of *Maryland*, (and also in the constitutions of several of the other states,) of the following tenor: "That in all criminal prosecutions *every man* hath a right to be informed of the accusation against him; to have a copy of the indictment or charge in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses

for and against him, on oath; and, *to a speedy trial* BY AN IMPARTIAL JURY, *without whose unanimous consent he ought not be found guilty.*" *Decl. of Rights*, 19, *and see Const. of Alabama, title Decl. of Rights*, 10; *ibid, of Mississippi, tit. ibid*, 10; *ibid of Missouri, ibid*, 9, *&c. &c.* A citizen of one of the free states would unhesitatingly construe this declaration to be a constitutional guaranty to the slave of the *trial by jury* upon every criminal accusation. In the slave-holding states, however, it has no such meaning. By reference to the constitutions of Alabama, Mississippi and Missouri, as above noted, the same provision will be found embodied there, in terms equally strong and explicit—indeed, in nearly the same as those contained in the constitution of Maryland as above cited. And yet, quotations taken from the *same* instruments, and already transcribed into this chapter, evidence in the clearest manner, that slaves are not considered as embraced by such provision. And in relation to the state of Maryland, the following *law* compels us to the like conclusion: "Whensoever any negro, Indian or mulatto slave, shall hereafter be charged with any pilfering or stealing, or any other crime or misdemeanor whereof the county court might have cognizance, it shall and may be lawful for any of the justices of the provincial or county courts, upon complaint made before him, to cause such negro, Indian or mulatto slave so offending to be brought immediately before him or any other justice of the peace for the county where such offence is committed, who, upon due proof made against any such negro or (Indian) or mulatto slave of any of the crimes as aforesaid, *such justice is hereby authorized and empowered to award and cause to be inflicted, according to the nature of the crime, such punishment by whipping as he shall think fit, not exceeding forty lashes.*" *Act of* 1717. *chap.* 13, § 6. This law, notwithstanding that it abrogates the right of trial by jury in the case of slaves accused of the offences enumerated in it, is given as *in force*, in an edition of the laws of the state, published under the express sanction of the legislature in 1799, (twenty-three years *after* the adoption of the constitution,) and in other more recent editions. But, wherever the life of the slave is the penalty of crime, no exception can be taken to the tribunal

which decides upon his fate in this state; *trial by jury* is then allowed. *Maryland Laws, act of* 1751, *chap.* 14.

The constitution of *North Carolina* guarantees trial by jury to *freemen* only. It declares, "That *no freeman* shall be put to answer any criminal charge, but *by indictment, presentment or impeachment.* That no *freeman* shall be convicted of any crime, *but by the unanimous verdict of a jury of good and lawful men,* in open court, as heretofore used." *See Bill of Rights,* § 8 & 9. A sense of justice has, however, so far triumphed over the prejudice by which these provisions were dictated, as to concede to slaves the privileges contained in the subjoined extract from a law passed in the year 1793. "In all cases hereafter happening, where any slave shall be accused of an offence, the punishment whereof shall extend *to life, limb or member,* such slave shall be entitled to trial by jury, on oath, consisting of twelve good and lawful men, owners of slaves, in a summary way and in open court of the county wherein such offence was committed."* *Haywood's Manual,* 532. *Tennessee,* at the date of this act, was a component part of North Carolina, and after their separation, agreeably to an article in the constitution of the former, she continued in the observance of the laws of the parent state, until they were severally annulled or modified by her own legislature. A slight modification, by her legislature, took place in this law, by an act passed October 23, 1813, in which it was declared—"That in the trial of slaves, for all offences where a jury is now required by law, it shall be the duty of the sheriff *to summon three justices to preside on the trial, and twelve housekeepers being owners of slaves to serve as a jury* on such trial, and should the jury find the slave guilty of the offence charged, the said justices shall proceed to

* It is with great pleasure I record the following humane provision of an act passed in 1822, by the legislature of North Carolina. "Hereafter, on the trial of any slave or slaves for capital offences, if it shall appear to the presiding judge, by affidavit or otherwise, that such slave or slaves cannot have a fair trial in the county wherein the offence is charged to have been committed, it shall and may be lawful for such judge to order the removal of such cause to an adjoining county for trial, notwithstanding the master or owner of such slave or slaves may neglect or refuse to make an application to the court for that purpose." *Act of Assembly of* 1822, *chap.* 2, § 2.

pronounce judgment and award execution according to law." *Tennessee Laws of* 1813, *chap.* 35. The change in the former act, which is thus effected, is decisively *unfavourable* to the slave. For though the trial by jury still subsists, yet it is *entirely within the power of the sheriff to make the selection both of the justices and of the jurors*—a power too important and too easily abused to be delegated to any individual.

But trial by jury is utterly denied to the slave, *even in criminal accusations which may affect his life*, in the states of South Carolina, Virginia and Louisiana; and the tribunal which is made to serve as its substitute, can boast of none of its excellences. This tribunal is usually styled "the justices and freeholders' court." Its constitution, and the manner in which its proceedings are conducted, will be best conveyed to the reader, by a transcript of the act of South Carolina: "*All crimes and offences* committed by slaves in this state, for which *capital* punishment may lawfully be inflicted, shall be heard, examined, tried and adjudged, and finally determined by any two justices of the peace, and any number of freeholders not less than three nor more than five, in the district where the offence shall be committed, and at a place where they can be most conveniently assembled; either of which justices, on complaint made on information received, of any such offence committed by a slave, shall commit the offender to the safe custody of some constable of the district, and shall without delay, by warrant under his hand and seal, call to his assistance and request any one of the nearest justices of the peace to associate with him; and shall by the same warrant, summon the number of freeholders aforesaid from the neighbourhood, to assemble and meet together with the said justices, at a certain day and place, *not exceeding six days* after the apprehending of such slave or slaves, &c.; and the justices and freeholders being so assembled, shall cause the slave accused or charged to be brought before them, and shall hear the accusation that shall be brought against such slave or slaves, and his, her or their defence, and shall proceed to the examination of witnesses and other evidence, and finally hear and determine the matter brought before them *in the most summary and expeditious* manner; and in case the accused shall be convicted of

any crime, for which by law, the punishment would be death, the said justices shall give judgment and award *such manner* of death*, as the said justices, with the consent of said freeholders, shall direct, and which they shall judge will be most effectual to deter others from offending in the like manner." *James' Digest*, 392-3. In Louisiana, by an act of assembly, passed June 7, 1806, this act of South Carolina was *adopted*, with no other change, than that a *judge of the court*, may, if present, act, instead of the *two justices of the peace*. 1 *Martin's Digest*, 642. The law, in *Virginia*, is *substantially* the same, as to the *constitution* of the court,—the only difference being, that instead of the two justices and three freeholders, *five justices*, WITHOUT JURIES, says the act, shall be a competent tribunal for trying slaves, charged with felony. 1 *Rev. Code*, 428. But in Virginia, in the *procedure of the court on the trial of a slave*, he enjoys two important advantages which are not yielded to him, either in South Carolina or Louisiana—one, in the allowance of counsel, for whose services a proper compensation is fixed by law, to be paid by the master,—the other, in requiring *unanimity* in the justices, to authorize a conviction. 1 *Virg. Rev. Code*, 429.

In the best constituted courts, where skilful counsel aid the prisoner in his defence, where a jury of twelve men, impartially selected, against whom he has no ground for even the suspicion of an unfavourable bias, must concur in their verdict, *and with the judge as his legal adviser*, (for such the humanity of the common law considers him,) it is not to be doubted that innocent persons have in some instances, from the fallibility of human judgment, been condemned to death. At times, when the passions of men are highly inflamed, when the offence charged is loudly reprobated by the public voice, or, when, in monarchical governments, the strong arm of power, is exerted to crush an obnoxious individual, even trial by jury, with all its guards against oppression, is, not seldom, an inadequate security

* Under the authority here given to the justices and freeholders, "*to award such manner of death*, as they may think fit," horrid spectacles are sometimes exhibited to public gaze. An account of one of these,—i. e. *the burning of a negro woman to death*, may be found in the daily prints of 1820.

to the accused. Yet, a conviction in such cases, can be obtained only through the concurrent decisions of *two distinct* tribunals, each composed of at least twelve men, all of whom act under the most solemn responsibility. What chance of justice, then, has an ignorant slave, under accusation, for example, of exciting an insurrection, before a tribunal, chosen by his accuser,—suddenly convoked, consisting of but five persons, (a majority of whom, in South Carolina and Louisiana, may convict,) without any one to countenance or advise him in the conduct of his defence.

The Court of Justices, &c. it would *appear*, is to continue in session for the trial of *all* slaves against whom complaint has been made. I speak in reference to the law of South Carolina and Louisiana, as not being *entirely* certain on this point; for as respects Virginia, there can be no doubt that such is the case, inasmuch as the ordinary justices of the county courts, make up this extraordinary tribunal for the trial of the slave. Those who are to determine upon the guilt or innocence of another, accused of a criminal offence, ought if possible, to be uninformed, except through the medium of witnesses examined in the particular trial, of the facts alleged against him, as grounds for conviction. A permanent tribunal in cases of extensive conspiracies—in insurrections especially, cannot possess this essential qualification. One of the many advantages which appertain to the trial by jury, is, that each prisoner may if he so elect, have a separate body to hear and decide between him and his accusers.

The foregoing remarks, have an especial bearing on the *constitution* of the justices and freeholders' courts. A law made for the regulation of these courts, in the *conduct* of the slave's trial, is also obnoxious to severe reprehension. Holding the slave, (as indeed all persons who are not white,) to be unworthy of belief in a controversy, which concerns even the property of a white man, the law-makers of most of the slave-holding states, have nevertheless, directed the testimony of the slave, without oath or solemn affirmation, to be received for or *against* a fellow slave, arrainged as the perpetrator of any criminal offence, and at the same time, in several of these states,

the precious boon of freedom is never conferred, except for what is termed, "*meritorious* services;"—*an important part of which is, the giving information of crimes committed by a slave.* The admission of slave testimony, *upon such conditions,* can hardly result beneficially to the accused. In truth, it would seem by the preamble of the law of South Carolina, on this head, that *convictions* only were sought for by the legislature who enacted it. The whole section reads thus: "*and for the preventing the concealment of crimes and offences committed by slaves, and for the more effectual discovery and bringing slaves to condign punishment,** Be it enacted, that not only the evidence of all free Indians, without oath, but the evidence of any slave without oath, shall be allowed and admitted in all causes whatsoever, for or against another slave, accused of any crime or offence whatsoever, the weight of which evidence being seriously considered, and compared with all other circumstances attending the case, shall be left to the conscience of the justices and freeholders." 2 *Brev. Dig.* 232. *James' Dig.* 394. In Virginia, 1 *Rev. Code,* 422 and 431;—in North Carolina and Tennessee, *Haywood's Manual,* 522,—in Kentucky, 2 *Litt. & Swi.* 1150 & 1153-4,—in Mississippi, *Rev. Code,* 382, laws of a similar character may be found, though the meaning is left somewhat to implication. In Georgia and Louisiana, this extraordinary exception as to the qualification of a witness, who is a slave, is not recognised. In other respects, the law may be regarded as the same. *Prince's Digest,* 448. 1 *Martin's Digest,* 642.

Hitherto, our attention has been *chiefly* confined to the consideration of the trial of the slave, when accused of a *capital* offence. Another species of punishment scarcely less severe, is sometimes imposed. I allude "*to corporal punishment, not extending to life or limb,*"† and is usually denominated

* In Virginia, an act was passed in 1705, a part of the title of which was, "for the *speedy* and *easy* prosecution of slaves committing capital crimes." *See* 2 *Tucker's Blackstone, appendix,* 59.

† This barbarous punishment, is not in *terms,* licensed in Kentucky. Yet, in point of fact, I fear, it may occur there, and yet challenge the sanction of law. A very high crime, "*advising or consulting to commit murder,*" is punishable, if a *jury* so direct, with *one hundred* lashes!" 2 *Litt. & Swi.* 1161.

in the acts of assembly, but which may be more accurately defined; *any torture on the body of a slave, which can be practised without producing death or dismemberment. Cutting off the ears,* and *the pillory,* are in considerable favour with the legislatures of Georgia, North and South Carolina and Delaware. But the punishment of universal prevalence, and of perpetual occurrence, is *whipping.* The infliction of this punishment to the *extent* of "twenty lashes, on the bare back, well laid on," is deemed in a great variety of cases, of insufficient moment to claim the intervention even of a single magistrate. Any white person,—a drunken patrol,—an absconding felon, or a vagabond mendicant, is supposed to possess discretion enough to interpret the laws, and to wield the cowskin or cart-whip, for their infraction;—and should death ensue by *accident,* while the slave is thus receiving *moderate* correction, the constitution of Georgia, and the laws of North Carolina, kindly denominate the offence, *justifiable* homicide!!

In Kentucky, offences by slaves which are not capital, are, with the solitary exception, indicated in the last act, punished with whipping, not exceeding thirty-nine lashes. *2 Litt. & Swi.* 1160; and one justice of the peace, without the intervention of a jury, may inquire into, and decide upon, the guilt or innocence of the slave charged with the commission of the same, *ibid,* 1161. The like authority is vested in a justice of the peace, by the laws of North Carolina, in cases where the punishment cannot exceed the number of forty stripes. *Haywood's Manual,* 526-7. So, in Virginia and Mississippi, many of the breaches of the law, for which the allotted expiation is whipping, must undergo the examination of a justice of the peace, before punishment can be lawfully inflicted. The decision of the justice, is, however, final and the sentence is carried into execution *immediately.* Even the cutting off of an ear, may be directed by a single magistrate, in South Carolina, for an

In Georgia and South Carolina, it will be recollected, that terrible as this punishment is, *in one case,* at least, the slave incurs it, for what, in the estimation of no rational being, can be accounted a crime, or any thing resembling it, i. e. *the want of success in a trial for freedom before a judicial tribunal!!* See *supra,* page 77.

act which, if done by a white person, would not be denominated a crime, nor be punishable at all as such. 2 *Brevard's Digest*, 227-8. *See supra*, page 102.

But in most of the slave-holding states,* the ordinary tribunal for the trial of slaves, charged with the perpetration of *inferior crimes*, for which the punishment of death is not awarded, is composed of justices and freeholders, or justices only. The number of these varies in a small degree, in the different states—being in Virginia, *five justices*. 1 *Rev. Code*, 428,—in Georgia, in North Carolina and in Tennessee, *three*. *Prince's Dig.* 459. *Haywood's Manual*, 522 & 526;—in Louisiana, one justice and three freeholders; 1 *Martin's Digest*, 645-6;—in South Carolina, one justice and *two* freeholders. *James' Digest*, 393;—in Mississippi, one justice and two *slave*-holders. *Miss. Rev. Code*, 391. In Louisiana, ONE HALF OF THE COURT MAY CONVICT, ALTHOUGH THE OTHER HALF, BE IN FAVOUR OF ACQUITTAL.† 1 *Martin's Digest*, 646;—in South Carolina, a majority (i. e. two, one of which, must be the justice,) is necessary to a conviction, and, except in Virginia, where, as it has been before stated, unanimity is always required for this purpose; I take it to be the proper construction of the law, that a majority constitutes a quorum, and is competent to render judgment either for or against the slave.

* In Kentucky, the justices and freeholders' court, is, I believe, unknown. The constitution of Missouri, by the extract from it, given in this chapter, secures to the slave, trial by jury, under *every* criminal accusation. A similar provision, exists in that of Alabama, for all offences *higher* than petit larceny.

† i. e. the *Justice* and one freeholder, may convict.

CHAPTER IV.

ON THE DISSOLUTION OF SLAVERY.

Section 1.—Of the laws for the abolition of slavery.

The laws which regulate the *voluntary* emancipation of slaves by their masters, will form the principal subject of this chapter. But before entering upon the consideration of these, I purpose furnishing, with but little deviation from chronological order, some notice of the measures by which slavery has been abolished in many of our states.

It is well known, that negro slavery was introduced into this country by means of the African slave trade, prosecuted during the period of our colonial subjection to Great Britain. At the time of our separation from the mother country, this evil, which had taken deep root at a much earlier date, prevailed more or less in all the British American colonies. It was protected by the laws of each of these, and continued so to be, even after the *Declaration of our Independence,* and until the *first day of March, A. D.* 1780, when the first glorious effort for its abolition was made by the Commonwealth of Pennsylvania. That day gave birth to an act of assembly, in its consequences second only to the Declaration of Independence. Its title distinctly proclaimed its object, in words few but of large import: "An act for the gradual abolition of slavery."

The preamble to this act contains such just and generous sentiments, depicts with so much force of truth and language the *sorrows* of slavery, and places the arguments for its abolition so concisely and yet so advantageously before the mind, that I cannot refuse myself the pleasure of transcribing it at length. "When we contemplate our abhorrence of that condition, to which the arms and tyranny of Great Britain were exerted to reduce us; when we look back on the variety of dangers to which we have been exposed, and how miraculously our wants in many instances have been supplied, and our deliverance wrought,

when even hope and human fortitude have become unequal to the conflict, we are unavoidably led to a serious and grateful sense of the manifold blessings which we have undeservedly received from the hand of that Being, from whom every good and perfect gift cometh. Impressed with these ideas, we conceive that it is our duty, and we rejoice that it is in our power to extend a portion of that freedom to others which hath been extended to us, and release from that state of thraldom to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to inquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know, that all are the work of an Almighty hand. We find in the distribution of the human species, that the most fertile as well as the most barren parts of the earth, are inhabited by men of complexions different from ours, and from each other; from whence we may reasonably as well as religiously infer, that He, who placed them in their various situations, hath extended equally his care and protection to all, and that it becometh not us to counteract his mercies. We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step to universal civilization, by removing, as much as possible, the sorrows of those who have lived in undeserved bondage, and from which, by the assumed authority* of the kings of Great Britain, no effectual relief could be obtained. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of

* The most signal effort here alluded to on the part of the General Assembly of Pennsylvania, when a colony, to prevent the importation of slaves, was by an act, which bears the title, "*An act to prevent the importation of negroes and Indians into this province,*" passed June 7, 1712, but disallowed and accordingly repealed by Queen Anne, on the 20th February, 1713. This act, though repealed, may be found on record, in the office of the Secretary of the Commonwealth, at Harrisburgh, *Book A, vol. 2, page* 50. I am induced to be thus minute in this reference, since the same act is mentioned in the *Memoirs of the Historical Society of Pennsylvania, vol.* 1, *page* 370, to have been lost. The date there assigned to it is 1711—an error which has probably misled the person by whom the search was made.

all conditions and nations; and we conceive ourselves at this particular period extraordinarily called upon, by the blessings which we have received, to manifest the sincerity of our profession, and to give a substantial proof of our gratitude.

"And whereas the condition of those persons who have heretofore been denominated negro and mulatto slaves, has been attended with circumstances which not only deprived them of the common blessings that they were by nature entitled to, but has cast them into the deepest afflictions by an unnatural separation and sale of husband and wife from each other and from their children, an injury, the greatness of which can only be conceived by supposing that we were in the same unhappy case. In justice, therefore, to persons so unhappily circumstanced, and who, having no prospect before them whereon they may rest their sorrows and their hopes, have no reasonable inducement to render their service to society, which they otherwise might, and also in grateful commemoration of our own happy deliverance from that state of unconditional submission to which we were doomed by the tyranny of Britain, *Be it enacted*, That all persons, as well negroes and mulattoes as others, who shall be born within this state from and after the passing of this act, shall not be deemed and considered as servants for life or slaves; and that all servitude for life or slavery of children in consequence of the slavery of their mothers, in the case of all children born within this state from and after the passing of this act as aforesaid, shall be and hereby is, UTTERLY TAKEN AWAY, EXTINGUISHED AND FOR EVER ABOLISHED."

The *fourth* and next section of the act relates to the children of the slaves which, according to the foregoing provisions, would be born free. It will be more properly introduced hereafter.

The *fifth* section made it the duty of the owner of any slave for life, &c. to cause him or her to be registered* at a place par-

* Many suits have been brought under this act, chiefly in consequence of an omission by the master to register his slaves in due time, or from some defect in the statement furnished by the master to the officer by whom the registry was directed to be made. None of them, however, possess general interest, nor are deemed of sufficient practical value, so much time having elapsed since the passing of the act, to require particular reference.

ticularly designated, (the registry to contain the name, age and sex of such slave, and the name, surname, occupation or profession of the master, and the name of the county, &c. wherein the master resided,) on or before the first day of November next ensuing the date of this act, "in order to ascertain and distinguish the slaves, &c. within this state, who should be such on the said first day of November, from all other persons," and declared, that with certain exceptions mentioned in other sections of the act, no negro or mulatto, then within the state, should, from and after the said first day of November, be deemed a slave, &c. unless his or her name, &c. should be registered as aforesaid; and in the *tenth* section, the latter provision of the *fifth* was in substance repeated, the language of which being as follows: "No man or woman of any nation or colour, except the negroes and mulattoes who shall be registered as aforesaid, shall at any time hereafter, be deemed, adjudged or holden, within the territories of this commonwealth, as slaves or servants for life, but as free men and free women, except the domestic slaves attending upon delegates in congress from the other American states, foreign ministers and consuls, and persons passing through or sojourning in this state and not becoming resident therein, and seamen employed in ships not belonging to any inhabitant of this state, nor employed in any ship owned by any such inhabitant, *provided*, such domestic slaves be not alienated or sold to any inhabitant, nor (except in the case of members of congress, foreign ministers and consuls) *retained in this state longer than six months.*"*

* It has been decided in Pennsylvania, that where the owner of slaves in Maryland, leased a farm, together with his slaves to cultivate it, that the consent of such lessee that one of the slaves should be removed to Pennsylvania, and his being brought there, would not entitle him to freedom. *Butler and others vs. Delaplaine*, 7 *Serg. & Rawle's Rep.* 378. Had the *owner* himself consented to such removal, the decision would have been different, unless he had been within the *excepted cases* mentioned in this tenth section. It was also decided at the same time, that "the sojourning of a master, a citizen of another state, with his slave, in the state of Pennsylvania, would not entitle such slave to freedom, unless there was at some time a continued retaining of the slave here for six months, except perhaps, in a case of a *fraudulent* removal backwards and forwards."

The import of these fifth and tenth sections could not have been mistaken, had not the legislature inserted between the two,

A decision of JUDGE WASHINGTON, given at Philadelphia, in 1806, at the October term of the *Circuit Court of the United States for the third circuit, &c.* inasmuch as it recognises the validity of the tenth section of the abolition act of 1780, may be here introduced. It is thus reported, *in the first volume of Washington's Circuit Court Reports, page 500 et seq. case of Butler vs. Hopper:* "This case comes before the court on a special verdict, the material parts of which, find, that the plaintiff formerly lived in the state of South Carolina, where, as well as in Georgia, he had a valuable plantation which he cultivated, and still cultivates, by his overseers and slaves, and on which he had, and still has, a furnished house and servants. That from the year 1794 to the present time, with the exception of an annual visit to his plantations at the southward, continuing from October in each year till May or June following, he has kept a dwelling house in the city of Philadelphia, and has *resided* in it, with his family, consisting of several children and domestic servants, and among the latter *Ben*, the subject of the present suit, who was his property, as a slave, at the time of his coming into this city, and who continued with him, claimed as such, until September 1805, when he was discharged from his service, under a *habeas corpus* issued from the court of common pleas of this state. Whilst on his plantation in South Carolina, during these annual visits, the plaintiff kept house, always having *Ben* with him. From the year 1794, until the 4th of January, 1805, the plaintiff represented the state of South Carolina in congress, except for two years, between 1796 and 1800, when he was a member of the legislature of that state. Upon these facts," said Judge Washington, "the question is, whether *Ben* became free, by virtue of a law of this state, (Pennsylvania) passed on the first of March, 1780," (the Judge then quoted the tenth section of this act.)

After disposing of an objection which had been suggested by the plaintiff's counsel to the validity of the law, by reason of the ninth section of article first of the constitution of the United States, and showing the inapplicability to the present case of the second section of article fourth of the same instrument, he proceeded in the following words: "We come then to the consideration of this law, (act of 1780, tenth section,) and of the facts found in the special verdict. The plaintiff claims an exemption from the enacting part of the section above stated, upon two grounds: first, as a member of congres; and *secondly*, as a sojourner. The first will not answer his purpose, because for two years he ceased to be a member of congress, and therefore lost the privilege which that character might otherwise have conferred upon him, under the exception in the law.

"The next question then is, can the plaintiff be considered as within the other exception of the law, a sojourner during the period when he ceased to be a member of congress? But the verdict precludes all inquiry into this point, by finding, that the plaintiff, from the year 1794 to the present time, has *resided*

under the name of a *sixth* section, this obscure proviso to the *fifth*—"Provided always, That any person in whom the ownership or right of service of any negro, &c. shall be vested at the passing of this act, other than such as are herein before excepted, his or her heirs, executors, administrators and assigns, &c. severally shall be liable to the overseers of the poor of the city, township, &c. to which any such negro, &c. shall become chargeable, for such necessary expense, with costs of suits thereon, as such overseers may be put to, through the neglect of the owner, master or mistress of such negro, &c. notwithstanding the name and other descriptions of such negro, &c. shall *not* be entered and recorded as aforesaid, unless his or her master or owner shall, before such slave, &c. attain *his or her twenty-eighth year*, execute and record in the proper county a deed or instrument, securing to such slave, &c. his or her freedom."

The introduction of the particle "*not*," which is *italicized*, in the above quotation, was supposed to limit the generality and unequivocal meaning of the fifth and tenth sections, as applied to the *absolute* emancipation of persons born as slaves, and who had *not attained the age of twenty-eight years at the date of the act*, and whose masters had omitted to register them according to the direction of the fifth section; and a case of this kind was accordingly brought before the supreme court in the year 1789. "Negro Betsey and two others, Cato and Isaac, who were brought before the court by *habeas corpus*, at the same time, were born before the first day of March, 1780, of parents who were held as slaves for life, when these children were born, but neither the parents nor the children had been registered by the master agreeably to the directions of the fifth section of the act. The parents being more than twenty-eight years of age were admitted to be free, but their former master claimed to retain the

with his family in Philadelphia, except at those times when he visited his plantations in the Southern states. No person is entitled to the protection of the exception, who is a resident in the state, unless he be a member of congress, a minister or consul. But the jury find that the plaintiff was a *resident*, and was not either a member of congress, a minister or consul. The conclusion is inevitable, &c. I am, therefore, of opinion, that upon this verdict the law is with *the defendant*."

children, not as slaves for life, *but as servants until they should severally attain the age of twenty-eight years.*" The case was twice argued, yet ultimately a difference of opinion existed in the court—a majority of the judges, however, decided against the construction contended for on behalf of the master, and thus was established the important principle, "That in Pennsylvania, no person born before the first of March, 1780, although born a slave, unless registered before the first day of November of that year, could be held by his or her former master, either as a slave or as a servant for years, but was absolutely free." *See the case, Respublica vs. Negro Betsey, et al,* 1 *Dallas' Reports,* 469 *et seq.*

It was deemed inconsistent with the duty, which, as a member of the *Union,* Pennsylvania owed to her sister states, to interfere with what in those states were regarded as *rights of property,* and, on this account, it was expressly provided, that nothing contained in the act, should give protection to any slave, &c. *absconding** from his or her owner, &c. residing in any other state, and coming into this state. *See* 1 *Smith's Laws of Pennsylvania,* 492 *et seq.*

Such were the leading provisions of the first act which was passed in the United States of America for the abolition of slavery. Its plain intent was to diminish gradually the number of slaves amongst us, and eventually to destroy the institution itself. By the positive terms of its enactments none could thereafter be born as slaves, and from its whole scope and spirit it

* Several very important cases have arisen under this section of the act. One of these, reported in the *second volume of Sergeant & Rawle's Reports, page* 305 *et seq.* was of this kind: "*Mary,* a negro woman, the slave of *James Corse,* of *Maryland,* absconded from her master, and came into the state of *Pennsylvania,* in which, after a residence of about two years, she became the mother of a female child. The owner of the mother claimed the child as his slave, and having obtained possession of her person, committed her to the prison of the city and county of *Philadelphia.* She was afterwards brought before the Judges of the Supreme Court, by writ of *habeas corpus:* the sole question before the court was, whether *birth in Pennsylvania* gave freedom to the child of a slave who had absconded from another state *before she became pregnant.* The court decided in the affirmative, that Eliza (the child) was not a slave, and she was accordingly set at liberty.

was evidently opposed to the introduction of any of this denomination of persons from the neighbouring states. On the 29th of March, 1788, it was, however, found necessary for further legislative aid in the grand cause which had been so nobly entered upon in 1780, and an act was passed on that day, which recites, "for preventing many evils and abuses, arising from ill-disposed persons availing themselves of certain defects in the act for the gradual abolition of slavery, passed on the first day of March, in the year of our LORD one thousand seven hundred and eighty, *Be it enacted*, That the *exception* contained in the *tenth* section of the act of first March, 1780, relative to domestic slaves attending upon persons passing through or sojourning in this state, and not becoming resident therein, shall not be deemed or taken to extend to the slaves of such persons as are inhabitants of or residents in this state, or who shall come here with an intention to settle and reside; but all and every slave and slaves who shall be brought into this state, by persons inhabiting or residing therein, or intending to inhabit or reside therein, shall be immediately considered, deemed and taken to be free, to all intents and purposes." 2 *Smith's Laws of Pennsylvania*, 443.

The abolition of slavery in *Massachusetts*, takes its date *one day* LATER than the date of the abolition law of *Pennsylvania*. It was not effected there by a *direct and intentionally specific act* of the legislature, but resulted as a consequence of the primary article in the *bill of rights* prefixed to the *constitution* of the state,—the language of which article is, "all men are born free and equal, and have certain natural, essential and unalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness."

This declaration, embodied as it was in the constitution, became at once the paramount law of the land,—and though so totally repugnant to its *spirit* as well as to its *letter*, was the enslavement of one part of the human family by another, that, as it appears to me, but one opinion could, with the least show of reason, be entertained on the subject; yet, it was not till after a solemn adjudication of the courts, *that slavery was by this*

means for ever abolished in Massachusetts, that in *practice* it was considered so to be. *See Winchenden vs. Hatfield*, 4 *Massachusetts Reports*, 129.

Connecticut appears to have been the earliest among her sister states to follow the precedent of Pennsylvania. At a special session held in January, 1784, for the purpose of revising and amending her code of laws, the legislature agreed to incorporate this section: "No negro or mulatto child, that shall after the first day of March, 1784, be born within this state, shall be held in servitude longer than until they arrive to the age of twenty-five years, notwithstanding the mother or parent of such child was held in servitude at the time of its birth, but such child, at the age aforesaid, shall be free," &c. *See Statutes of Connecticut*, 625.

Probably about the same time (the *precise* date is not mentioned in the work which is in my possession) the legislature of *Rhode Island* enacted a law on the same subject, varying in a slight degree from that of Connecticut, yet fixing the same day as the period at which hereditary servitude should cease, as the subjoined extract will show: "No person born within this state, on or after the *first day of March, A. D.* 1784, shall be deemed or considered a servant for life or a slave, and all servitude for life or slavery of children to be born as aforesaid, in consequence of the condition of their mothers, be and the same is hereby taken away, extinguished and for ever abolished." *Laws of Rhode Island*, 443—"*An act relative to slaves, and their manumission and support*," § 8.

The importation of slaves into the state of Connecticut having been prohibited in October, 1774, and in Rhode Island, it is believed, at a period equally remote, the *entire* abolition of slavery in these states, as well as in Pennsylvania, may be now considered as virtually accomplished.

New Hampshire having in her constitution, which was finally ratified on the eighth day of February, 1792, inserted a provision of similar import, and comprised indeed in nearly the same words with that already cited from the constitution of Massachusetts, has by *implication* also, abolished slavery within her territory.

The same important doctrine previously promulgated, as it is well known to have been, in the memorable Declaration of our Independence on Great Britain, has served the like glorious purpose in the state of *Vermont*. The citizens of *Vermont*, however, were not content with *implication* on such a momentous article of their political faith, but wisely established, by *distinct enunciation*, the *inference* as well as the *principle* which they so justly revered. I give the whole article, notwithstanding it enters more into detail than is altogether necessary. "That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing and protecting property; and pursuing and obtaining happiness and safety; THEREFORE, no male person born in this country or brought from over sea, ought to be holden by law to serve any person as a servant, slave or apprentice, after he arrives to the age of twenty-one years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent after they arrive at such age, or bound by law, for the payment of debts, damages, fines, costs or the like." *See the Constitution of Vermont, chap.* 1, *art.* 1.—The date of the constitution is *July* 4*th*, 1793.

The first act of the state of *New York* on this subject, was designed to work a *gradual* abolition of slavery in that state. It bears date the 29*th day of March*, 1799, and provides, That all children born of slaves after the 4*th of July*, 1799, should be held by the owner of the mothers of the same only until they should respectively attain to the age of twenty-eight years, if males; and if females, until to the age of twenty-five years. Another act, of similar import so far as respects the point under examination, was passed *April* 8, 1801. But by an act of the 31*st of March, one thousand eight hundred and seventeen*, a final blow was given in that state to the dominion of the slave-holder. The fourth section of this act is as follows: "Every child born of a slave within this state, after the fourth day of July, in the year of our LORD one thousand seven hundred and ninety-nine, shall be free, but shall remain the servant of the owner of his or her mother, and the executors, administrators or assigns of such owner,

in the same manner as if such child had been bound to service, by the overseers of the poor, and shall continue in such service, if a male, until the age of twenty-eight years, and if a female, until the age of twenty-five years; and every child born of a slave within this state, after the passing of this act, shall remain a servant as aforesaid, until the age of twenty-one years, and no longer." And by the thirty-second section of the same act, it was declared, that "Every negro, mulatto or mustee, within this state, born before the fourth day of July, 1799, should, from and after *the fourth day of July*, 1827, BE FREE." This auspicious day has gone by, and there is, therefore, at this moment, not a slave within the wide spread territory of this prosperous state.

After several ineffectual* efforts on the part of the advocates of human rights, an act was at length obtained, on the 14th day of February 1804, from the legislature of *New Jersey*, entitled "An act for the gradual abolition of slavery." It differs in nothing material, to the present inquiry, from the law of *Rhode Island*, except that white male children born of slaves, after the *4th day of July* 1804, may be retained *as servants* by the owners of their mothers, until the age of twenty-five years only, and female children, in like manner, until the age of twenty-one years only. *See Revised Laws of New Jersey*, 679.

The three non-slave-holding states,—*Ohio*, *Indiana* and *Illinois*, it is well known, derive this important characteristic from the "ordinance for the government of the territory of the United States, north west of the river Ohio," which was ratified by Congress July 13th, 1787. The ordinance recites and adopts certain articles, previously agreed upon by the states of Massachusetts, Connecticut, New York, and Virginia, in the compact† by which these states ceded the North Western Ter-

* One of these efforts was frustrated by a *single* vote in the house of assembly. This was six years before the passing of the law in the text.

† Notwithstanding the solemnity with which this compact was originally entered into, and afterwards ratified by the Congress of the United States, and notwithstanding, also, the plain and strong prohibition of slavery contained in the sixth article, a violent endeavour was made, several years since, in *Illinois*, to obtain a convention of delegates, in order to expunge the prohibition inserted in the constitution of that state !!

ritory to the federal government. The articles alluded to are styled, "Articles of compact between the original states and the people and states within the said territory, *for ever to remain unalterable, unless by common consent,*" the sixth of which provides, "There shall be neither slavery nor involuntary servitude in said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted."

The citizens of *Ohio* duly appreciating the valuable guaranty thus conferred upon them, manifested an accordant spirit with the framers of the ordinance and the parties to the compact, and to prevent any undue advantage from being obtained of coloured persons, in addition to the condition contained in the ordinance, saw fit to embody the following excellent provision in their constitution—"Nor shall any indenture of any negro or mulatto, hereafter made and executed *out* of this state, or if made *in* the state, where the term of service exceeds one year, be of the least validity, except those given in the case of apprenticeships." *Const. of Ohio, Art.* 8, § 2. A provision in almost the same words is inserted in the constitution of *Illinois, Art.* 6, § 1, and also in the constitution of *Indiana*, with the omission, in the latter, of the words, "*or if made in the state.*" *Const. of Indiana, Art.* 11, § 7.

The state of *Maine* is the only remaining non-slave-holding state. As the territory of which it is composed, was a part of the state of Massachusetts, until within a few years since, *Maine*, as a distinct sovereignty, has never been contaminated with slavery. Her constitution, moreover, adopted October 29, 1819, by a convention chosen for the purpose by the freemen within the limits of her territory, and ratified by Congress on March 2nd, 1821, contains the same grand declaration of unalienable rights, which gave unconditional freedom to all slaves within the parent state. *See Const. of Maine, Art.* 1, § 1.

It will be observed from the notices here given, that the abolition of slavery in the states abovementioned, has been of two kinds; *gradual* and *immediate*. In those states in which it has been *gradual*,—prejudice, the effect of long established practice,—and the spirit of gain which so frequently overpowers the

sense of justice, have usually made a difference in the condition of the white population and of such of the coloured as have been exempted from slavery for life, unfavourable to the rights and happiness of the latter. Thus in Pennsylvania, by the 4th section of the abolition act, it is enacted, "That every negro or mulatto child born within this state, after the passing of this act, &c. (who would, in case this act had not been made, have been born a servant for years or life or a slave,) shall be deemed to be, and shall be, by virtue of this act, the servant of such person or his or her assigns, who would, in such case, have been entitled to the service of such child, until such child shall attain unto the age of *twenty-eight* years, in the manner and on the conditions whereon servants bound by indenture for four years, are or may be retained and holden, &c. &c."* So in Connecticut, according to the section already extracted, the same class of persons might be held, not as servants bound by indenture, but as slaves, until they should arrive at *twenty-five years* of age. At the present time, the law there is somewhat different, it having been enacted in May, 1797, that, "no negro or mulatto child born within this state after the first day of August, 1797, shall be held in servitude longer than until he arrives to the age of *twenty-one years*, &c. but that such child at the age aforesaid, shall be free." *Statutes of Connecticut*, 626. Accordant with this latter section of the laws of Connecticut, is the law of Rhode Island. *See Laws of Rhode Island*, 443, *section 9th of "the act relative to slaves, &c."*

* The want of precision in the phraseology used in this section, seems to have induced an opinion with some persons, that *the servitude for twenty-eight years* which is authorized by this section, was not confined to the *immediate offspring* of those who were slaves at the date of the abolition act, but was designed to be extended to their DESCENDANTS, *if duly registered*, to the remotest generation. The case of *the Commonwealth vs. Barker*, 11 *Sergt. and Rawle, Rep.* 360, presented this point for the decison of the court, but, as the registry was defective, the court, on the ground of this *defect* alone, ordered the person claimed as such servant to be discharged, declaring, at the same time, that the former was a point of great importance, upon which no opinion was intimated. But in a later case, in which the *evaded* point came again before the same court, it was decided that the species of servitude alluded to, did not extend beyond the immediate offspring of *slaves*—that the children of coloured *servants* were in this particular, on the same footing with the children of white persons.

In New York, by the acts of 1799 and of 1801, every child born of a slave within the state, after the 4th of July, 1799, was declared to be free, but might be retained by the owner of the mother, &c. as a servant, in the same manner as if bound to service by the overseers of the poor; if a male, until he should arrive to the age of *twenty-eight years* of age, and if a female until *twenty-five* years of age. This section was re-enacted by the act of 31st of March, 1817, with this important supplement, that every such child born after the passing of the last act, should "remain a servant as aforesaid until the age of *twenty-one* years and *no longer.*" So that the only distinction which now exists on this subject, in the state of New York, between the condition of the white population and the children born of slaves since the 31st March, 1817, is, that *females* as well as males may be held as servants till they attain the age of *twenty-one* years instead of being freed at the age of *eighteen* years.

The abolition act of New Jersey conforms to the precedent of Pennsylvania with respect to the general principle here adverted to, yet humanely diminishes the period of servitude to *twenty-five* years in the case of *males*, and to *twenty-one* in the case of *females*.

The term *gradual* in its usual acceptation as applied to the abolition of slavery, and as it is to be understood in the acts of assembly before quoted, as also in the remarks which I have made upon them, is restricted in its signification to the extinction of slavery, by depriving it of its *hereditary* quality. A *gradual* abolition act operates *to prevent* the enslavement of the unborn, while it leaves unaffected the condition of those already in being. Such were the abolition acts of Pennsylvania, Connecticut, Rhode Island, New Jersey, and the *first two* abolition acts of the state of New York. But a measure which communicates freedom to those previous to, and at the time of its adoption, held as slaves, is here called *immediate*, whether such freedom be conferred instantaneously or whether it be postponed to a point of time future in relation to the date of the measure. This distinction comprehends the *last* abolition act of New York, as also, the *constitutional* provisions of Massachusetts, New Hampshire and Vermont, and the sixth article of the

ordinance of congress of 1787, for the government of the territory north-west of the Ohio.

Slaves being considered *property*, it has been said, an immediate abolition act like that of New York, would be *unconstitutional*, unless compensation should be made to their former owners to the extent of their value. But men, *as such*, by nature, are equally free; it is impossible, therefore, that one can acquire a right over the person of another unless by his consent. Involuntary servitude, unless inflicted by society as the punishment of crime, is a usurpation of power, and it would be strange if society at its pleasure might not put an end to its own wrong. On a theme so hackneyed, however, it is unnecessary to waste argument; and happily in the state of New York, a new constitution has been adopted since the passing of the abolition act, and the acts of the legislature in force at the adoption of the constitution, have been expressly declared in that instrument to be valid. The abolition act, therefore, may be regarded as a part of the present constitution itself.

The abolition of slavery in Massachusetts and New Hampshire was effected as has been stated, by force of the first article of the declaration of rights prefixed to their respective constitutions. In Massachusetts, an express decision of the Supreme Court of that state, has established this construction. No unprejudiced intelligence can, I believe, find fault with this decision. The language of the article must be wrested from its proper and obvious signification to give countenance to any other conclusion. And yet, in *Pennsylvania*, the birth place of efficient hostility to negro bondage, the highest judicial tribunal of the state, has pronounced as the result of its solemn deliberation on *a similar article of her constitution*, that slavery was not inconsistent with it.* This mockery of justice took place

* This case is not to be found in the books of reports. It may, therefore, be proper to give some further notice of it. It was instituted in the Supreme Court, to January term, 1795, by a writ *de homine replegiando*, and is entitled on the docket, *negro Flora vs. Joseph Graisberry*. The defendant having died, his executors, John Reed and James Glentworth, were substituted agreeably to an act of assembly providing for such contingencies. On the 15th of December, 1797, the trial came on, when a special verdict was found by the jury,

so recently as the twenty-third day of January, in the year of our Lord one thousand eight hundred and two. It took place after the most able and ample discussion by counsel. It was not suddenly cast forth in the hurry of a nisi prius trial, and by a single judge, but the record is stamped with the *unanimous* sanction of seven men claiming to be in the full possession of intellectual faculties of no common order, and acting upon mature consideration. Such are the deplorable effects of long familiarity with injustice and oppression.

General principles of political government, militating against the existence of slavery, are asserted in the constitutions of most of the slave-holding states; yet care has been taken to qualify their bearing by some express declaration, importing that the rights of *freemen* only were designed to be protected. The constitution of the state of *Delaware*, though a slave-holding state, seems to have been framed with somewhat less caution on this subject. It sets forth, that, "Through Divine goodness, *all men* have, by nature, the rights of worshipping and serving their Creator according to the dictates of their consciences; OF ENJOYING AND DEFENDING LIFE AND LIBERTY; *of acquiring and protecting reputation and property;* and, in general, *of attaining objects suitable to their condition* WITHOUT INJURY BY ONE TO ANOTHER." Here we have a charter of liberty of sufficient amplitude. How far it may be considered as annihi-

on the suggestion and by the consent of counsel, and at March term, 1798, judgment was entered for the defendant, "for the purpose," as is stated in the record, "of an appeal to the High Court of Errors and Appeals, and that the justices of this court may there assist in hearing and determining it." On the 20th January, 1802, the hearing took place before the High Court of Errors and Appeals. *Jared Ingersoll, William Rawle,* and *William Lewis, Esquires,* were of counsel with the plaintiff, and from the known character of these gentlemen, it is to be inferred, that during the four days which were occupied in the hearing, no argument which ingenuity and learning could supply was wanting. The judges with a reserve more convenient to themselves than convincing to their hearers, were content with the brief declaration, announced through their President, "that it was their unanimous opinion, slavery was not inconsistent with any clause of the constitution of Pennsylvania;" in conformity with which, judgment was entered on the record, "court unanimously of opinion, that negro Flora is a slave, and that she is the property of the defendants in error, and the judgment of the Supreme Court is affirmed."

lated by what follows in connexion,—"and as these rights are essential to their welfare, for the due exercise thereof, power is inherent in them, and *therefore*, all just authority in the institutions of a political society, is derived from the people, and established with their consent to advance their happiness, and they may, for this end, as circumstances require, from time to time, alter their constitution of government,"—will depend very much on the moral sentiments of those who pass judgment upon the question.

Section II. On the laws regulating the emancipation of slaves.

Slavery being *hereditary*, may, of consequence, be rendered *perpetual*, if such be the will of the master of the slave. From a just consideration of the rights of *property*, it would seem equally plain, that the master might, at his pleasure, relinquish his dominion over the slave. But society, in our slave-holding states, has decreed otherwise. Having degraded a rational and immortal being into a *chattel*—a thing of bargain and sale—it has been discovered that certain incidents result from this degradation, which it concerns the welfare of the community vigorously to exact and preserve. One of these is, that the master's benevolence to his unhappy bondman, is not to be exercised, by emancipation, *without the consent of his creditor*. This is a principle of law which pervades nearly every code in the slave-holding states. In *some* of these *codes*, express enactment cannot be cited for it; yet I think it probable, unless with the single exception of North Carolina,* that *practically* it is made so to operate.

* In North Carolina, a slave, as will be shown hereafter, cannot be emancipated *except for meritorious services*, to be adjudged of and allowed by the court. *Haywood's Manual*, 537 (*act of* 1796.) The act is *silent* as to the *rights of creditors*, and I infer, therefore, that the claims for *meritorious services*, are deemed paramount to the *rights* of third persons, whether creditors or otherwise interested. In South Carolina, in Georgia, and in Alabama, the legislature only, by special acts, have authority to emancipate slaves. Of course, the clause may be, and no doubt always is, inserted to preserve these supposed rights.

In Virginia and Mississippi, an emancipated slave may be taken in execution to satisfy *any debt* contracted by the person emancipating him, previous to such emancipation. 1 *Rev.* (*Vir.*) *Code*, 434; *Mississippi Rev. Code*, 386. In Kentucky, the act which authorizes emancipation, and directs the mode by which it may be effected, contains a *saving* of the rights of creditors, &c. 2 *Litt. & Swi.* 1155, *sect.* 27, *act of* 1798.

By the new civil code of Louisiana, it is declared, "Any enfranchisement made in *fraud of creditors*, or of the portion reserved by law to forced heirs, is null and void; *and such fraud shall be considered as* PROVED, *when it shall appear that at the moment of executing the enfranchisement*, THE PERSON GRANTING IT HAD NOT SUFFICIENT PROPERTY TO PAY HIS DEBTS." *Art.* 190.

But in addition to the obstacles to emancipation which is created by the *saving* in favour of creditors, a very extraordinary one is opposed on behalf of the *widows* of deceased slave-holders. For where a widow is entitled by law to one-third of her deceased husband's personal estate, unless he shall have left sufficient other personal estate, after payment of his debts, to satisfy her claim of one-third, his slaves, though declared to be free by his last will, shall nevertheless *not* be free, but shall be held liable for the *third* to which the widow is entitled. 1 *Vir. Rev. Code*, 435; *Mississippi Rev. Code*, 386; 2 *Litt. & Swi.* (*Kentucky*) 1246.

But it is in the mode by which emancipation is to be effected, that the most formidable difficulties arise. In South Carolina,*

* In South Carolina, before the passing of the act of 1820, here referred to, the law stood thus: "No emancipation of any slave shall be valid, except it be by deed, and according to the regulations above described, (which regulations made it necessary for the person intending to emancipate a slave, to obtain the approbation of a justice of the quorum and five freeholders,) and accompanied by the above certificate," (i. e. the certificate of the justice and freeholders.) 2 *Brevard's Digest*, 256. With such strictness was this law construed, that where a testator made a bequest of slaves to a trustee, *with directions to liberate them*, it was held by the court of chancery to be a void bequest, and that therefore the slaves might be retained in perpetual servitude. *See the case of Byrnum vs. Bostwick*, 4 *Dessaussure's Chancery Reports*, 266.

Georgia, Alabama and Mississippi, it is only *by authority of the legislature specially granted*, that a valid emancipation can be made. It is not enough that a penalty is imposed upon the benevolence of a master who may permit his slave to work for himself; a slave-owner must continue a slave-owner, (unless he dispose of his *chattels* by *sale*,) until he can induce the legislature to indulge him in the wish to set the captives free. *Prince's Digest*, 456 (*act of Dec.* 5, 1801); *James' Digest*, 398 (*act of* 1820); *Toulmin's Digest*, 632; *Mississippi Rev. Code*, 386.

In Georgia, the *attempt* to set free a slave, by any other mode than by an application to the legislature, is visited with severe penalties, as will appear from the following act: "If any person or persons shall, after the passing of this act, 1801,) set free any slave or slaves, in any other manner and form than the one prescribed herein, (i. e. by special legislative act,) he shall forfeit for every such *offence two hundred dollars*, to be recovered by action of debt, or *indictment*, the one half to be applied to the use of the county in which the *offence* may have been committed, the other half to the use of the informer, and the said slave or slaves so manumitted and set free, *shall be still to all intents and purposes as much in a state of slavery as before they were manumitted and set free* by the party or parties so offending." *Prince's Digest*, 457. Notwithstanding the punishment thus imposed for this *new* crime which the Christian people of the republic of Georgia have seen fit to create, in the nineteenth century, some refractory heretic, it is presumed, must have been found within her borders, for in the year 1818, the following act was added to her code: "All and every will and testament, deed, whether by way of trust or otherwise, contract or agreement or stipulation, or other instrument in writing, or by parole, made and executed for the purpose of effecting or endeavouring to effect the manumission of any slave or slaves, either directly by conferring or attempting to confer freedom on such slave or slaves, or indirectly or virtually, by allowing and securing or attempting to allow and secure to such slave or slaves the right or privilege of working for his, her or themselves, free from the control of the master or owner of such slave or slaves, or of enjoying the profits of his, her or their labour or skill, shall be and

the same are hereby declared to be utterly null and void: and the person or persons so making, &c. any such deed, &c. &c. and all and every person or persons concerned in giving or attempting to give effect thereto, whether by accepting the trust thereby created or attempted to be created, or in any other way or manner whatsoever, shall be severally liable to a penalty not exceeding *one thousand dollars*, to be recovered, &c. &c. and each and every slave or slaves in whose behalf such will or testament, &c. &c. shall have been made, shall be liable to be arrested by warrant under the hand and seal of any magistrate of this state, and being thereof *convicted*, &c. shall be liable to be sold as a slave or slaves, by public outcry, and the proceeds of such sales shall be appropriated, &c. &c." *Prince's Digest*, 466.

By an act of the General Assembly of North Carolina, in 1777, it is enacted, "That no negro or mulatto slave shall hereafter be set free, except for *meritorious services to be adjudged of and allowed by the County Court*, and license first had and obtained thereupon: and when any slave is or shall be set free by his or her master or owner, otherwise than is herein before directed, it shall and may be lawful for any freeholder in this state to apprehend and take up such slave and deliver him or her to the sheriff of the county, who, upon receiving such slave, shall give such freeholder a receipt for the same, and the sheriff shall commit all such slaves to the jail of the county, there to remain until the next court to be held for that county; and the court of the county shall order all such confined slaves to be sold, during the term, to the highest bidder." *Haywood's Manual*, 525. The sheriff is directed five days before the time appointed for the sale of the *emancipated* negro, to give notice in writing to the person by whom the emancipation was made, to the end that such person may, if he thinks proper, *renew* his claim to the negro so emancipated by him, on failure to do which, the sale is to be made by the sheriff, and one fifth part of the nett proceeds is to become the property of the freeholder by whom the apprehension was made, and the remaining four fifths are to be paid into the public treasury. *Ibid*, 525-6, *and see act of* 1788, *ibid*, 529, *also act of* 1796, *ibid*, 537.

The same law obtained in Tennessee till Nov. 13, 1801, when a new act was passed, authorizing the court to emancipate slaves upon a presentation of a petition for that purpose, with the *proviso*, that "the reasons set forth in said petition, shall, in the opinion of the court, be consistent with the interest and policy of the state." *Tenn. Laws, act of* 1801, *chap.* 27. The usual, and, I suppose, necessary precaution of requiring a bond from the emancipator, to indemnify the public against any charge which might accrue for the support of the emancipated slave, in case he should be disqualified from labour by sickness or the infirmities of age, is exacted in this act.

Mississippi has combined in one act all the obstacles to emancipation which are to be met with in the laws of the other slave-holding states. Thus, the emancipation must be by an *instrument in writiug*, a last will or deed, &c. *under seal, attested by at least two credible witnesses, or acknowledged in the court of the county or corporation*, where the emancipator resides, *proof satisfactory to the General Assembly must be adduced that the slave has done some meritorious act for the benefit of his master, or rendered some distinguished service to the state;* all which circumstances are but *pre-requisites*, and are of no efficacy until a *special act of assembly* sanctions the emancipation;—to which may be added, as has been already stated, *a saving of the rights of creditors* and the protection of *the widow's thirds. Mississippi Rev. Code*, 385-6, (*act of June* 18, 1822.)

In Kentucky, Missouri, Virginia, and Maryland, greater facility is afforded to emancipation. The first named of these states, enacted in 1798 the following law, which continues still in force: "It shall be lawful for any person by his or her last will and testament, or by any other instrument in writing, under his or her hand and seal, attested and proved in the county court by two witnesses or acknowledged by the party in the court of the county where he or she resides, to emancipate or set free his or her slave or slaves, who shall thereupou be entirely and fully discharged from the performance of any contract entered into during their servitude, and enjoy their full freedom as if they had been born free. And the said court shall

have full power to demand bond and sufficient security of the emancipator, his or her executors, &c. for the maintenance of any slave or slaves that may *be aged or infirm* either of body or mind, to prevent him, her, or them becoming chargeable to the county; and every slave so emancipated shall have a certificate of his freedom from the clerk of such court on parchment, with the county seal affixed thereto, &c. *saving, however, the rights of creditors*, &c. &c." 2 *Litt. & Swi.* 1155. And in 1800, in consequence of a humane law particularly noticed in a previous page* of this sketch, by which slaves were constituted *real estate*, and therefore, so far as concerns *the law of descents*, not subject to disposition by the will of a *minor*, or by a deed executed by him, an act was passed to remove this impediment, declaring, "That any person of the age of *eighteen* years, being possessed of or having a right to any slave or slaves, may, by his last will and testament, or by an instrument in writing, emancipate such slave or slaves." *Ibid*, 1247.

The law of Missouri on this subject bears so close an analogy to the law of Kentucky of 1798, as not to call for a particular recital. *See* 2 *Missouri Laws*, 744.

In Virginia, the law of emancipation has undergone many changes since the year 1699, when the first legislative interposition happened. By an act of that year, the emancipation of any negro or mulatto slave, was rendered nugatory unless the emancipator *should send his freedman out of the country within six months* from the time of his emancipation; and in default of so doing, the church wardens were authorized to apprehend and sell him. 3 *Henning's Statutes*, 87. Another act was passed in 1723, forbidding emancipation, except for *meritorious* services to be adjudged of by the governor and council. 4 *ibid*, 132. This latter act was superseded in 1782, by the introduction of one nearly similar, which is now in force in this state, and which in many essential points has been closely followed in the law of Kentucky of 1798, as above transcribed. *See* 1 *Rev. Code*, (*Virginia*, 433-4.) In one respect, and that too of a most important character, the law of Virginia differs from the law of Kentucky. I allude to the inhuman provision

* See *supra*, *note* † p. 23.

adverted to in the first part of this sketch, by which an emancipated negro, being more than twenty-one years of age, who shall continue within the state more than twelve months after his right to freedom shall have accrued, may be again reduced to slavery!! *Ibid*, 436.*

The existing law of Marylaud on this subject, takes its date from the act of 1796, *chap.* 67;—the 29th section of which is in these words: "Where any person or persons possessed of any slave or slaves within this state, who are or shall be of *healthy constitutions*, and sound in mind and body, capable by labour to procure to him or them sufficient food and raiment, with the requisite necessaries of life, and not exceeding forty-five years of age, and† such person or persons possessing such slave or slaves as aforesaid, may by writing, under his, her or their hand and seal, evidenced by two good and sufficient witnesses at least, grant to such slave or slaves, his, her or their freedom; and any deed or writing whereby freedom shall be given or granted to any such slave, which shall be intended to take place in future,‡ shall be good to all intents, constructions, and purposes whatsoever, from the time that such freedom or manumission is intend-

* See *supra*, page 18.

† The word *and*, though in the law, should be striken out.

‡ In a case of this kind, where a future point of time is fixed at which the slave is to be free, it is plain, he ought to be regarded not as an absolute slave, but merely bound to a servitude *for years*. According to the maxim, that the condition of the *issue* depends upon the condition of the *mother*, it would, therefore, follow, that the issue of female slaves *so circumstanced*, and born during the period of *their mother's servitude for years*, should not be considered slaves for life. Whether such issue should be held as *slaves for life*, or should be regarded as *free*, seems not to have been well settled by the courts. To remove all doubt on this subject, as on some other nearly similar cases, "that from and after the first day of February, 1810, if any negro or mulatto female slave, by testament, or last will, or deed of manumission, shall be declared to be free after any given period of service, or at any stipulated age, or upon the performance of any condition, or on the event of any contingency, it shall be lawful for the person making such last will, &c. &c. to fix and determine in the same, the state and condition of the issue that may be born of such negro or mulatto female slave during their period of service." So far the act is judicious, but in the next section, it is provided, that in the event, that, the testator, &c. shall not determine the condition of the issue so born, they shall be esteemed *slaves for life!!!* *Maryland Laws, act of Nov.* 1809, *ch.* 171.

ed to commence by the said deed or writing, so that such deed and writing be not in *prejudice of creditors*, and that such slave, at the time such freedom or manumission shall take place or commence, be not above the age aforesaid, and be able to work and gain a sufficient livelihood and maintenance, according to the true intent and meaning of this act, which instrument of writing shall be acknowledged before one justice of the peace of the county wherein the person or persons so granting such freedom shall reside, which justice shall endorse on the back of such instrument the time of the acknowledgment, and the party making the same, which he or they, or the parties concerned, shall cause to be entered among the records of the county court, where the person or persons granting such freedom shall reside, within six months after the date of such instrument of writing, and the clerk of the respective county courts within the state, shall immediately upon the receipt of such instrument, endorse the time of his receiving the same, and shall well and truly enrol such deed or instrument in a good and sufficient book, in folio, to be regularly alphabeted in the names of both parties, and to remain in the custody of the said clerk for the time being, among the records of the respective county courts; and that the said clerk shall on the back of every such instrument, in a full, legible hand, make an endorsement of such enrolment, and also of the folio of the book, in which the same shall be enrolled, and to such endorsement set his hand, the person or persons requiring such entry paying the usual and legal fees for the same." Emancipation is also authorized by the same act, to be made by *last will and testament*, subject to the same restrictions which are imposed in case the emancipation is effected by deed, &c. agreeably to the above section. *Ibid*, § 13.*

The state of Louisiana, directs emancipation to be made in the

* In this state, a slave may be manumitted by *implication* contained in a last will and testament. As by a devise of real, or a bequest of personal property to a slave by his owner. *See Hall vs. Mullin*, 5 *Harris & Johnson's Reports*, 190. In North and South Carolina, it will be recollected, such a devise or bequest, so far from entitling the slave to freedom, is held to be *utterly void*. The decision in Maryland is, however, in conformity with the law of villanage, as well as to the civil law. *See Coke Litt. tit. Villanage*, § 205.

manner set forth in the following Articles of her new civil code: "a master may manumit his slave in this state, either by an act, *inter vivos*, or by a disposition made in prospect of death, provided such manumission be made with the forms and under the conditions prescribed by law; but an enfranchisement, when made by a last will, must be express and formal, and shall not be implied by any other circumstances of the testament, such as a legacy, an institution of heir, testamentary executorship, or other dispositions of this nature, which in such case shall be considered as if they had not been made." *Art.* 184. The manner to be observed by the emancipator, (when the emancipation is not by a last will,) is thus delineated: "The master who wishes to emancipate his slave, is bound to make a declaration of his intention to the judge of the parish where he resides; the judge must order notice of it to be published during forty days by advertisement posted at the door of the court house, and if at the expiration of this delay, no opposition be made, he shall authorize the master to pass the act of emancipation." *Art.* 187. The general powers thus conferred, are subject nevertheless, to these limitations: "No one can emancipate his slave unless the slave has attained the age of *thirty years*,* and has behaved well at least for four years preceding his emancipation;" *Art.* 185, except "*a slave who has saved the life of his master, his master's wife or one of his children,*" *for such a one* "*may be emancipated at any age.*" *Art.* 186.

* The bearing of this law, has given rise to a private act of the assembly of Louisiana, which, to one accustomed to consider freedom as among the imprescriptible rights of rational creatures, may seem inexplicable. The act alluded to, is entitled, "an act to authorize the manumission of certain slaves," and contains the following recital and enactment. "Whereas Maria Martha, a free woman of colour, of the parish of West Baton Rouge, has presented a petition to the legislature, praying *to be authorized to manumit two of her children*, one named Terence, of *twenty-six years of age*, and the other Valery, of *twenty-four years of age*, both being *her own property*, and begotten whilst the said Maria Martha was in the bonds of slavery; and whereas, in conformity of the existing laws of this state, slaves cannot be manumitted until they have attained a certain age, therefore, be it enacted, &c. that the said Maria Martha, &c. be and she is hereby authorized to manumit her two children, &c. &c." *See acts of assembly of Louisiana in the year* 1823, *page* 36.

While treating on the subject of emancipation, with reference to the laws of Louisiana, it is due to the framers of the new civil code, as well as to the legislature and people by whom it has been adopted, to notice distinctly several provisions in this code, which evidence greater benevolence to the slave than is usually exhibited in slave-holding countries. Thus, to meet a case which may frequently occur, it is an article of the code, that "the child born of a woman after she has acquired the *right* of being free at a *future time*, follows the condition of the mother, *and becomes free* AT THE TIME FIXED *for her enfranchisement, even though the mother should die before that time.*" *Art.* 196. Again, "The slave who has acquired the right of being free at a future time, is, from that time, (i. e. the period when the *right* is acquired,) capable of receiving by testament or donation. Property given or devised to him, must be preserved for him, in order to be delivered to him in kind, when his emancipation shall take place. In the mean time, it must be administered by a curator." *Art.* 193.

APPENDIX.

OF THE LAWS OF THE UNITED STATES RELATING TO SLAVERY.

CHAPTER I.

ON THE APPORTIONMENT OF REPRESENTATIVES TO CONGRESS, &c.

THE introduction of negro slavery into this country was, as it has been already stated, a part of the colonial policy of Great Britain. It has been also stated, that long before, and at the era of our independence, it existed to some extent, in each of the original states of the Union. It was an institution, the evils of which, at this latter period, in particular, were severely felt, while its incompatibility with the principles of a republican government was too palpable not to be generally perceived and acknowledged. Prevailing, however, as was the case, in *some* states *much more* than in *others*, it was the dictate of sound policy, on the part of the FIRST *Congress*, to leave the whole subject unaffected by any national measure. Accordingly, when the *original* draught of the Declaration of Independence was presented to that body, a portion of this instrument, which reprobated in strong language the conduct of the mother country in relation to the slave population, was entirely stricken out. And afterwards, in 1778, when the articles of confederation between the several states were adopted, the topic of slavery was again carefully excluded. But when the perils of the revolutionary conflict were over, and peace invited the exercise of patriotism,

philanthropy and religion, in the formation of a more stable and more perfect system of government, by which were to be reconciled the jarring elements incident to a wide-spread country, peopled by inhabitants whose education, whose interests and whose religious creeds were different, the consideration of slavery was *forced* upon the convention. Politically speaking, a majority of the states would have been benefited had the *same caution* been observed with respect to the *Constitution*, which had been pursued in reference to the *Declaration of Independence* and the *Articles of Confederation*. The apportionment of representatives among the several states, was, however, a subject of such prominence, as to claim the earliest attention of the convention. In an evil hour, the important advantage was conceded to the slave-holding states of including within the enumeration of inhabitants by which the ratio of representation was to be ascertained, *three-fifths of those who were held in slavery*.

For the surrender of right, involved in this anomalous arrangement, the *large non*-slave-holding states, such as New York and Pennsylvania, obtained not even a nominal equivalent. The provision relative to *direct taxes*, when viewed in all its bearings, is beneficial to the slave-holding rather than to the *non*-slave-holding states.* The equal representation of the states in the Senate, it will not be pretended, confers undue power upon

* The late Honourable William Paterson, who was a member of the convention by which the constitution of the United States was formed, speaking of the mode which is prescribed by that instrument for the regulation of *direct taxes*, says: "The provision was made *in favour* of the Southern states. They possessed *a large number of slaves;* they had extensive tracts of territory thinly settled and not very productive. A majority of the states had but few slaves, and several of them a limited territory, well settled, and in a high state of cultivation. The Southern states, if no provision had been introduced in the constitution, would have been wholly at the mercy of the other states. Congress, in such case, might tax slaves, at discretion or arbitrarily, and land in every part of the Union, after the same rule or measure—so much a head in the first instance, and so much an acre in the second. To guard them against imposition in these particulars, *was the reason of introducing the clause in the constitution*, which directs that representatives and *direct taxes* shall be apportioned among the states, according to their respective numbers." *See* 3 *Dallas' Reports*, 177.

the LARGE *non-slave-holding states.* On the contrary, this is known to have been the result of a compromise, in which the interest of the *small* states only was consulted. It was deemed necessary, in order to preserve the federative system; and believing as I do, that for this purpose it was indispensable, great as was the sacrifice on the part of the large states, nevertheless, it ought, I concede, to have been made.

This latter principle, of equal representation of the several states in the Senate, induced the consent of the *small non-slave-holding states* to the monstrous anomaly in a republican government of the legislative representation of *slaves* by their *masters.* No argument can be advanced to give plausibility to this article of the constitution. It has been, already, the cause of incalculable detriment to the nation. It has secured the recognition of slavery in Missouri—it may operate the like effect in other territories equally enriched by the bounty of Heaven —the like fit abodes of the children of freemen.

CHAPTER II.

ON THE NINTH SECTION OF ARTICLE II. OF THE CONSTITUTION OF THE UNITED STATES.

At the adoption of the constitution, *a majority of the states*, had but few slaves. In several, acts for the abolition of slavery had been passed. These states were politically interested to oppose the further importation of slaves. The *ninth section of article second* was accordingly incorporated in the constitution. It is in these words: "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax may be imposed on such importation, not exceeding ten dollars for each person."*

* By the article of the constitution just quoted, Congress was prevented from passing any law to prohibit, *prior to the year* 1808, the importation of slaves *into the United States*, yet, no restraint was imposed upon its power to prevent her citizens from engaging in the slave trade for the supply of *foreign* countries. And *a convention of delegates from the Abolition Societies established in the states of Connecticut, New York, New Jersey, Pennsylvania, Delaware, and Maryland*, having assembled on the first day of January, A. D. 1794, at Philadelphia, addressed a memorial to Congress, requesting, "*That a law might be passed, prohibiting the traffic carried on by citizens of the United States for the supply of slaves to foreign nations, and preventing foreigners from fitting out vessels for the slave trade in the ports of the United States.*" This memorial was acted upon by Congress with great promptness, and on the 22nd day of March of the same year, an act of this body was passed, which prohibited, under the penalty of the forfeiture of the ship and a fine of two thousand dollars for each person concerned, any citizen of the United States, or any foreigner, *resident here*, for himself, or for any other person whatsoever, either as master, factor or owner, from building, equipping, &c. any vessel within any port or place in the United states, or causing, &c. for the purpose of carrying on any trade or traffic in slaves to any FOREIGN COUNTRY. *Ingersoll's Abridgment*, 670. And afterwards, (May 10, 1800,) it was made unlawful for any citizen of the United States, or other person residing within the same, directly or indirectly, to hold any right or property in a vessel employed in the transportation of slaves from *one foreign country to another*, and a penalty was incurred by a violation of this

As this article concerns the *slave trade*, and not the condition of slaves after their introduction into our country, *in itself* it has no immediate connexion with the subject in hand. But certain laws have been enacted by Congress under the sanction of it, from which consequences have ensued of such a nature as to require more than a passing notice, particularly in regard to the subject treated of in the first part* of this sketch. To illustrate this point satisfactorily, will require a minute detail of the provisions contained in the acts of congress alluded to, as also a careful examination of several acts of the assemblies of some of the individual states of the Union.

The time fixed by law for the annual meeting of congress, is, it will be recollected, the first Monday in December. The interval between this date, in the year 1807, and that at which, by the terms of the constitution, the importation of slaves *might* be interdicted, was so brief, that it was obviously the dictate of wisdom to begin with legislation, on so momentous a subject, before the expiration of the preceding session. Accordingly, on *the second of March* 1807, an act was passed, by which such importation *from abroad*, was utterly prohibited after the first day of January, one thousand eight hundred and eight.

act, of a forfeiture of such share or right as he might hold, &c. and a fine of double the value of such share or right, &c. in the vessel, and, also, a fine equal to twice the value of his interest in any slave which, at any time, might have been transported in any such vessel, &c. Citizens of the United States were, by the same act, forbidden to serve on board any vessel employed in the slave trade, under the penalty of a fine not exceeding two thousand dollars, and of imprisonment not exceeding two years. *Ibid* 672, 673.

My purpose in introducing the subject of this note, is to evidence the sentiments of at least a majority of the people of the United States, in regard to the *slave trade*. Additional authority on the same point, may be derived from another act of Congress, which was passed Februrary 28th, 1803, entitled, "An act to prevent the importation of certain persons into certatn states, where, by the laws thereof, their admission is prohibited." This law, the purport of which is but obscurely intimated by the title, was designed as a co-operation on behalf of the Federal Government, in carrying into effect laws which had been enacted by our Atlantic states (both the *slave-holding* and the non-slave-holding,) to prohibit the importation of slaves from foreign dominions into their respective territories.

* See *supra*, page 19.

The *date* of this leading act evinces, in an unequivocal manner, the strong and general repugnance felt by the people of the United States to the slave trade. But, while a firm persuasion of the truth of this remark compels me to offer it, I cannot forbear to add, that, viewed as a whole, the act is so *discordant*, as to involve in no little obscurity the character of its supporters for perspicacious foresight. An analysis of its provisions will sufficiently elucidate my meaning.

The *first* section is short, and being the ground-work of what follows, I will extract it verbally. "From and after the first day of January, one thousand eight hundred and eight, it shall not be lawful to import or bring into the United States or the territories thereof, from any foreign kingdom, place or country, any negro, mulatto or person of colour, with intent to hold, sell or dispose of such negro, mulatto or person of colour, as a slave, or to be held to service or labour." The *second* section prohibits any person, after the first day of January, 1808, for himself or for any other person, from being concerned in any way whatever, in building, equipping, &c. a vessel, in any port, &c. of the United States, for the purpose of carrying on the slave trade; and for a transgression of this prohibition, authorizes a forfeiture of the vessel, her tackle, &c. The *third* section enforces the restriction in the *second*, by imposing a fine of twenty thousand dollars on each person who shall contravene the object of the preceding sections. The *fourth* section is specially directed against the actual *importation* of slaves. And it is in the provisions of this section, that the discordancy, I have spoken of, is introduced. It may be given as follows: "If any citizen of the United States or any person resident within the jurisdiction of the same, shall, from and after the first day of January, 1808, take on board, receive or transport, from any of the coasts or kingdoms of Africa, &c. &c. any negro, &c. &c. in any ship or vessel, for the purpose of selling them in any port, &c. within the jurisdiction of the United States, *as slaves*, &c. or shall be in any way aiding, &c. such citizen, &c. shall forfeit and pay five thousand dollars, &c. &c. and the ship, &c. shall be forfeited, &c. And neither the importer, nor any person or persons claiming from or under him,

shall hold any right or title whatsoever to any negro, &c. who may be imported, &c. within the United States, &c. in violation of this law, *but the same shall remain subject to any regulations, not contravening the provisions of this act, which the legislatures of the several states or territories at any time hereafter may make, for* DISPOSING *of any such negro, mulatto or person of colour.*"

Had the act stopt here, though the meaning would have been obscure, as to what was to be understood, by the authority given to the different state and territorial legislatures to make "regulations, *not contravening the provisions of the act,* FOR DISPOSING of any such negro, &c," yet, I conceive, it would have been held as the proper construction, that the *imported* negro could not be retained as a *slave.* But the *sixth* section removes the obscurity of the fourth, and explains the intention of congress to have been, that the negro, &c. though *illegally* imported, yet if so directed by the state legislatures, he and his offspring, should be regarded as *absolute slaves!!!*

The sixth section is long, but it is too important to be omitted. It is as follows: "If any person or persons whatever, shall from and after the first day of January, 1808, purchase or sell any negro, mulatto, or person of colour, for a slave, or to be held to service or labour, who shall have been imported or brought from any foreign kingdom, place or country, or from the dominions of any foreign state, immediately adjoining to the United States, into any port or place within the jurisdiction of the United States, after the last day of December, 1807, knowing at the time of such purchase or sale, such negro, mulatto, or person of colour, was so brought within the jurisdiction of the United States as aforesaid, such purchaser and seller shall severally forfeit and pay for every negro, mulatto or person of colour, so purchased, &c. as aforesaid, eight hundred dollars; one moiety to the United States, &c.: *Provided, that the aforesaid forfeiture shall not extend to* THE SELLER OR PURCHASER *of any negro, &c. who may be sold or disposed of* IN VIRTUE OF ANY REGULATION WHICH MAY HEREAFTER BE MADE BY ANY OF THE LEGISLATURES *of the several states in that respect,* IN

PURSUANCE OF THIS ACT, and the constitution of the United States."

The legislature of Louisiana was not tardy in *improving* the privileges thus preposterously conferred by congress. By an act of assembly, passed March 20th, 1809, it was enacted, that *every negro, mulatto or person of colour*, who had been posterior to the *first day of January*, 1808, or who should be, at any time thereafter, imported into the *territory* of Louisiana from any foreign kingdom, place or country, with intent to be held, sold or disposed of, for a slave, or to be held to service or labour, either for life or for a term of years, should *be sold* by virtue of a judgment to be rendered by the territorial courts, before whom proof of such importation should be made, and that the proceeds of such sale should be delivered into the hands of the treasurer of the territory, to be afterwards disposed of as the legislature might deem proper. 1 *Martin's Digest*, 664. North Carolina and Georgia, respectively adopted a similar law, the former in 1816, *Haywood's Manual*, 545, *et seq.*, the latter* in 1817. *Prince's Digest*, 463.

Public attention had not yet been attracted to the inconsistency of the act of congress which I have indicated. And what may seem not a little surprising, on the 20th of April, 1818, another act of congress was passed, imposing more severe penalties on the prosecution of the slave trade, *but re-enacting the odious sixth section of the act of March 2d*, 1807, and *recog-*

* The act of Georgia, contains a provision, equally just and humane which is not to be found in the act of North Carolina or in that of Louisiana. Having authorized the governor to make sale of the unhappy captives, who, though *illegally* imported, were, nevertheless subjected to the control of the state legislatures, and might be by them, consigned to interminable bondage, the subjoined section was added: "If previous to any sale of such persons of colour, the society for the colonization of free persons of colour within the United States, will undertake to transport them to Africa, or any other foreign place which they may procure as a colony for free persons of colour at the sole expense of said society, and shall likewise pay to his excellency the governor, all expenses incurred by the state since they have been captured and condemned, his excellency the governor is authorized and requested to aid in promoting the benevolent views of said society in such manner as he may deem expedient." *Prince's Digest*, 463.

nizing the laws of the several state legislatures on this subject, which have just been commented upon!! *See Ingersoll's Abridgment,* 680.

The evil, however, soon afterwards, reached its crisis. The repetition of such monstrous injustice, awaked the slumbering energies of the friends of injured Africa: and the *same* congress by which the act of 1818 had been passed, was induced to *resume* the consideration of the slave trade, and, having done so, by a law of March 3d, 1819, authorized the president, at his discretion, to cause any of the public armed vessels of the United States to be employed to cruise on any of the coasts of the United States, &c., or on the coast of Africa, in order to suppress the slave trade; and directed that when any vessels should be captured, having negroes, &c. on board, &c. they should be delivered to the marshal of the district into which the vessel might be brought, if the same should be a port of the United States, and if brought in elsewhere, to an agent whom the president was empowered to appoint for such purpose, &c. And authority was given to the president to make such arrangements as he should think expedient for the safe-keeping, support, and *removal beyond the limits of the United State* of such negroes, &c. And to meet the case of slave vessels, which might escape seizure from the public armed vessels, it was enacted, that when any citizen or other person should lodge information with the attorney general for the district of any state, &c. that any negro, &c. had been imported, &c. contrary to the provisions of the acts for the suppression of the slave trade, such attorney should be bound forthwith to commence a prosecution, &c. and process was to be issued against the person charged with holding such negro, &c. and if upon the verdict of a jury, it should be ascertained, that any such negro, &c. had been imported contrary to the acts of congress, &c. it was made the duty of the court to direct the marshal, &c. to take the said negroes, &c. into his custody for safe keeping, subject to the orders of the president of the United States, &c. &c. The act also grants to the informer a bounty *of fifty dollars for each negro* thus delivered into the custody of the marshal. *See Ingersoll's Abridg-*

ment, 683. And lastly, *the sections of the former acts which conferred authority upon the state legislatures to dispose of the* ILLEGALLY IMPORTED NEGROES, WERE REPEALED.*

* Notwithstanding this repeal, the state of Alabama, on *first day of January*, 1823, passed an act, entitled, "an act to carry into *effect the laws of the United States* prohibiting the slave trade." The provisions of this extraordinary violation of the act of congress, are similar to those comprised in the acts of Louisiana and North Carolina, upon which I have animadverted, authorizing in *express* terms, an agent, to be appointed by the governor of the state, to *sell* for the benefit of the state, all persons of colour who should be brought into the United States, and within the jurisdiction of Alabama, contrary to the laws of congress prohibiting the slave trade!!! *See Toulmin's Digest*, 643.

CHAPTER III.

OF THE ACT OF CONGRESS RELATIVE TO FUGITIVE SLAVES.

THE *Federal Government* being composed of thirteen distinct and independent sovereignties, in four of which, before the constitution of the United States was framed, slavery had been abolished, it was deemed expedient to secure by a stipulation to be inserted in the constitution, a right in the citizens of one state, whose servants or slaves should escape from their masters and become residents of another state, to reclaim such fugitives and subject them again to bondage. This stipulation is comprised in the *third division of section 2d, article* 4, in these words: "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."

Upon the authority of this provision of the constitution, an act of Congress, dated *February 12th*, 1793, has been passed, which, in its actual enforcement, is the source of bitter anguish to its immediate victims, of deplorable excitement among the free coloured population, and of painful sympathy and regret to the humane and patriotic white citizen who may be compelled to witness the spectacle.

The part of the act of Congress just mentioned, which bears upon the present inquiry, is as follows: "When a person held to labour in any of the United States, or in either of the territories on the north-west or south of the river Ohio, under the laws thereof, shall *escape* into any other of the said states or territories, the person to whom such labour or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labour, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a

county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labour to the state or territory from which he or she fled." *Ingersoll's Abridgment*, 310.

Pennsylvania, from her contiguity to several of the slave-holding states, has, probably been the forum of most of the decisions which have been made under this law. The records, however, of but *few* of these have been preserved—a majority, unfortunately, having occurred before *justices of the peace*, selected by the claimant from their known willingness to subserve his interest, rather than to administer with impartiality the authority delegated to them.

The act of Congress, and the article of the constitution of the United States, above cited, are so essentially connected, that the judicial decisions to which I have alluded, have been made generally as much in reference to the one as to the other. I shall, therefore, not attempt a distinct classification.

The first case of an important character, as relates to the present chapter, was that of *Butler vs. Hopper*, already inserted at considerable length. It was there said, by *Judge Washington*, that "the second section of the fourth article, (i. e. of the constitution of the United States,) which declares, *that no person held to labour or service in one state, under the laws thereof*, ESCAPING *into another, shall, in cons equence of any law therein, be discharged from such service*, did not extend to the case of a slave *voluntarily* carried by his master into another state, and there leaving him under the protection of some law declaring him free." 1 *Washington's Circ. Court Rep.* 501.

At October term, 1823, the principle of the decision in *Butler vs. Hopper*, was again recognised by *Judge Washington*, on an application preferred by *J. W. Simmons*, agreeably to

the act of Congress of February 12, 1793, for a certificate that *James Mathist*, a black man, was his slave. It was proved in this case, that *Simmons* was a citizen of *Charleston, South Carolina*, and had lived there, generally, till within a few years, when he came to the city of Philadelphia, took a house, and with his family had resided in the city ever since. *James* was admitted to have been his slave before and at the time of his leaving Charleston, and as such *to have been brought by him to Philadelphia*, in June, 1822. Upon these facts the Judge refused the certificate, and dismissed the application, saying, *that the act of Congress applied exclusively to fugitive slaves, and not to those whom their masters themselves brought from one state to another.*

A third case may be adduced, decided on the twentieth of February, 1826, by *Judge Barnes*, now President of the District Court for the city and county of Philadelphia, upon the following facts: "*Marshall Green*, a black man, was claimed as a slave, by *Peter Buchell*, administrator, &c. of *John Buchell*, deceased, who for many years before, and at the time of his decease, was an inhabitant of *Cecil county, Maryland.* About four years previous to the hearing before *Judge Barnes*, and one year before the death of *John Buchell, Marshall* absconded from his master's residence, and continued absent until August, 1825, when he was arrested by *Peter Buchell*, and carried back to *Maryland.* At the time when he *absconded*, he took with him his three children, who were alleged also to be slaves. After *Marshall's* return to Maryland, in August, 1825, *Peter Buchell*, then his master, in order to obtain possession of these children, *gave him permission, and for that purpose furnished him with a* PASS, to come into *Pennsylvania*, upon his express promise, that he would, within a certain period, if successful in the pursuit of his children, bring them to his master—if not successful, he would return himself. The time of absence granted by the master having expired, *Marshall* was again arrested, by virtue of a warrant issued by *Judge Barnes*, in compliance with the directions of the *act of assembly* of the commonwealth of Pennsylvania, passed March 25th, 1826, and brought before him for a hearing. The Judge having taken time for deliberation, re-

fused the certificate applied for by the master, under the act of Congress, upon the ground, which was ably supported in the opinion he pronounced, that the act of Congress did not embrace a case like that before him, inasmuch as *Marshall* was *not* a *fugitive* slave—had *not* "escaped from one state into another" —*but, by his master's consent, had left Maryland and come into Pennsylvania.*

A construction of considerable importance, has been placed upon another portion of the act of congress, by the Supreme Court of Pennsylvania, in a case brought before it in 1819. The following is the reporter's statement prefixed to the decision of the court: "This was a writ *de homine replegiando,* sued out by the plaintiff, a coloured man, against the defendant, who was the keeper of the prison of the city and county of *Philadelphia,* and the defendant's counsel now moved to quash it, on the ground of its having issued *contrary to the constitution and laws of the United States.* The facts were submitted to the court, in a case stated, by which it appeared, that the plaintiff having been claimed by *Rasin Gale* of *Kent county,* in the state of *Maryland,* as a fugitive from his service, was arrested by him, in the county of *Philadelphia,* and carried before *Richard Renshaw, Esq.* justice of the peace, who committed the plaintiff to prison, in order that inquiry might be made into the claim of the said *Gale.* The plaintiff then sued out a *habeas corpus,* returnable before *Thomas Armstrong, Esq.* an associate judge of the Court of Common Pleas. *Judge Armstrong* having heard the parties, gave a certificate, that it appeared to him, by *sufficient* testimony, that the plaintiff owed labour or service to said *Gale,* from whose service, in the state of *Maryland,* he had absconded, and the said judge, therefore, in pursuance of the act of the congress of the United States, &c. delivered the said certificate to the said *Gale,* in order that the plaintiff might be removed to the state of *Maryland.*" The court having held the case under advisement for several days, directed *the writ to be quashed,* on the ground, that by the act of congress, the certificate of the judge was conclusive evidence of the right of the master to remove the plaintiff to the state of Maryland, and, therefore, that no writ of a civil nature could

be issued to interrupt the master in the exercise of the power conferred upon him by the certificate. *Wright, otherwise called Hall vs. Deacon,* 5 *Sergeant & Rawle's Reports,* 62-4.

But the constitution of the United States does not exempt runaway slaves from the penal laws of a state in which they may happen to flee upon escaping from their masters. As, where a slave had absconded from his master, living in the state of *Maryland,* and was afterwards confined in prison in the city of Philadelphia, upon the charge of fornication and bastardy, committed during his residence in Pennsylvania, the Supreme Court refused to deliver him to his master, but ordered him to be detained, to answer the charge which had been made against him. *Case of the Commonwealth, on the relation of Johnson, a negro vs. Holloway,* 3 *Sergeant & Rawle's Reports,* 4-6. And see for a similar opinion 9 *Johnson's* (*N. Y.*) *Reports,* 70, *Glen vs. Hodges.*

But, it was held in this latter case, by the Supreme Court of the state of *New York,* that where a slave had absconded from his master living in the state of New York, and had taken refuge in Vermont, that a citizen of this latter state, who had traded with him under the belief that he was free, and as such had given credit to him for goods, could not issue civil process to prevent the master from reclaiming him, inasmuch as a slave is, in law, incapable of making a contract.*

Much complaint having been made against justices of the peace and aldermen for an abuse of the powers given to them by the act of congress, the legislature of Pennsylvania, passed an act, dated March 27th, 1820, prohibiting them from the further exercise of these powers. And on the 25th of March, 1826, the subject of arresting fugitive slaves having been again brought, in a very extraordinary manner, before the legislatue, a law was passed, which, besides the re-enactment of the prohibition in the act of 1820, contains many other regulations which, from their importance, are here inserted.

"Sect. 3. *Be it enacted, &c.* That when a person held to labour or service in any of the United States, or in either of the territories thereof, under the laws thereof, shall escape into this

* See *supra,* page 61.

commonwealth, the person to whom such labour or service is due, his or her duly authorized agent or attorney, constituted in writing, is hereby authorized to apply to any judge, justice of the peace, or alderman, who on such application, supported by the oath or affirmation of such claimant, or authorized agent or attorney, as aforesaid, that the said fugitive hath escaped from his or her service, or from the service of the person for whom he is duly constituted agent or attorney, shall issue his warrant under his hand and seal, and directed to the sheriff or any constable of the proper city or county, authorizing and empowering said sheriff, or constable, to arrest and seize said fugitive, who shall be named in said warrant, and to bring said fugitive before a judge of the proper county, which said warrant shall be in the form or to the effect following: "State of Pennsylvania, county, ss: The commonwealth of Pennsylvania to the sheriff or any constable of county, greeting. Whereas it appears by the oath, or solemn affirmation, of that was held to labour or service, to , of county, in the state of , and that the said hath escaped from the labour and service of the said . You are therefore commanded to arrest and seize the body of the said , if he be found in your county, and bring him, forthwith, before the person issuing the warrant, if a judge, (or if a justice of the peace or alderman) before a judge of the court of common pleas, or of the district court, as the case may be, of your proper county, or recorder of a city, so that the truth of the matter may be inquired into, and the said be dealt with as the constitution of the United States and the laws of this commonwealth directs. Witness our said judge, (or alderman, or justice, as the case may be,) at this day of A. D. one thousand eight hundred and ." By virtue of such warrant the person named therein may be arrested by the proper sheriff, or constable, to whom the same shall be delivered within the proper city or county.

Sect. 4. *Be it enacted, &c.* That no judge, justice of the peace

or alderman, shall issue a warrant, on the application of any agent or attorney, as provided in the said third section, unless the said agent or attorney shall, in addition to his own oath or affirmation, produce the affidavit of the claimant of the fugitive, taken before, and certified by a justice of the peace or other magistrate authorized to administer oaths, in the state or territory in which such claimant shall reside, and accompanied by the certificate of the authority of such justice or other magistrate, to administer oaths, signed by the clerk or prothonotary, and authenticated by the seal of a court of record, in such state or territory, which affidavit shall state the said claimant's title, to the service of such fugitive, and also the name, age and description of the person of such fugitive.

Sect. 5. *Be it enacted, &c.* That it shall be the duty of any judge, justice of the peace or alderman, when he grants or issues any warrant under the provisions of the third section of this act, to make a fair record on his docket, of the same, in which he shall enter the name and place of residence of the person on whose oath or affirmation the said warrant may be granted and also if an affidavit shall have been produced under the provisions of the fourth section of this act, the name and place of residence of the person making such affidavit, and the age and description of the person of the alleged fugitive contained in such affidavit, and shall within ten days thereafter, file a certified copy thereof in the office of the clerk of the court of general quarter sessions of the peace or mayor's court, of the proper city or county; and any judge, justice of the peace or alderman, who shall refuse, or neglect to comply with the provisions of this section, shall be deemed guilty of a misdemeanor in office, and shall, on conviction thereof, be sentenced to pay, at the discretion of the court, any sum not exceeding one thousand dollars, one half to the party prosecuting for the same, and the other half to the commonwealth; and that any sheriff or constable, receiving and executing the said warrant, shall without unnecessary delay, carry the person arrested before the judge, according to the exigency of the warrant; and any sheriff or constable, who shall refuse or wilfully neglect so to do, shall on conviction thereof, be sentenced to pay, at the discretion of the court, any sum not ex-

ceeding five hundred dollars, one half to the party prosecuting for the same, and the other half to the commonwealth, or shall also be sentenced to imprisonment, at hard labour, for a time not exceeding six months, or both.

Sect. 6. *Be it enacted, &c.* That the said fugitive from labour or service, when so arrested, shall be brought before a judge, as aforesaid, and upon proof, to the satisfaction of such judge, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge to give a certificate thereof, to such claimant, his or her duly authorized agent or attorney, which shall be sufficient warrant for removing the said fugitive to the state or territory from which he or she fled: *Provided*, That the oath of the owner or owners, or other person interested, shall in no case be received in evidence, before the judge, on the hearing of the case.

Sect. 7. *Be it enacted, &c.* That when the fugitive shall be brought before the judge, agreeably to the provisions of this act, and either party allege, and prove to the satisfaction of the said judge, that he or she is not prepared for trial, and have testimony material to the matter in controversy that can be obtained in a reasonable time, it shall and may be lawful, unless security, satisfactory to the said judge, be given, for the appearance of the said fugitive, on a day certain, to commit the said fugitive to the common jail for safe keeping, there to be detained at the expense of the owner, agent or attorney, for such time as the said judge shall think reasonable and just, and to a day certain, when the said fugitive shall be brought before him by habeas corpus, in the court house of the proper county, or in term time, at the chamber of the said judge, for final hearing and adjudication: *Provided*, That if the adjournment of the hearing be requested by the claimant, his agent or attorney, such adjournment shall not be granted, unless the said claimant, his agent or attorney, shall give security, satisfactory to the judge, to appear and prosecute his claim, on the day to which the hearing shall be adjourned: *Provided*, That on the hearing last mentioined, if the judge committing the said fugitive, or taking the security as aforesaid, should be absent, sick or otherwise unable to attend,

it shall be the duty of either of the other judges, on notice given, to attend to the said hearing, and to decide thereon.

Sect. 9. *Be it enacted, &c.* That no alderman or justice of the peace of this commonwealth shall have jurisdiction, or take cognizance of the case of any fugitive from labour, from any of the United States or territories, under a certain act of congress, passed on the twelfth day of February, one thousand seven hundred and ninety-three, entiled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" nor shall any alderman or justice of the peace, of this commonwealth, issue or grant any certificate or warrant of removal, of any such fugitive from labour, as aforesaid, except in the manner and to the effect provided in the third section of this act, upon the application, affidavit or testimony of any person or persons whatsoever, under the said act of congress, or under any other law, authority or act of the congress of the United States; and if any alderman or justice of the peace of this commonwealth, shall contravene the provisions of this act, take cognizance or jurisdiction of the case of any such fugitive as aforesaid, except in the manner herein before provided, or shall grant or issue any certificate or warrant of removal as aforesaid, then, and in either case, he shall be deemed guilty of a misdemeanor in office, and shall on conviction thereof, be sentenced to pay, at the discretion of the court, any sum not less than five hundred dollars, nor exceeding one thousand dollars, the one half to the party prosecuting for the same, and the other half to the use of this commonwealth.

Sect. 10. *Be it enacted, &c.* That it shall be the duty of the judge or recorder, of any court of record of this commonwealth, when he grants or issues any certificate or warrant of removal, of any negro or mulatto, claimed to be a fugitive from labour, to the state or territory from which he or she fled, in pursuance of an act of congress, passed on the twelfth day of February, one thousand seven hundred and ninety-three, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," and of this act, to make a fair record of the same, in which he shall enter the name, age, sex and a general description of the person of the negro or mulatto, for

whom he shall grant such certificate or warrant of removal, together with the evidence and the name of places of residence of the witnesses, and the party claiming such negro or mulatto, and shall within ten days thereafter, file a certified copy thereof, in the office of the clerk of the court of general quarter sessions of the peace, or mayor's court of the city or county in which he may reside."

But, notwithstanding the tendency of these regulations, is to throw around the person claimed as a fugitive slave, a much greater security than he before possessed, yet since, by the decision of the Supreme Court of the state, the certificate of the judge, &c. is to be regarded as *conclusive evidence* of a right in the individual to whom it is granted, to remove his captive to a land where his very colour is his condemnation, it is manifest, that even in Pennsylvania, great injustice to coloured persons may still be perpetrated with impunity. But in those states, where a justice of the peace, with, perhaps, no other knowledge of jurisprudence than the almost boundless extent of his powers, and no regard for his reputation, except what the dread of punishment may inspire, sits, if he so please, in the privacy of his chamber, *the sole arbiter of the law and the fact*, who will say, that *manstealing* may not be prosecuted under the panoply of the law?

CHAPTER IV.

OF THE JURISDICTION OF THE FEDERAL GOVERNMENT OVER THE TERRITORIES NOT YET FORMED INTO STATES.

By several treaties with foreign powers, and by cessions from many of the original states of the confederacy, the Federal Government has, at different times, acquired lawful and peaceable possession of a vast extent of country, much of which is not yet formed into states, but is known by the name of *Territories.* Over these Territories, the Federal Government is expressly authorized by the constitution, to exercise entire jurisdiction. The provision alluded to, of the constitution, is this: "Congress shall have power to dispose of, and make all needful rules and regulations respecting the *territory* or other property belonging to the United States." *Art.* 4, § 3. Unless, therefore, the treaties and acts of cession impose conditions, the authority of the Federal Government over the Territories, is without limit. And such is not only the plain intent, but has been the uniform construction of this article of the constitution.

The territory *north west of the river Ohio,* was ceded, happily, upon the condition, that slavery should not be permitted there! On the contrary, the *deed* of cession of the territory *south of the same* river, forming at this time the state of Tennessee, made it imperative on Congress to tolerate it within the limits of that cession. The treaties by which the Federal Government derive title to *Louisiana* and the *Floridas,* contain no provision on the subject.

With respect to Louisiana, previous to the formation of a state out of a part of its territory, it was competent to the United States to have annihilated the institution of slavery within the *whole* of its extensive borders. It is competent for her *now* to do so, as to those portions which are not comprised within the

bounds of the two states have been created out of it. It is hardly necessary to apply this remark specifically to the Floridas: they are, obviously, in a similar predicament.

The *abolition* of slavery in her territories, has not been attempted by the Federal Government. But highly important regulations have been made by Congress, on a point not very remotely allied to that subject. On the 7th of April 1798, an act was passed by this body, "Authorizing the establishment of a government in the Mississippi Territory;" the *seventh* section of which provides, "That after the establishment of the aforesaid government, it shall not be lawful for any person or persons to *import or bring into the said Mississippi Territory*, from any port or place without the limits of the United States, or to cause or procure to be so imported, &c. or knowingly to aid or assist in so importing, &c. *any slave or slaves*, and that every person so offending, &c. shall forfeit, &c. for each and every slave so imported, &c. the sum of three hundred dollars, &c. and *that every slave so imported, &c. shall thereupon become entitled to and receive his or her freedom. See acts of the 2nd session of the 5th Congress, chap.* 45. This section is incorporated without the least variation, except as to the name of the territory, into the act of Congress passed March 26, 1804, entitled, "An act erecting Louisiana into two territories, and providing for the temporary government thereof," with supplementary regulations, prohibiting, in the first place, under an equal penalty, the introduction into Louisiana Territory, "from any port or place *within* the limits of the United States, &c. *any slave or slaves* which had been imported since the first of May, 1798, into any port or place within the limits of the United States, or which should be imported thereafter from any port or place without the limits of the United States," and concluding in this manner: "And no slave or slaves shall directly or indirectly be introduced into said territory, except by a citizen of the United States *removing* into said territory *for actual settlement*, and being at the time of such removal *bona fide owner* of such slave or slaves, and every slave imported or brought into the said territory, contrary to the provisions of this act, shall, thereupon, be entitled to and receive his or her

freedom." *Acts of the 1st session of the 8th Congress, chap.* 38, § 10.

This act does honour to the illustrious body from which it proceeded. In practice, however, its benefits were of much less value than one, not fully conversant with the mode in which the DOMESTIC *slave trade* is prosecuted, would be led to infer. A prohibition on this subject, to be *effectual*, should be ABSOLUTE AND WITHOUT ANY EXCEPTION. *Actual settlers and bona fide owners* may *protect* this traffic to an extent adequate to the demand, without incurring a risk at all commensurate with the probable gain.

But the act is of great moment, as a *precedent* to Congress, in regard to the Missouri, the Arkansas, and Florida Territories. The defects which have been suggested, may be easily supplied. Let the introduction of slaves into these territories, be, without delay, WHOLLY FORBIDDEN. Humanity and religion, the character of our country—the true interests as well of the slave-holding, as of the non-slave-holding states, demand this to be done.

NOTE TO PAGES 111—12.

The form in which it was found convenient to print the table inserted on the above pages, prevented the following note from being added in its proper place.

In forming this table, a difficulty has been experienced, of which the reader should be apprised. The *Revised Code* of Mississippi was prepared chiefly in 1821 and 1822, by *Governor Poindexter*, under the authority of an appointment for this purpose, by the legislature. The excellence of its execution, evinces that much time and study were bestowed upon it. I am, nevertheless, not able to learn to my *entire* satisfaction, either from the code or from the constitution of the state, whether or not, the common law or any part of it, is recognized there. It is declared in the *constitution*, that, "*all laws* and *parts of laws* now in force in the Mississippi territory, and not repugnant to the provisions of this constitution, shall continue and remain in force as the laws of this state, until they *expire by their own limitation*, or shall be altered or repealed by the legislature thereof." The expressions "*parts of laws*," and, "*expiring by their own limitation*," seem to refer exclusively to *statutes* and *not* to the common law.—The *Revised Code*, is a collection of public statutes, and is so expressly denominated. It contains no statute which *adopts* the common law or any portion of it. I *incline*, therefore, to the opinion, that it is not in force there. Feeling, however, some hesitancy, I have not ventured to speak peremptorily on this point, but have stated in the table, in many instances, under the head of "punishment of white persons," "*not provided for by statute;*" which implies, according to the view which I have taken, that white persons are not at all punishable for any of these offences. Some, indeed, are not offences by the common law.—The same remark, "not provided for by statute," might with propriety have been noted in reference to the punishment of white persons, for offences, Nos. 20, 21, 22, 23, 25, 26, and 27, instead of that which I have given, i. e. "a fine not exceeding 300 dollars, and may at the discretion of the court, receive 39 lashes." For this is the punishment assigned for a crime somewhat different, namely, *misprision or concealment* of the felonies mentioned.

CONTENTS.

CHAPTER III.

CHAPTER IV.

APPENDIX.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.