

Case No. 8,478.

IN RE LONG.

[9 N. Y. Leg. Obs. 73; 3 Am. Law J. (U. S.) 294; 8 Leg. Int. 10.]

District Court, S. D. New York.

Jan. 8, 1851.

FUGITIVE SLAVE LAW—CONSTITUTIONALITY.

1. The act of 16th September, 1850 [9 Stat. 462], is constitutional, valid, and binding.
2. Examination of evidence as to identity of fugitive.

In the matter of Henry Long, claimed as a fugitive from service.

J. L. White and John Jay, for Long.

Geo. Wood, N. M. Western, and the United States District Attorney, for claimant.

JUDSON, District Judge. This proceeding has been brought into court in pursuance of

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the act of congress of February 12, 1793 [1 Stat. 302], and an amendment of Sept 16, 1850 [9 Stat. 402]. J. S. Smith, the claimant, is a resident of Virginia, and claims the restoration of Henry as a fugitive from his service. To reclaim to that service he has, under a valid power of attorney, caused the arrest of Henry by his authorized agent and attorney. An affidavit having been filed in court, a warrant issued, and the arrest made, Henry is now in custody of the marshal of this district, awaiting the determination of this matter. No questions have been raised in regard to the form or validity of the papers in the case. The claimant has produced his evidence in support of that claim; and the alleged fugitive, by his counsel, has produced such evidence as the counsel deemed proper, all of which has been heard and considered. Counsel, learned in the law, have discussed with great ability the questions involved in the case. And now it devolves on the court to decide these questions according to law and evidence. However important a cause may be to the public or an individual, no other rule can ever be adopted in the administration of justice. If evidence is to be weighed that must be done in even scales. If the law is to be interpreted, there must be no departure from the long established rules belonging to the code of the civilized world.

Before stating the question now to be determined, it may be proper to remark that, in the argument of the case, the learned counsel for the defence, who last addressed the court, did, with great frankness and candor, admit that the law of congress of Sept. 16, 1850, by virtue of which this case is now proceeding In the circuit court of the United States, is In no manner inconsistent with the provisions of the constitution. Or in other words, so far as this court and this cause are concerned, this law is constitutional, valid and binding. To this admission it may well be added that every judge of every court in the United States, having taken upon himself the oath to support the constitution, can by no possibility fail in the performance of that duty whenever a case falling within the law, supported by competent proof, is brought before him. To do otherwise would be a violation of known duty and a prostration of all laws, never to be required of any judge by a single individual of that community in which he may be called to act. These considerations and this admission supersede all necessity of discussing either the constitutionality of the law or its power over this court.

What remains then to be done in the present case? It is simply to inquire: 1st. Does Henry Long by the laws of Virginia owe service and labor to John T. Smith, the claimant? And, 2d, is Henry Long a fugitive from that service within the meaning and intent of the second section of the 4th article of the constitution of the United States, and within the meaning of the act of congress above mentioned. These questions of fact comprehend all that the court has to determine. The case is therefore brought down to a very narrow point; the common sense construction and weight of evidence may be alluded to as furnishing a guide for the mind. The means of knowledge, the integrity and standing

of witnesses, the probability of the story related, the liability to mistake as to time, facts or circumstances connected with the case, these are all to be taken into the account in giving effect to the terminating of the case. To return to the first question, does the person arrested, according to the laws of Virginia, owe service and labor to the claimant? By the laws of Virginia slavery is tolerated. The constitution of the United States yields its sanction to that law, and since the organization of the government, the supreme court of the United States, in its numerous decisions, have upheld the right; therefore, no subordinate tribunals can now call it in question. In point of fact, then, how stands the case and the proof in regard to the person claimed? Dr. Wade, a citizen of Virginia, an intelligent witness, speaks of his own knowledge to this court, bearing testimony that Henry was born in his own immediate neighborhood, in the town of Christianburgh, Virginia; that his mother was a slave, owned by Mr. Anderson; that they were brought up together as boys and men; that he has always known him, and seen him in service as a slave; that this claimant married the daughter of Mr. Anderson; that after the death of Mr. Anderson, the mother and son passed into the hands of this claimant; and this witness adds, that he has now met Henry in New York, and in conversation with him, and in seeing him here in court, he knows him to be the same person, and positively swears to his identity as he would to his own brother. Dr. Wm. Parker, another citizen of Virginia, testifies that heretofore he has been in the habit of visiting John T. Smith, his brother-in-law, in Russell county, Virginia, and saw there in service as a slave the person here arrested; that at the instance and request of Smith, and as his agent, this witness had the letting of Henry in Richmond, Va., to the house of Haskins & Libby, as the slave of this claimant, and collected the wages, transmitting the same to his brother-in-law, Smith; that while so in service in Richmond, Henry was sick, more than once; and that he was his physician, attending him while sick, and sat up with him through the night; that at the request of Henry, he wrote to Henry's wife and master in Russell county. Two witnesses, masters of vessels sailing between the ports of New York and Richmond, have also testified that they have frequently seen this man at work in the store of Haskins & Libby during the time stated by Dr. Parker; that since that time they have seen him in this city, and seeing him here in court, identify him as the same individual.

The second question is, has Henry Long escaped

from the service of John T. Smith? Dr. Parker testified that in Dec, 1848, Henry left Richmond; that he advertised him; that with diligent inquiry he could not be found there; and that since that time he has been found in New York. On the part of the claimant, it is insisted that this evidence should be deemed satisfactory proof, competent in law. On the other hand, the counsel for defence have introduced four witnesses, who testify that they saw Henry in the city of New York in November and December, 1847, January 24, 1848, and from that time down to the present. It is claimed on the part of the defence, that the alleged fugitive was not in Richmond at the time sworn to by Dr. Parker and the two ship masters. There is no necessary contradiction between the witnesses thus introduced. They only differ as to time. There is no doubt that these four witnesses have seen Henry Long in N. York, but as to the precise time they may be mistaken, and have substituted the year 1848 for 1849. For instance, the paper which bears date January 24, 1848, was undoubtedly written in 1849, for the witness declares that her father-in-law sailed for California in a particular ship which sailed in January, 1848, as she swears; when, in point of fact, the ship sailed in January, 1849. Then, as to the testimony of John Butler, he testifies that he saw Henry frequently; that Henry was a constant driver of a carriage from a particular street named by him; and that he often met him at a blacksmith's shop in Centre street. One of these witnesses testifies that Henry was a waiter at an hotel in New York; another one that he saw Henry with his waiter's garb and dress on board the Vanderbilt, all in the year 1848. If these things actually occurred in 1848, it would be an easy matter for Henry to inform his counsel where lived the owner of this coach he drove so long, whose was the hotel in which he waited, and who was the captain of the Vanderbilt in 1848, for whom he served; they would all have been here. This omission goes far to show that there may have been a mistake as to the precise time when Henry was first seen in New York, and an honest mistake too.

There is another remarkable omission which characterizes the defence. Are there two Henry Longs? I have heard of no such pretence, and if there be but one Henry Long, the question naturally presents itself here, is this man now present the Henry Long of Virginia, or is he Henry Long of New York? And if this latter, why are not his parents, his brothers, his sisters, his neighbors, his boyhood acquaintances, here to identify him, instead of John Butler? They would all rush to the court room, and tell us that this man is the Henry Long of New York, and a free man. This aspect of the case is one of singular importance.

These considerations lead the court to the inevitable conclusion that there is no real contradiction arising out of the evidence of the case, and that the two great questions of fact involved in the controversy are maintained upon satisfactory proofs competent in law. The consequence is that a certificate in conformity to the act of congress be now issued

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by the clerk of this court, for the surrender of Henry Long, as a fugitive from service and labor.

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