13FED.CAS.—66

Case No. 7,501.

JONES v. VANZANDT.

[2 McLean, 596;[1] 1 West. Law J. 2.]

Circuit Court, D. Ohio. July Term, 1843.

PLEADING—DEMURRER TO EVIDENCE—SLAVERY—RECAPTURE OF RUNAWAY SLAVES—HARBORING RUNAWAY SLAVES—DAMAGES.

1. A demurrer to evidence admits the facts proved, and every legal presumption which may be drawn from them.

2. A motion to overrule the evidence can only be made on the ground of its irrelevancy or in competency.

3. If there be evidence conducing to prove the case made in the declaration the court will not overrule it.

4. Slavery exists, only, by virtue of the laws of the states where it is sanctioned.

[Cited in Osborn v. Nicholson, Case No. 10,595.]

5. If a slave abscond from the state where he is held to service, into a jurisdiction where slavery is not tolerated, he is free. And this would he the law of these states, had not the constitution made a provision that such slave should be delivered up on claim of his master.

[Cited in Rodney v. Illinois Cent. R. Co., 19 Ill. 44.]

6. There is no general principle in the law of nations which requires such a surrender. It can only be required by virtue of a compact.

7. Recaption, at common law, could not be made in a foreign sovereignty.

8. Damages for harboring or concealing a slave, in a free state, are recoverable, only, by virtue of the constitution of the United States and the act of congress [1 Stat. 302]. No suit, therefore, for such an act can be sustained at common law.

[Cited in Daggs v. Frazer, Case No. 3,538; Van Metre v. Mitchell, Id. 16,865; Osborn v. Nicholson, Id. 10,595; Beckner v. Street, Id. 2,098.]

9. Notice that the colored persons harbored or concealed are fugitives from labor need not be in writing by the claimant or his agent, nor need it be given by either of them verbally.

10. Notice under this act means knowledge. And if there be evidence conducing to show such notice or knowledge, it must go to the jury, who will judge of the sufficiency of it. The same principle applies as to the evidence of harboring or concealing the fugitives.

Cited in Van Metre v. Mitchell, Case No. 16,864.]

[This was an action of trespass on the case by Wharton Jones against John Vanzandt.]

This action is brought by the plaintiff, a citizen of the state of Kentucky, against the defendant, a citizen of Ohio, under the act of congress, in regard to fugitives from labor. The declaration contains nine counts: First. That the plaintiff, being a citizen of Kentucky, where slavery is established by law, owned nine slaves, (naming them) who, without his license, departed from his services, and came to the defendant, &c. Second. That the said slaves, being fugitives from labor, came to the defendant, &c, who, after notice that they

were such fugitives, harbored and concealed them contrary to the statute, &c. Third and fourth. With some variations the same as above. Fifth. That the above slaves, &c, that the plaintiff, by his agents then and there undertook to seize and arrest such slaves as fugitives from labor, but was then and there knowingly and wilfully obstructed and hindered, &c, by the defendant from so doing, &c. Sixth. Charged the defendant with rescuing the fugitives from labor aforesaid, after they had been arrested, &c. Seventh and eighth. Were counts in trover. Ninth. That the defendant harbored and concealed Andrew, a fugitive from labor, after notice. &c.

Jones, a witness called by the plaintiff, stated that the plaintiff owned nine negroes (naming them) and resided in Boone county, Kentucky. That the greater part of them were born his, and that he purchased the others. That on Saturday evening, the 23d April, 1842, about nine o'clock, he was at the house of the plaintiff, and saw the negroes; the next day, at about twelve o'clock, he saw the same negroes, with the exception of two of them, in the jail at Covington. The plaintiff lives ten miles below Covington. Jackson, one of the absent negroes, returned in a few days; but Andrew remained absent, and has not been reclaimed. The plaintiff paid a reward

to the persons who returned the negroes of four hundred and fifty dollars, and other expenses which were incurred, amounting in the whole to about the sum of six hundred dollars. Andrew was about thirty years old, and his services were worth to the plaintiff six hundred dollars. That he could be sold in Kentucky for that sum. Several other witnesses corroborated the statements of this witness, as to the ownership of the negroes, the reward paid, and the value of the services of Andrew. Hefferman, a witness, stated, that he lives in Sharon, thirteen miles north of Cincinnati, on the road to Lebanon. That on Sunday morning, a little after day-light, he saw a wagon which was rapidly passing through Sharon. It was covered, and both the hind and fore part of the wagon were closed; a colored man was driving it. He knew the wagon belonged to the defendant, and his suspicion was excited. The witness and one Hargrave, another witness, started, in a short time, in pursuit of the wagon. They overtook it near Bates' about six miles from Sharon. The defendant lives near Sharon. On coming up with the wagon, the boy driving it was ordered by Hargrave to stop; he checked the horses, but a voice from within the wagon directed the boy to drive over him. The wagon horses were then whipped, running against Hargrave's horse which threw him off. The horses were driven in a run some two hundred yards, but at length, were overtaken by the witness, who seizing the reins of the horses drew them up into a corner of a fence. The driver jumped off and ran some distance; Vanzandt, the defendant, then came out of the wagon and took the lines, but the witness refused to let the horses proceed. Eight negroes were in the wagon; one of them called Jackson, and Andrew, the driver, escaped; the other seven were brought back to Covington and lodged in jail. Hargrave, accompanied the above witness in pursuit of the wagon, which he knew to belong to the defendant. Being acquainted with the defendant, he knew it to be his voice, which directed the colored boy to drive over the witness. That the wagon-tongue being driven against the horse of the witness, he was thrown, and the wagon-horses were driven on the run, until overtaken and stopped. Seeing the defendant in the wagon, with the negroes, the witness asked him if he did not know they were slaves. The defendant replied, that he knew they were slaves, but that they were born free. He said he was going to Springboro, a village in Warren county. This witness, and, also, Hefferman, stated the amount paid, as a reward, for bringing the negroes to Covington, as above Hume, very early on Sunday morning saw the wagon moving very rapidly, and two men on horseback pursuing it, near Bates' Looked into the wagon, after it was stopped, and saw the defendant in it with the negroes. He was asked if he did not know that they were slaves, and he replied that, by nature, they were as free as any one. Witness took the negroes to Covington in a wagon. Some time after this he saw the defendant, who said to him, "if you had let me alone, the negroes would have been free, but now they are in bondage." And the defendant said it was a Christian act to take slaves and set them at liberty. Bates, a witness, states that he went to the wagon after

it had been stopped, looked into it, and saw the defendant with the negroes. The witness said, "Vanzandt, is that you—have you a load of runaways?" The defendant replied, "they are, by nature, as free as you and I." The witness heard the defendant say that, having been at market in the city of Cincinnati, he returned to Lane Seminary, a distance of two or three miles, to spend the night with Mr. Moore. That he left his wagon standing in the road, and, when he came to it, about three o'clock the next morning, he found the negroes standing near it; that he did not know how they came there, or where they wished to go. He had no conversation with them. He geared his horses, hitched them to the wagon, and the negroes got into it. He afterwards said that he had received the blacks from Mr. Alley. McDonald, a witness, stated that he heard the defendant say he received the negroes on Walnut Hills, the same place as Lane Seminary. That at three o'clock on Sunday morning, he found the negroes standing near his wagon, in the road; they got into it, and he started for home. That he rose early, to have the cool of the morning. Defendant said he had done right. That he would, at all times, help his fellow man out of bondage; and that, what he had done, he would do again. Thurman, a witness, stated that he saw the defendant in the wagon with the negroes, the cover closed behind and before. The defendant said to Hefferman the negroes ought to be free, but he knew they were not. The defendant lives at Sharon, and this was six or seven miles beyond, on the road to Lebanon. This is the substance of the facts proved, on which the counsel for the plaintiff rested the case. The evidence for the plaintiff being closed, a motion was made by the defendant's counsel to overrule the testimony. This motion was argued on both sides with ability, and at great length.

Fox, Southgate & Morris, for plaintiff.

Mr. Chase, T. Morris, and Mr. Jolliffe, for defendant.

{For the defendant it was insisted: (1) That the constitution of the United States does not recognize the existence of property in human beings; but regards all men as persons and not as the subjects of property. (2) That the clause in the constitution which relates to fugitives from service, only secures to the master the right to the re-delivery of an escaping servant on claim, in a single class of cases only, namely where the person escaping has been held to service

in one state under the laws thereof and has escaped into another; subject to this claim only, the escaping servant has all the rights in the state into which he comes, that an immigrant under other circumstances would have. (3) That this clause in the constitution being in derogation of natural liberty and of state rights, must be construed with great strictness. (4) That the act of congress under which the action was brought is repugnant to the national constitution and to the ordinance of 1787, and therefore void. (5) That the act, if not void, is to be strictly construed, for the same reasons which apply to the clause in the constitution in relation to fugitives from service. (6) That the clause in the act, which saves to the claimant of a fugitive from service his right of action for injuries sustained, does not create such a right, and therefore, as no such right of action existed prior to the statute, no such exists now. (7) That proof of actual notice from the plaintiff, or some one acting in his behalf, to the defendant, that the persons alleged to be harbored or concealed were held to service in one state and escaped into another, was necessary to sustain the action, and no such proof having been made, the action must fail.

[In support of these propositions the defendant's counsel cited Hill v. Low [Case No. 6,494]; Ex parte Simmons [Id. 12,863]; Harry v. Decker, Walk. (Miss.) 36, 83; these propositions Lunsford v. Coquillon, 2 Mart [N. S.] 401; these propositions Rankin v. Lydia, 2 A. K. Marsh. (Ky.) 470; Mr. Senator Walker's Argument, 15 Pet. [40 U. S.] Append. 72; Com. v. Aves, 18 Pick. 215; Story, Confl. Law, 203, 214; 2 Barn. & C. 448; Groves v. Slaughter, 15 Pet. [40 U. S.] 493.

[The counsel for the plaintiff controverted these positions. They cited 9 Johns. 69; [Groves v. Slaughter] 15 Pet. [40 U. S.] 493; these propositions Johnson v. Tompkins [Case No. 7,416]; these propositions [Prigg v. Commonwealth of Pennsylvania] 16 Pet. [41 U. S. 539.][2]

MCLEAN, Circuit Justice. It is proper, first, to ascertain the precise character of the motion. By some of the counsel, in the argument, it has been treated as a demurrer to the evidence; but it can not be so considered. No demurrer has been filed, and should the motion be overruled the defendant intends to examine witnesses. A demurrer to the evidence takes the case from the jury; the facts proved are admitted to be true, and, also, every legal inference that can be drawn from them favorable to the plaintiff. The motion is not, technically, for a nonsuit. Such a motion would not be granted by the court, where there was evidence conducing to sustain the right of the plaintiff. The motion must then be considered as asking the court to overrule the evidence, on account of its irrelevancy or incompetency. Now, such a motion is never granted where the evidence is competent and it conduces to establish the case made in the declaration. The jury are the proper judges of the sufficiency of the testimony. The range of discussion by the counsel on both sides, has not been restricted by the court. It has embraced slavery in all its forms and consequences—the federal constitution, the act of congress, and the power of the states. It

may be proper to notice some of the topics thus discussed, which have a bearing upon the case under consideration. The nature of the action has been examined. It must be admitted that it arises wholly under the constitution and act of congress. Slavery is local in its character. It depends upon the municipal law of the state where it is established. And if a person held in slavery go beyond the jurisdiction where he is so held, and into another sovereignty where slavery is not tolerated, he becomes free. And this would be the law of these states, had the constitution of the United States adopted no regulation up on the subject. Recaption has been named as a common law remedy. But this remedy could not be pursued beyond the sovereignty where slavery exists, and into another jurisdiction which had entered into no compact to surrender the fugitives. There is no general principle in the law of nations, which would require a surrender in such a case. The remarks of the supreme court, in regard to a surrender of captured slaves in the Amistad Case, were made with reference to our treaty with Spain. In our colonial governments, and under the confederation, no general provision existed for the surrender of slaves. From our earliest history it appears that slavery existed in all the colonies, and at the adoption of the federal constitution it was tolerated in most of the states. The constitution treats of slaves as persons. The view of Mr. Madison, who "thought it wrong to admit in the constitution, the idea that there could be property in men," seems to have been carried out in that most important instrument. Whether slaves are referred to in it, as the basis of representation, as migrating, or being imported, or as fugitives from labor, they are spoken of as persons. Property, real or personal, takes its designation and character from the laws of the states. It was not the object of the federal government to regulate property. A federal government was organized by conferring on it certain delegated powers, and by imposing certain restrictions on the states. Among these restrictions it is provided that no state shall impair the obligation of a contract, nor liberate a person who is held to labor in another state from which he escaped. In this form the constitution protects contracts, and the right of the master, but it originates neither.

The traffic in slaves does not come under the constitutional power of congress to regulate

commerce among the several states. In this view the constitution does not consider slaves as merchandise. This was held in the case of Groves v. Slaughter, 15 Pet. [40 U. S. 449]. The constitution nowhere speaks of slaves as property. But how does this affect the case under consideration? It is clear the plaintiff has no common law right of action for the injury complained of. He must loot exclusively to the constitution and act of congress for redress. The counsel for the defendant admit that, in a given case, the plaintiff has a remedy under the act of congress. If this he so, what have we to do with slavery in the abstract? It is admitted, by almost all who have examined the subject,' to be founded in wrong, in oppression, in power against right. But in this case we have only to inquire whether the acts of the defendant, as proved under the law of congress, subject him to a claim for indemnity by the plaintiff. By the third section of the act respecting fugitives from labor, it is provided, "that when a person, held to labor in any of the United States, &c, under the laws thereof, shall escape into any other of the said states, the person to whom such labor is due, his agent, or attorney, may seize or arrest any such fugitive," &c. [1 Stat. 302]. And the fourth section provides "that when any person shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitives from labor, &c, or shall harbor or conceal such persons, after notice that he or she was a fugitive from labor as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars, &c, saving, moreover, to the person claiming such labor or service, his right of action for, or on account of, the said injuries, or either of them." As the first clause in the above section supposes the offender to come in contact with the claimant of the fugitives, his agent or attorney, and as there is no evidence showing an authority from the claimant to those who arrested the fugitives, the second clause, only, of the section will be examined. The offence under this clause consists in harboring or concealing such fugitive, after notice that he or she had escaped from labor. What acts shall constitute this offence? What shall be a notice under the statute? That a formal written notice from the claimant, his agent or attorney, is not required, must be admitted. Nor must the notice, verbal or otherwise, necessarily come from the claimant or his agent. Such a construction presupposes a knowledge, by the complainant, of the individual who harbors or conceals the fugitives. At this stage of the case it is unnecessary to say more on this point than that there is evidence before the jury which conduces to show that the defendant knew the negroes in question were fugitives from labor. Whether the proof is sufficient to establish this fact is a matter for the determination of the jury. To harbor or conceal a fugitive, in violation of the statute, the act must evince an intention to elude the vigilance of the master or his agents; and the act done must be calculated to attain this object. To relieve the hunger of a fugitive would not be within the statute, unless accompanied by acts showing a determination to disregard the law. There is evidence in the case conducing to show an intention to do this by the defendant, and also to show acts

calculated to give effect to such an intention. The sufficiency of this evidence, like that which regards the notice, will be referred to the jury. The clause in the section, "saving to the claimant the right of action for the injuries received, beyond the penalty, presupposes a right of action to exist." The correctness of this will scarcely be questioned, when the constitutional provision on the subject is considered. On this motion the question of damages need not be considered, nor the alledged defects in the declaration. These points may be considered in the future progress of the case. The court overruled the motion.

An unsuccessful effort was made by calling witnesses to impeach the credibility of some of the plaintiff's witnesses.

{The cause was then argued to the jury on the facts by the same counsel, who insisted on and controverted before the court the same legal positions as on the motion to overrule. In behalf of the defendant the court was asked to give those legal positions except the fourth, fifth, and sixth, in charge to the jury, and also to charge: (1) That fraudulent concealment was necessary to constitute the offense of harboring or concealing under the statute. (2) That the concealment must be actual, the person concealed being kept out of view and sheltered from observation. (3) That no damages could be recovered from the loss of any person not thus actually concealed. (4) That no reward paid under a statute of another state, for acts done in violation of the criminal law of Ohio, could form an item of damages. (5) That unless the injuries complained of, namely, the loss of services and the expenses of recaption, were the consequences of acts done by the defendant, he could not be held liable. (6) That obstruction, to the seizure or arrest of fugitives from labor within the description of the act of congress by persons having no actual authority from the claimant to make such seizure, was no offense under the act, although the acts of such persons were subsequently approved by the claimant.}[3]

McLEAN, Circuit Justice (charging jury). The attention and patience with which you have heard this case, gentlemen of the jury, show that you appreciate its importance;

and I doubt not that, in deciding it, you will follow the dictates of an unbiassed judgment. (Here the judge restated the evidence, which may be omitted, as it is stated above.) The plaintiff does not seek redress for the injuries complained of on any general principle, legal or equitable, of the common law. He relies on the constitution, and the act of congress [1 Stat. 302], as the foundation of his right. The second section of the fourth article of the constitution, declares that "no person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor may be due." And the third and fourth sections of the act of congress, of the 12th February, 1793, as above cited, define more particularly the rights of the master, and provide for him modes of redress. The seventh and eighth counts, which were in trover, have been abandoned. These counts state that the slaves were casually lost in Boone county, Kentucky, by the plaintiff, and that they came into the possession of the defendant a citizen of Ohio. Now, if the slaves left the service of the plaintiff with his consent, or in any other mode, except as fugitives from labor, and came into the possession of the defendant, as alledged, the plaintiff has no right to their services, and still less, to recover from the defendant their value. The sixth count, which charges the defendant with having rescued the slaves after they were seized by the agents of the plaintiff, has also been abandoned. There is no evidence which tends, in any degree, to show a rescue. The fifth count charges the defendant, under the first clause of the fourth section of the act, that he knowingly and willingly obstructed, and hindered the agents of the plaintiff, in seizing or arresting the fugitives. That the defendant resisted, to the utmost of his power, the arrest of the negroes, by Hefferman and Hargrave, is undoubted. But in this, did the defendant violate the law? The persons who made the seizure had no authority from the plaintiff. And it is the obstruction or hindrance to the arrest, by the claimant, his agent or attorney, that incurs the penalty under the above clause of the statute, and also subjects the party to damages for the injury. The resistance, then, of the defendant to the arrest, by Hefferman and Hargrave was, in no sense, a violation of the statute. They acted without authority, and had no legal right therefore, to make the arrest. But it seems, from the evidence, that the plaintiff, when the negroes were returned, ratified the acts of Hefferman and Hargrave, in making the arrest. And here the question arises, whether a subsequent ratification can legalize the arrest. That the subsequent ratification legalizes the original transaction, is a general principle in agencies. And, in this case, it is unquestionably good, as between the plaintiff and his agents. But the inquiry is, whether such subsequent ratification can have relation back, so as to affect the acts of the defendant. Can it so change the nature of the defendant's acts as to subject him to a penalty, which was not incurred prior to such ratification, Most clearly it can not. The statute under consideration is a penal one, and, consequently, must be construed strictly. It is not within the legislative power

to make an act penal which was not so when it was done. Much less can such an effect result from the ratification, by the plaintiff, in the present case. We must look to the other counts in the declaration, which charge the defendant with harboring and concealing the negroes, after he had notice that they were fugitives from labor. If the evidence shall not sustain these counts, the plaintiff can not recover. The plaintiff is bound to show that the defendant harbored or concealed the negroes, after he had notice that they were fugitives from labor. And, first, as to the fact of notice.

In Kentucky, and every other state where slavery is sanctioned, every colored person is presumed to be a slave. This presumption arises from the nature of their institutions, and from the fact that, with few exceptions, all the colored persons within those states are slaves. On the same principle, every person in Ohio, or any other free state, without regard to color, is presumed to be free. No presumption, therefore, arises, from the color of these fugitives, alone, that the defendant had notice that they were slaves. A notice in writing to the defendant was not necessary, nor any special notice from the plaintiff, his agent or attorney. But if, at the time the defendant was connected with these negroes, he had a full knowledge of the fact however acquired, that they were slaves and fugitives from labor, it is enough to charge him with notice. You must satisfy yourselves on this point by an examination of the evidence. The fact must be clearly proved, and, if it be so proved, it would be a reproach to the law, and to the administration of justice, to hold that the notice was insufficient. What shall constitute a harboring or concealing within the statute? This offence is not committed, in my judgment, by treating the fugitive on the ordinary principles of humanity. You may converse with him, relieve his hunger and thirst without violating the law. In short you may do any act which does not show an intent to defeat the claims of the master. But any overt act which shall be so marked in its character, as not only to show an intention to elude the vigilance of the master, but is calculated to attain such an object is a harboring of the fugitive in violation of the statute. It is clearly within the mischief it was designed to prevent. To constitute the offence under the statute, it is not necessary to incarcerate the fugitive in a dungeon or room: if he be

taken in a wagon and conveyed from the shore of the Ohio to the shore of Lake Erie which enables him to escape into Canada, I suppose no one could doubt that the individual had made himself responsible. And if carrying the fugitive the whole of this route would incur the penalty, on the same principle the conveyance of him such a part of the route as shall cause the loss of his services to the master would equally incur liability. The damages claimed by the plaintiff consist of the sum of four hundred and fifty dollars paid as a reward to Hefferman and Hargrave, and other expenses, amounting in the whole to about six hundred dollars. And, also, he claims the value of the services of Andrew, who had been lost to the plaintiff. Those services are estimated by the witnesses to be worth six hundred dollars. It is said that this sum could have been realized by the plaintiff for the boy. Under the statute you will observe that a penalty of five hundred dollars is incurred for harboring or concealing a fugitive, which the party injured may recover, but the present action is not for this penalty. In this suit the plaintiff is only entitled to recover the damages he has actually sustained by the acts of the defendant. You will first determine whether the proof under the principles here laid down entitle the plaintiff to recover. And if he be so entitled then you will consider the amount of the damages.

It is earnestly contended by the defendant's counsel, that as Hargrave and Hefferman were kidnappers and violators of the law of the state in arresting the negroes; that they were entitled to no reward, and that the payment of it by the plaintiff does not entitle him to remuneration. The principle is recognized that the commission of a crime or an agreement to commit an unlawful act, does not constitute a good consideration for a contract. Any contract is void that rests upon such a basis. But this principle does not apply to the point under consideration. It may be admitted that Hefferman and Hargrave were trespassers, if nothing more, in seizing the wagon of the defendant; but the inquiry is, whether, by the laws of Kentucky, the plaintiff was not bound to pay to Hefferman and Hargrave, for the return of the fugitives. There is no doubt of this, as the law of Kentucky is explicit on the subject. If then the plaintiff, by the law of Kentucky, was obliged to pay the sum, and if such obligation resulted from the acts of the defendant, it would seem that the plaintiff may claim indemnity for such an injury. In this incidental mode we cannot try the guilt or innocence of Hargrave and Hefferman. We can only judge of the acts of the defendant, and to what extent he injured the plaintiff. Unless you should be clearly satisfied, gentlemen, that the defendant, after notice that the negroes were fugitives from labor, did harbor or conceal them within the statute, you will find for the defendant. But if you shall find that the defendant has violated the law, then you will find for the plaintiff the damages he has suffered from such violation of the law and of his rights by the defendant. To authorize such a verdict, you must believe that, by the acts of the defendant, the plaintiff has been compelled to pay the reward stated, and the other expenses, and also that he has lost the services of the colored man, Andrew.

If the evidence showed that the defendant had taken the negroes from the farm of the plaintiff, in Kentucky, and conveyed them through Ohio until arrested, there would seem to be no doubt of the plaintiff's right to the damages he claims. But there is no proof that the defendant took the negroes from Kentucky. On the contrary it appears, by his own confession, that he received them at the Walnut Hills, near Cincinnati. Still if you shall consider the defendant is liable under the statute, and that the full amount of the injury complained of has been done to the plaintiff by the defendant, it will be your duty to find accordingly. Gentlemen, in the course of the argument much has been said of slavery in the abstract, of abolitionism, of associations with the view of promoting the abolition of slavery and of acts growing out of these exciting topics, which have no direct connection with the issues before you. Citizens, individually or collectively, have a right to express their opinions and to discuss any subject in which they may feel an interest. Unpopular and foolish as it would be for individuals to form association to alter the constitution of Ohio and annul the ordinance of 1787, so as to admit slavery into the state, yet I suppose no one would question their right to do so. And so long as they should confine themselves to topics of discussion, however erroneous, still they would be obnoxious to no legal penalty. But if they should attempt to subvert the law, by a clandestine introduction of slavery into the state, every good citizen would say they should suffer the penalties for such an offence. I know of no association whose avowed object is to subvert the law, unless it be one in a neighboring state, which I have noticed since the commencement of this trial, and which, it seems, pledges itself to oppose by force the execution of a certain law.

In the course of this discussion much has been said of the laws of nature, of conscience, and the rights of conscience. This monitor, under great excitement, may mislead, and always does mislead, when it urges any one to violate the law. Paul acted in all good conscience, when he consented to the death of the first martyr; and, also, when he bore letters to Damascus, authorizing him to bring bound to Jerusalem all who called upon the name of Jesus. I have read to you the constitution and the act of congress. These bear the impress of the nation. The principles which they lay down and enforce have been sanctioned

in the most solemn form known in our government. We are bound to sustain them. They form the only guides in the administration of justice in this case. I charge you, gentlemen, to guard yourselves against any improper influence. You are to know the parties only as litigants. With their former associations and views, disconnected with this controversy, you have nothing to do. It is your duty to follow the law, to act impartially and justly; and such, I doubt not, will be the result of your deliberations.

{The jury returned a verdict in favor of the plaintiff for twelve hundred dollars, which was entered, by direction of the plaintiff's counsel, as a verdict of guilty under the third and fourth counts of the declaration, which charged the defendant with harboring and concealing the fugitives after notice, thereby occasioning to the plaintiff the loss of their services for six days, and the expenses incident to the recaption. No verdict was entered on the other counts. Mr. Chase, for the defendant, filed a motion for a new trial and a motion in arrest, which motions at a subsequent day were argued together.

{The defendant's counsel insisted that judgment must be arrested for the following reasons, among others: (1) Because the declaration did not set forth a cause of action. It averred that the persons alleged to be fugitive servants "unlawfully went away from the service of the plaintiff at Boone county, in the state of Kentucky, without his consent, and subsequently came to the defendant at Hamilton county, Ohio," and that the defendant harbored and concealed them after notice that they were "fugitives from labor," which averments did not make a case within the constitution and law. (2) Because the verdict, being entered on the third and fourth counts only, did not comprehend all the issues submitted to the jury. (3) Because one of the counts on which the verdict was entered did not conclude against the form of the statute, and was therefore fatally defective. They also insisted that a new trial should be granted for the following, among other, reasons: (1) Because the verdict was against evidence. (2) Because the damages were excessive, being the full amount claimed, whereas the verdict did not comprehend the ninth count, which alone alleged the total loss of the services of Andrew.}[4]

{NOTE. The motion for a new trial was granted at the costs of defendant. Case No. 7,502. The costs not being paid, the new trial was not claimed, but was abandoned. Vanzandt, the defendant, in the meantime died, and a scire facias was issued to revive the suit against his administrator. To this scire facias the defendant demurred. The circuit court overruled the demurrer. Id. 7,503. The motion in arrest of judgment was not heard by the court until after the death of Vanzandt, and nearly eight years after the hearing of the motion for a new trial. At the April term, 1851, the circuit court overruled the motion in arrest, and entered judgment upon the verdict of the jury. Id. 7,505.}

NOTE {from original report in 1 West. Law J. 2}. There was also an action of debt brought by the same plaintiff against the same defendant, to recover the penalty of five hundred dollars given by the act of 1793 to the claimants of fugitives from labor. It was

sustained by substantially the same evidence, and involved the same legal questions, except those relating to the amount to be recovered. A verdict was rendered for the plaintiff. Motions for a new trial and in arrest were filed.

This case will now go to the supreme court of the United States upon a certificate of division in opinion between the judges of the circuit court on the following points, as copied from the record: First. Whether, under the fourth section of the act of 12th February, 1793, "respecting fugitives from justice and persons escaping from the service of their masters," on a charge for harboring and concealing a fugitive from labor, the notice must be in writing by the claimant or his agent, stating that such person is a fugitive from labor under the third section of the above act, and served on the person harboring or concealing such fugitive, to make him liable to the penalty of five hundred dollars under the act. Second. Whether such notice, if not in writing and served as aforesaid, must be given verbally by the claimant or his agent to the person who harbors or conceals the fugitive, or, whether to charge him under the statute, a general notice to the public in a newspaper is necessary. Third. Whether clear proof of the knowledge of the defendant, by his own confession or otherwise, that he knew the colored person was a slave and fugitive from labor, though he may have acquired such knowledge from the slave himself or otherwise, is not sufficient to charge him with notice. Fourth. Whether receiving the fugitive from labor at three o'clock in the morning at a place in the state of Ohio, about twelve miles distant from the place in Kentucky where the fugitive was held to labor from a certain individual, and transporting him in a closely covered wagon twelve or fourteen miles, so that the boy thereby escaped pursuit, and his services were thereby lost to his master, is not harboring or concealing of the fugitive within the statute. Fifth. Whether a transporting under the above circumstances, though the boy should he recaptured by his master, is not harboring or concealing of him within the statute. Sixth. Whether such a transportation in an open wagon, whereby the services of the boy were entirely lost to his master, is not a harboring of him within the statute. Seventh. Whether a claim of the fugitive from the person harboring or concealing him must precede or accompany the notice. Eighth. Whether any overt act so marked in its character as to show an intention to elude the vigilance of the master or his agent, and calculated to attain such an object, is a harboring of the fugitive within the statute.

The cause having progressed, and the jury having brought in their verdict, the defendant moved in arrest of judgment, and assigned sundry reasons in support of his motion; on some of which points the opinions of the judges were opposed, to wit: First. Whether the first and second accounts contain the necessary averments that Andrew, the colored man, escaped from the state of Kentucky into the state of Ohio. Second. Whether said counts contain the necessary averment of notice that said Andrew was a fugitive from labor within the description of the act of congress. Third. Whether the averments in said

counts, that the defendant harbored said Andrew, are sufficient. Fourth. Whether said counts are otherwise sufficient, Fifth. Whether the act of congress approved February 12, 1793, be repugnant to the constitution of the United States. Sixth. Whether said act be repugnant to the ordinance

of congress, adopted July, 1787, entitled "An ordinance for the government of the territory of the United States northwest of the Ohio river."

{NOTE. The points stated above as having been certified to the supreme court were fully considered by that court, Mr. Justice Woodbury delivering the opinion of the court and finding upon the points in favor of the plaintiff. 5 How. (46 U. S.) 215. In an action for debt, for the amount of the statutory penalty $500, a writ of scire facias was issued to revive the action against Vanzandt's administrator. To this scire facias the defendant demurred. The court sustained the demurrer, holding that an action for a penalty abates on the death of the defendant. Case No. 7,504.}

[1] {From 1 West Law J. 2.}

[2] {From 1 West Law J. 2.}

[3] {From 1 West Law J. 2.}

[4] {From 1 West Law J. 2.}