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Indiana and Fugitive Slave Legislation

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Of the many aspects of the slavery controversy which absorbed a large part of the energies of the United States in the decades before the Civil War, none produced more bitterness than the question of the rendition of fugitive slaves. In the constitutional realm this gave rise to conflicts over the respective spheres of authority of the national and state governments and led also to problems in interstate relations. A study of the legislation of Indiana relating to the subject of fugitive slaves will, perhaps, throw additional light on the question as it affected the whole nation.

The provisions regarding both fugitives from justice and fugitives from labor were found in Article IV, Section 2, of the Constitution of the United States, which said:

"A person charged in any State with Treason, Felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the Executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

"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."

Although there appears to be some evidence that the framers of the Constitution thought that the article would be self-executing, Congress in 1793 passed "An Act respecting fugitives from justice, and persons escaping from the service of their masters."[1] The first part of the law dealt with the

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[1] *United States Statutes at Large*, I, 302-305.

procedure to be used in the extradition of fugitives from justice. It provided that upon the presentation of a copy of the indictment or an affadavit charging the fugitive with crime, it became the duty of the governor of the state to which he had fled to have him arrested and delivered to the agent of the state from which he had fled.

Section three of the act dealt with fugitives from labor. In these cases the claimant or his agent might arrest the slave in any state or territory (without the necessity of securing a warrant) and take him before any United States judge or state magistrate. Evidence in the form of oral testimony or affadavit was to be submitted by the claimant; if the judge or magistrate was convinced of the claimant's right to the fugitive, he was to issue a certificate authorizing the removal of the fugitive to the state or territory from which he had fled. The act provided penalties for obstructing the arrest of, or harboring or concealing, a fugitive.

From the fact that both the constitutional provisions and the law of 1793 link the rendition of fugitives from justice and fugitives from labor, it is apparent that the framers of both the Constitution and the law thought that the procedure for the return of fugitive slaves was in the nature of an extradition process rather than a judicial trial. Hence it is not surprising that the law did not provide the judicial safeguards, such as a jury trial, which are guaranteed in the Fifth and Sixth Amendments of the Constitution. The federal law merely provided the procedure for removing a fugitive to the state from which he had fled.[2]

Theoretically, at least, the fugitive, once returned to the state from which he had fled, if entitled to his freedom, could institute a suit in the courts of that state. In practice, however, the fugitive's fate was nearly always determined by the hearing before the magistrate which the federal law provided. It soon became apparent that the law did not provide any protection to free Negroes against illegal seizure and enslavement. Indeed, the act made it relatively easy for the unscrupulous to kidnap free persons, claim them as fugitive slaves, and receive warrants to carry them away.

The threat to the liberty of free colored persons created a dilemma for state lawmakers, particularly in states like

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[2] See Allen Johnson, "Constitutionality of the Fugitive Slave Acts," *Yale Law Journal* (New Haven, 1891-), XXXI (1921), 161-182.

Indiana which bordered on slave states. On the one hand there was an obligation to protect the liberties of the colored residents of the state; on the other was the obligation under the Constitution and laws of the United States to return fugitive slaves. As early as 1810 the legislature of Indiana Territory showed an awareness of the problem and enacted stiff penalties for kidnaping. It provided that any person who attempted to remove a Negro from the territory must first prove before one of the judges of the court of common pleas or a justice of the peace that he was "legally entitled to do so according to the laws of the United States and of this territory. . . ." After such proof had been given, the claimant was to receive a certificate authorizing the removal. For failure to comply with this procedure the penalty was a fine of $1,000.00—one half of which was to be paid to the informer, the other to the territory. The guilty person was also liable to a damage suit by the aggrieved person.[3]

In his first message to the General Assembly after Indiana became a state, Governor Jonathan Jennings recommended legislation "to prevent more effectually any unlawful attempts to seize and carry into bondage persons of colour, legally entitled to their freedom, and at the same time as far as practicable to prevent those who rightfully owe service to the citizens of any other state or territory, from seeking within the limits of this state a refuge from the possession of their lawful owners." The legislature responded with "An Act to Prevent Manstealing." To protect free Negroes, the act provided that any person who forcibly seized or arrested a person, with the design to take him out of the state, without establishing his claim according to the laws of Indiana or the United States, was subject to a fine of from $500.00 to $1,000.00. The law also prescribed a procedure for reclaiming fugitives which differed from that provided in the federal law of 1793. Under the Indiana law the claimant was required to secure a warrant for the arrest of the alleged fugitive from either a justice of the peace or judge of the supreme cir-

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[3] Lewis B. Ewbank and Dorothy Riker (eds.), *The Laws of Indiana Territory, 1809-1816* (Indianapolis, 1934), 138-139. This is volume XX of the Indiana Historical *Collections* (Indianapolis, 1916-). Jefferson County records show that two persons were indicted under the act in 1815, but neither was convicted. Jefferson County Civil Order Book, 1812-1818, pp. 163, 167, 168, 170, 178. (The unpublished court records cited in this article are on microfilm in the Indiana State Library.)

cuit courts, and the arrest was to be made by either a sheriff or constable. After the arrest the justice of the peace or judge of the circuit court was to hear all testimony from both plaintiff and defendant, i.e., claimant and fugitive. If he decided that the plaintiff's claim appeared to be well-founded, a trial was set for the next term of the circuit court, at which the alleged fugitive was guaranteed a "fair and impartial trial by a jury." If the verdict was in favor of the claimant he was to receive a certificate for carrying the fugitive out of the state, but only after he had paid the costs of the trial. The act also imposed fines on persons who gave false certificates of emancipation to runaway slaves or who knowingly harbored runaways or encouraged slaves to desert their masters. In 1819 the measure was amended to provide that in addition to being fined a person convicted of manstealing might receive a whipping of from ten to one hundred lashes.[4]

It is obvious that the laws of 1810 and 1816, particularly the latter, raised questions of possible conflict with the federal statute of 1793. The Indiana lawmakers sought to avoid this pitfall by providing that claimants must retake fugitives under either the Indiana law *or* the law of the United States, thus making the law permissive rather than mandatory. In other words, either procedure might be used. The procedure for arresting the fugitive under the Indiana law required a warrant and arrest by the sheriff, whereas the federal law did not. More important, the Indiana law provided that the case should be decided by a jury, while the federal law provided for a summary hearing.[5] Because of the apparent conflicts some persons argued that the Indiana law was unconstitutional. At the same time others maintained that the act of Congress was invalid since the clause on fugitives from labor in the Constitution of the United States did not expressly grant Congress the power to legislate on the subject. Therefore, it was asserted that although there was an obligation to return fugitive slaves, the states, not Congress, should legislate on the subject.

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[4] *Indiana House Journal, 1816-1817*, p. 11; *Laws of Indiana*, 1 Sess., pp. 150-152; *Laws of Indiana*, 3 Sess., 1819, p. 64.

[5] For a further analysis of this question see William R. Leslie, "The Constitutional Significance of Indiana's Statute of 1824 on Fugitives from Labor," *Journal of Southern History* (Lexington, 1935-), XIII (1947), 338-353.

The two points of view were argued in a case which came before Judge Benjamin Parke in the United States District Court for Indiana in 1818. The case involved the freedom of a Negro woman, Susan, whom a Kentuckian, John L. Chasteen, claimed as his slave. Susan had been arrested under the Indiana law, and the case had been certified to the court of Jefferson County for trial. However, Chasteen signified his intention of taking the case to the federal court instead and asked that the case in the county court be dismissed. Thereupon Susan's lawyers sought an injunction in the Jefferson County court to prevent Chasteen from carrying her out of the state until she had had a trial under the Indiana law. The Jefferson County judge decided that the case should be tried under the state law and ordered the claimant to post bond as security that Susan should not be removed until such a trial had been held.[6]

Chasteen, however, ignored this order and sought a warrant from the United States court. In this court Susan's lawyers moved for a dismissal of the case on two grounds: first, that the fugitive slave clause of the United States Constitution conferred no authority upon Congress to legislate on the subject; and second, that even if the constitutionality of the federal law of 1793 were admitted, the states had concurrent power to legislate on the subject. These arguments were rejected by Judge Parke in an opinion which was probably the first one handed down by a federal court concerning the constitutionality of the law of 1793.[7] He held that the act of Congress was valid and superseded state laws on the subject. He admitted that a concurrent power might be exerted by a state on the same subject "for different purposes, but not for the attainment of the same end." He pointed out that the methods prescribed in the federal law and the Indiana law were incompatible and that since appeal had been made to the federal law that procedure must be used. "It is unnecessary to inquire whether one or the other [state or federal law] is best calculated to promote the ends of justice. It is sufficient that congress have prescribed the mode." Therefore, the motion of Susan's lawyers to dismiss the case was overruled.

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[6] *Susan a woman of color* v. *Heirs and Legal Representatives of Lewis Chasteen*, in Chancery, Jefferson County Civil Order Book, 1812-1818, pp. 496-498, 532-533.

[7] *In re Susan*, 23 *Federal Cases*, 444-445.

Although Parke did not declare the Indiana law unconstitutional it is apparent that his opinion would have the effect of limiting the use of the law.

Meanwhile, in the United States Congress efforts were being made to amend the act of 1793 in the interests of the slaveholders. A bill proposed in December, 1817, provided that alleged fugitives should not be identified nor the owner's claims proved in the state where the capture was made, but that the fugitive should be taken to the state where the person claiming him resided and there the case should be heard. The bill also made it a penal offense for a state officer to refuse to assist in carrying out the act. These proposals reflect the slave states residents' fear of the hostility of northern magistrates toward the South's "peculiar institution." In the debates over the measure the strongest objections raised were that the law would not provide adequate guarantees against the kidnaping of free Negroes. The bill failed to become a law because the House of Representatives refused to concur in amendments proposed in the Senate.[8]

The opinion of Judge Parke, added to the threat of Congressional action, was no doubt responsible for a joint resolution adopted by the Indiana General Assembly in December, 1818. The resolution asked that Congress pass no legislation which would deny persons claimed as fugitive slaves the right of jury trial: "Whereas sundry persons destitute of every principal of humanity are in the habit of seizing carrying off and selling as slaves, free persons of color who are or have been for a long time inhabitants of this state: and whereas all persons resident therein, are under the protection of our laws, and fully invested with those invaluable rights, guaranteed by our constitution namely, life, liberty & the pursuit of happiness of which they cannot be divested but on conviction of crime against the community of which they may claim to be members, by a jury of their country according to law. Therefore most solemnly disavowing all interference, between those persons who may be fugitives from service and those citizens of other states, who may have a just claim to such service, whenever such claim is legally established we deem it our just right to demand the proofs of such claim to service according to our laws. Wherefore.

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[8] *Annals of Congress*, 15 Cong., 1 Sess., I, 446-447, 513, 829-830, 837-840, II, 1339, 1393.

"*Resolved*, by the general assembly of the state of Indiana, that our senators in congress be instructed and our representative be requested, to use their exertions to prevent congress from enacting any law, the provision of which would deprive any person resident in this state, claimed as a fugitive from service of a legal constitutional trial, according to the laws of this state before they shall be removed therefrom."[9]

While the case of one Negro woman named Susan had raised the question of conflict between the Indiana law and the federal law on fugitive slaves, the case of another Susan was the occasion for a lengthy altercation between Indiana and Kentucky, involving both the problems of fugitives from labor and fugitives from justice. The second Susan had been held as a slave by Richard Stephens, a resident of Bardstown, Kentucky, but had escaped to Indiana in 1815 or 1816. Prior to her purchase by Stephens she had been held by a master who lived near the boundary between Virginia and Pennsylvania and who had operated a ferry across the Monongahela River. In Indiana, Susan instituted a suit for her freedom in Harrison County, claiming that she was free as the result of her former residence in Pennsylvania.

In response to a writ of habeas corpus issued in Harrison County, Stephens replied that he held a bill of sale for Susan which warranted her a slave for life. In August, 1818, the case was tried in the circuit court; the jury returned the following verdict: "We of the jury find the Negro woman to be the property of Richard Stephens and that the said Negro woman be returned to him again." However, on the motion of Susan's attorney, a new trial was ordered, and the case was continued for several terms of the court.[10]

Faced with this delay in the recovery of what he regarded as his lawful property, Stephens decided upon a program of direct action. Accordingly, his son, Robert, came to Indiana and with the aid of two accomplices carried off Susan from

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[9] *Laws of Indiana*, 3 Sess., 1818, 141-142. In 1819 the United States House of Representatives again took up consideration of a bill to strengthen the law of 1793 but it failed to pass. *Annals of Congress*, 15 Cong., 2 Sess., I, 546, 551.

[10] *Susan (a Woman of Colour)* v. *Richard Stephens*, Harrison County Circuit Court Order Book, 1817-1820; Nellie A. Robertson and Dorothy Riker (eds.), *The John Tipton Papers* (3 vols., Indianapolis, 1942), I, 146 n. These volumes are XXIV-XXVI of the Indiana Historical *Collections*.

the home of Daniel C. Lane in Harrison County, where she was staying while awaiting a new trial. For this abduction Robert Stephens was indicted on a charge of manstealing by a grand jury in Harrison County. A warrant for his arrest was issued, and Governor Jennings signed a warrant for his extradition from Kentucky, in accordance with the part of the federal law of 1793 which dealt with fugitives from justice. The warrant for extradition was delivered by John Tipton, sheriff of Harrison County. Tipton was apparently on friendly terms with both the elder and the younger Stephens; Robert Stephens had written to him earlier about the possibility of carrying off Susan.[11]

The governor of Kentucky refused to extradite Stephens, who was a member of the Kentucky legislature. Stephens wrote a letter to Tipton urging him to use his "influence to put an end to the affair," and suggesting that it would be unwise for the governor of Indiana to send another warrant. If the attempt at extradition were renewed, Stephens warned Tipton: "I beg of you not to be the messenger and should any man for whom you have a high regard be deputed for the purpose warn him that he will occupy dangerous ground for sir if I am surrendered I will have to resort to the law of nature self preservation and every consideration which can stimulate a high minded man might force me to do what in another situation would be more than criminal I dont Know what will be the consiquencis I fear even in imagination to look forward to the event."[12]

The continued efforts of Jennings to bring Stephens and his associates to trial in Indiana caused a lengthy wrangle between the governor and legislature of Indiana and the governor and legislature of Kentucky. The cases of Susan and Stephens were not the only ones involving the related

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[11] Robertson and Riker, *The John Tipton Papers*, I, 146-147; Logan Esarey (ed.), *Messages and Papers of Jonathan Jennings, Ratliff Boon and William Hendricks* (3 vols., Indianapolis, 1924), III, 99, 104-105. This is volume XII of the Indiana Historical *Collections*. In resorting to this method of recovering his property, Stephens appears to have been acting on the advice of some residents of Indiana. Susan evidently escaped from her captors. The abduction occurred in November, 1818, and in April, 1819, she appeared in court with her lawyer to give security that she would appear at the next session of the court. Harrison County Circuit Court Order Book, 1817-1820.

[12] *State of Indiana* v. *Robert Stephens*, Harrison County Circuit Court Order Book, 1817-1820; Robertson and Riker, *The John Tipton Papers*, I, 147, 171, 173-174. Spelling and punctuation in Stephens' letter are as in original.

problems of rendition of fugitives from labor and justice, but their cases highlighted the issues.

Earlier, at its session of 1816-1817, the Kentucky legislature, as the result of the escape of Susan or similar escapes, had passed a resolution requesting the acting governor, Lieutenant Governor Gabriel Slaughter, to open correspondence with the governors of Ohio and Indiana on the subject of slaves who escaped and were assisted in their escape by residents of the two states. The resolution asserted that "the difficulty experienced by the citizens of this state in reclaiming their fugitive slaves who may have escaped into those states, owing to the real or supposed obstructions produced by their citizens, is calculated to excite sensations unfavorable to the friendly relations which ought to subsist between neighboring states." The governors of Indiana and Ohio were asked to recommend to their legislatures the adoption of "such municipal regulations in relation to this interesting subject, as may be best calculated to do justice to all concerned, and to promote and increase the amity now existing between this and those states."

In his 1817 message to the Indiana legislature, Governor Jennings noted that there was excitement in Kentucky about slaves escaping into Indiana. He urged legislation to expedite settling such cases by enabling the judges of the circuit courts or Supreme Court to summon juries to hear such cases even when the courts were not in regular session. In response to this request the portion of the law of 1816 dealing with the rendition of fugitives was amended to provide that a special session of the circuit court should be summoned and a special jury called to try cases of this sort within three days after the arrest of the fugitive.[13]

In the meantime in at least two cases residents of Kentucky were accused of violating the provisions of the 1816 law which dealt with manstealing. In 1818 an agent was sent to Kentucky to demand the rendition of certain persons who had been indicted by the grand jury of Clark County on charges of kidnaping, but no answer was received from the

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[13] *Acts of Kentucky*, 25 General Assembly, 1 Sess., 1816-1817, p. 282; Logan Esarey (ed.) *Messages and Letters of William Henry Harrison* (2 vols., Indianapolis, 1922), III, 42. This is volume VII of the Indiana Historical *Collections; Laws of Indiana*, 3 Sess., 1819, p. 65.

Kentucky authorities in response to this request. The case of Robert Stephens, for whom a warrant of extradition was issued in November, 1819, has already been mentioned. When the governor of Kentucky received the warrant for Stephens he refused the request. In a letter to Jennings he explained the reasons for his refusal in rather ambiguous terms, apparently on the grounds that the case did not come within the scope of the federal law on fugitives from justice. He also objected that the documents which Indiana submitted were defective and that there had been too long a delay between the indictment of Stephens and the request for extradition. He concluded: "The demand which your excellency has made, not being brought within the provisions of the constitution and laws which point out my duty in such applications, I must decline interfering. Had the case been one within the provisions of the law, I should without hesitation have complied with your request."[14]

In reply Jennings pointed out that laws of Indiana prescribed punishment for persons who harbored fugitive slaves or prevented their owners from reclaiming them and asserted: "It has been the policy of this state, and certainly has been mine, to provide as far as the principles of the constitution of our state would permit, in addition to the constitution and laws of the United States, to facilitate the reclamation of fugitives from labor. . . ." In return for the manner in which Indiana had discharged its obligations to other states on this subject, Jennings stated, it was expected that the authorities of other states would assist in bringing to trial persons who had violated the penal laws of Indiana and then fled. Jennings reiterated that in this matter he was acting in accordance with the act of Congress.

Governor Slaughter again replied that the documents submitted in the case of Stephens were insufficient and that they did not comply with the requirements of the act of Congress. In spite of these repeated rebuffs Jennings wrote again. He enclosed new documents which were supposed to meet the technical objections which Slaughter had made to the previous ones. In this letter he remarked: "An object no

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[14] Dorothy Riker (ed.), *Executive Proceedings of the State of Indiana, 1816-1836* (Indianapolis, 1947), 74. This is volume XXIX of the Indiana Historical *Collections;* Esarey, *Messages and Papers of Jennings, Boon and Hendricks,* III, 98, 100.

less than the punishment and prevention of crimes seems to have given rise to the provisions of the Federal Constitution, and the laws to enforce them, on the subject of bringing to trial persons charged with offences in one state and having fled to another. Yet their well meant provisions will not only fall short of their object, but will themselves prove sources of discord and dissension, unless they are observed in good faith by the respective parties concerned in their execution."[15]

While the governors carried on this acrimonious correspondence, the Kentucky legislature had amended their state law with regard to fugitives from justice so as to cover the case of Stephens or any similar case that might arise—that is, cases in which a Kentuckian was indicted under the laws of another state for carrying off a Negro whom he claimed to be his runaway slave. The amendment provided that in such cases, when the governor of the "other" state demanded extradition, the governor of Kentucky should issue a warrant to the sheriff of the county where the indicted man lived and have him brought before a circuit judge. Should this Kentucky judge be of the opinion that the accused person was actually the owner of the slave, or had acted as the owner's agent, the person was to be discharged out of custody. But if the judge was of the opinion that the accused was not the slave's owner, or the owner's agent, then the person was to be sent back into custody again, "to be dealt with according to the laws now in force on that subject [kidnaping]."[16] By thus ignoring the Constitution and laws of the United States and arrogating to her officials the power to determine the guilt or innocence of persons indicted under the laws of another state, Kentucky sought to solve this particular problem in interstate relations.

Meanwhile, Jennings had submitted the correspondence with the governor of Kentucky and the documents relating to the Stephens case to the Indiana legislature at its 1819-1820 session. From the correspondence it would appear that Slaughter rested his refusal chiefly on the grounds that the request of Indiana for the rendition of Stephens did not comply with the act of Congress on fugitives from justice as well as the

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[15] Esarey, *Messages and Papers of Jennings, Boon and Hendricks*, III, 101-104, 108.

[16] *Acts of Kentucky*, 28 General Assembly, 1 Sess., 1819-1820, pp. 856-858. (Act approved January 27, 1820.)

fact that the documents submitted were defective. However, from a resolution of a committee of the Indiana house of representatives to which the matter was referred, it appears that the committee thought his objections were based on the assumption that the Indiana law on manstealing was unconstitutional. The resolution defended the right of Indiana to enact the law. It declared that although the Constitution of the United States provided that persons held to labor were not freed by escape into another state, there was nothing in the Constitution to suggest that the right to legislate on the subject of fugitive slaves was granted exclusively to Congress. The clause in the Constitution merely prohibited one state from emancipating the slaves of another state. "But though an unfortunate race of human beings are recognized as property in several of the states, and though their fleeing from service does not dissolve their obligation to serve, yet as slavery is unknown in our Constitution, the natural presumption is, that every individual within the limits of Indiana is free, and must be deemed as such until the contrary is proved. Hence the propriety of the law that requires the individual claimed as a fugitive from service, to be proved to be such, prior to his removal from this state." For Indiana to surrender the right claimed by this law, as Kentucky seemed to demand, would mean the loss of an essential prerogative of sovereignty.[17]

At the next session of the Indiana legislature a lengthy report of the judiciary committee of the house analyzed the Indiana law of 1816 in relation to the Constitution and laws of the United States and by implication criticized the actions of Kentucky. Again the assertion that Congress had exclusive power to regulate the manner of reclaiming fugitive slaves was denied. The report pointed out that the federal law fixed no penalty for abuses arising under it. It added that, although the courts of Kentucky might grant redress to persons illegally seized and taken there, those courts could not punish crimes committed in another state. "Nor can it be admitted for a moment that those states alone where slavery is tolerated are to try the right of freedom where it is disputed, and to prohibit and punish manstealing. . . . As therefore, Congress have not provided that abuses under the law [of 1793] should be

[17] *Indiana House Journal, 1819-1820*, pp. 360-362.

punished . . . it became both the right and duty of our state to pass some law on the subject. And though our statute may not please the unfortunate slaveholder in every respect; yet, so far is it from discharging from service and labor, that it provides that state officers shall aid the restoration of fugitives from labor to the claimant; that as speedy a decision should be had as in questions of far less consequence than that of freedom; and that a penalty should be imposed upon those who, unauthorized either by the laws of the United States or of this state, commit violence on others, who, by our constitution, are presumed to be free."

The committee report added further that if sister states persisted in disregarding the provisions of the United States Constitution for the rendition of fugitives from justice, then "indeed, we may predict a speedy dissolution of those bonds, under which we have hitherto acted as members of one family." Furthermore: "If any of the laws of Indiana are unconstitutional, and if any persons indicted in our courts are innocent, ought it not to appear from some other authority than the legislature of Kentucky, which, by its own constitution, is prohibited from exercising judiciary powers." In conclusion the report requested that the governor communicate with the President of the United States or Congress on the subject of the proceedings on the demand for the rendition of Robert Stephens and "enter into such negotiations on the subject as he may deem most for the honour of our state."[18]

Accordingly, Governor Jennings forwarded to John Quincy Adams, secretary of state, the correspondence with the governor of Kentucky on the subject of this case of fugitives from justice, requesting that it be laid before President James Monroe. A letter was received from Adams stating that the papers had been turned over to the President. There the matter ended, apparently, for no evidence exists that Monroe replied or took any steps to settle this interstate dispute.

Kentucky, then, appears to have been the victor in this round over rendition of fugitives from justice. The case against Robert Stephens in the Harrison County court was finally dismissed in June, 1823.[19]

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[18] *Indiana House Journal, 1820-1821*, pp. 307-310.

[19] Esarey, *Messages and Papers of Jennings, Boon and Hendricks*, III, 223, 455-456; Robertson and Riker, *The John Tipton Papers*, I, 146 n.

While denying the right of Indiana to try citizens of Kentucky accused of kidnaping free Negroes, the Kentucky legislature continued to urge Indiana to modify its laws so as to better protect the rights of slaveholders. In a resolution adopted at its 1821-1822 session, the Kentucky legislature requested that the governor of Kentucky correspond with the governors of Ohio, Indiana, and Illinois, and through them with the legislatures of those states, to ask for the appointment of one or two commissioners from each state, to meet such commissioners to be appointed from Kentucky. The commissioners were to bring with them copies of all laws in force in their states relating to free people of color, slaves, and slaveholders. The purpose of such consulting together would be that the commissioners would mutually agree upon and recommend laws on those subjects applicable to the condition of the different states which would "best conduce to the private rights of citizens, and to that peace and harmony which it is so eminently the interest and duty of these states to preserve toward each other."

In his message to the Indiana legislature in December, 1822, Lieutenant Governor Ratliff Boon mentioned a communication from the governor of Kentucky soliciting the appointment of such a commission. The senate passed a resolution to appoint the commissioners; but the house insisted upon amending the resolution to state that it was inexpedient to authorize a commission and that, instead, the governor should be authorized to correspond with the governor of Kentucky on the subject of differences between the two states. Inasmuch as the senate failed to concur in the house amendment no action was taken.[20]

The enactment of the controversial Manstealing Act of 1816 had shown that Indiana's lawmakers were genuinely concerned about the protection of the rights of the free Negro residents of Indiana. In the long dispute with Kentucky over extradition, the Indiana governor and legislature had vigorously defended Indiana's right to provide a jury trial for persons claimed as fugitive slaves and its right to punish persons who were guilty of kidnaping free Negroes. In 1824, however, the legislature retreated somewhat from the position

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[20] *Acts of Kentucky*, 30 General Assembly, 1821-1822, pp. 470-471; *Indiana House Journal, 1822-1823*, pp. 14, 312; *Indiana Senate Journal, 1822-1823*, p. 257.

it had taken in earlier sessions. The law on fugitives from labor which was incorporated into the general revision of the laws adopted that year appears to have been due in part to the protests from Kentucky. It made pronounced concessions to the demands of the slaveholders. It also appears to have reflected the legal opinion of Judge Benjamin Parke, who had written the decision in the case of Susan and Chasteen discussed above and under whose supervision the revision of the laws was made.[21]

The 1824 law changed the procedure for retaking fugitives from labor. It permitted the claimant, after securing a warrant from the clerk of any circuit court in the state, to make an arrest, possession of the warrant giving sufficient authority to make the arrest. The alleged fugitive from labor was then to be taken before a justice of the peace or judge of the circuit or supreme courts and placed in custody. Within sixty days after the arrest a trial was to be held, at which it was the duty of the justice of the peace or judge "to hear and determine the case in a summary way." If the judge decided in favor of the claimant he was to issue a certificate authorizing the removal of the fugitive from the state. Either party to the case might appeal this decision; but the appellant was required to pay the cost of the first trial and give security for the cost of the appeal. If an appeal was made the fugitive was also required to give security for his appearance or be jailed pending the final decision. A jury was summoned within five days to try the case when an appeal was granted; but if either party was unprepared for the trial the judge might continue the case until the next term of the court.[22]

It is apparent that the procedure prescribed by the 1824 law conformed more nearly to that of the federal law of 1793 than did that provided in the law of 1816 and that it was less favorable to the alleged fugitive than the 1816 law.

In the section of the 1824 revision of the laws which dealt with crimes and punishments, penalties were provided for kidnaping. A fine of from $100.00 to $5,000.00 and imprisonment of from one to fourteen years were imposed on persons who forcibly took or arrested any man, woman, or child "with-

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[21] Leslie, "The Constitutional Significance of Indiana's Statute of 1824," *Journal of Southern History*, XIII, 340.

[22] *Revised Laws of Indiana*, 8 Sess., 1824, pp. 221-222.

out establishing a claim according to the laws of this state, or of the United States." Persons who gave false certificates of emancipation, or who knowingly harbored or employed a slave or obstructed the recapture of a fugitive, were liable for fines not exceeding $500.00 and for damages to the party injured. Subsequent revisions of the laws retained the provisions of the 1824 law concerning the taking of fugitive slaves as well as the provisions regarding kidnaping and the harboring of slaves.[23]

There was no serious attempt to change the legislation on fugitive slaves until 1837, when Kentucky again appealed for a revision of the Indiana law. The Kentucky legislature, in a resolution adopted February 3, 1837, complained that many citizens of Kentucky had sustained losses from the escape of slaves to Ohio, Indiana, and Illinois, whence the slaves had been helped to go on to Canada, where they could not be reclaimed. The resolution also stated that slaves passing up and down the Ohio River in the service of their masters were sometimes lured away and concealed when they touched at the ports of Ohio, Indiana, and Illinois. The legislators expressed their belief that "the citizens of those states are comparatively few, by whose artifice, crude, ill digested and fanatic notions of civil rights, the injuries refered to are inflicted." Nevertheless, since the continuance of these practices might have the effect of producing upon the minds of the people of Kentucky "an excitement unfavorable to the amity and friendly intercourse which now so happily subsists . . . between coterminous republics," the legislature asked the sister "republics" to enact laws inflicting penalties in order to restrain their citizens from conduct "so injurious to the proprietors of that species of property, and so exasperating in its effects upon the minds and feelings of the people of the slave-holding States." The Kentucky lawmakers refrained from making any specific suggestions as to the type of legislation required but expressed confidence that the suggestions would lead to appropriate action.[24]

Governor Noah Noble laid the resolution before the next session of the Indiana legislature with the suggestion that it

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[23] *Ibid.*, 142-143; *Revised Laws of Indiana*, 15 Sess., 1831, pp. 183, 277-278; *Revised Statutes of Indiana*, 27 Sess., 1843, pp. 962, 984, 1032-1034.

[24] *Acts of Kentucky*, December Sess., 1836, pp. 353-354.

be given consideration. The Indiana governor admitted, however, that he could suggest no more efficient means of redress than that already contained in the laws of the state, since those laws had been framed for the express purpose of aiding slaveholders in the recovery of their property. He declared: "Upon all questions connected with the institution of slavery, the citizens of this State have been exempt from excitement. Ever mindful of the duties which devolve upon her as a member of the great family of American States . . . the State of Indiana has religiously abstained in her principles and her policy from every act that could be construed into a disposition to tamper with or disregard the domestic institutions of her sister States. By a reference to our laws on the subject it will be seen that they have been shaped with a view to protect the interests and rights of the citizens of those States where slavery has been established, and to furnish all just facilities for the reclamation of that species of property."

A bill on the subject of fugitives from labor was introduced in the senate and passed both that body and the house of representatives; but it was not signed by the governor and so did not become a law. The reasons for the governor's action are not apparent.[25]

Although Indiana failed to change her laws on the subject of fugitive slaves, relations with Kentucky in this period were cordial. In 1839 the Kentucky legislature passed another resolution asking that two commissioners be sent to Ohio to ask the legislature of that state to take action "to prevent evil disposed persons, residing within the jurisdictional limits of Ohio, from enticing away the slaves of citizens of Kentucky." That no mention was made of citizens of Indiana may indicate that the Indiana laws were operating to the satisfaction of Kentuckians.

At almost the same time that the last-mentioned resolution was adopted in Kentucky, the Indiana legislature passed a general resolution on the subject of slavery which was heartening to Kentuckians. In language reminiscent of the famous resolutions which John C. Calhoun had offered in the Congress of the United States in 1837, the Indiana legislators

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[25] *Indiana House Journal*, 1837-1838, pp. 23-24, 543, 687; *Indiana Senate Journal, 1837-1333*, p. 574. The account in the journals does not reveal the provisions of the proposed law, and the original bill is not in the state archives.

declared: "That any interference in the domestic institutions of the slaveholding states of this Union, (without their consent) either by Congress or the state legislatures, is contrary to the compact by which those states became members of the Union.

"*Resolved,* That any such interference is highly reprehensible, unpatriotic, and injurious to the peace and stability of the union of the states."

In response the Kentucky legislature adopted a resolution which declared that the legislature of Indiana, "regardful of the rights of her sister States of the South," had taken an action which called forth "the most decided and unqualified approbation of this Legislature," and which was "such as might have been expected from our enlightened, liberal, and patriotic, sister State."[26]

It is evident that the policy of the Indiana legislature with regard to the subject of fugitive slaves had undergone a marked change since 1816. Beginning with the law of 1824, the actions of the legislature seem to have been influenced by a desire to placate a neighboring slave state. They reflect more the desire to preserve friendly relations with the South than interest in protecting the rights of persons claimed as fugitive slaves. Although a militant anti-slavery movement was developing in Indiana in the 1830's, it was as yet politically unimportant and did not influence actions of the legislature.

While the Indiana lawmakers were thus retreating from the defense of the rights of persons claimed as fugitives which had marked their actions in the early days of statehood, other northern states had been following a different course. Several states had adopted "personal liberty" laws dealing with the subject of kidnaping and claiming fugitive slaves. These laws guaranteed jury trial and in other ways were at variance with the procedure set forth in the federal statute of 1793.

In 1842 the issue of the constitutionality of state laws of this sort came before the Supreme Court of the United States in the case of *Prigg* v. *Pennsylvania.*[27] The Court held un-

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[26] *Acts of Kentucky,* December Sess., 1838, p. 390; *Laws of Indiana,* 23 Sess., 1839, p. 353; Acts of Kentucky, December Sess., 1838, pp. 390-391.

[27] *Prigg* v. *Pennsylvania,* 41 *U. S. Reports* 539-674 (1842).

constitutional and void the Pennsylvania law on which the indictment of the defendant, Edward Prigg, was founded, and held that the power to legislate on the subject of the seizure and return of fugitive slaves belonged exclusively to the Congress of the United States. It was held by the Court that the legislation of Congress, if constitutional, must supersede all state legislation, on the same subject, and, by necessary implication, prohibit it. At the same time the Court asserted that the states could not be compelled to enforce the provisions of the Constitution regarding fugitives, since this was a function of the federal government, adding that "it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the Constitution." At the same time, however, the Court said that "state magistrates may, if they choose, exercise that authority [to aid in the taking of fugitives] unless prohibited by state legislation."[28]

The decision in the Prigg case seemed to mean that the Indiana legislation on the subject of fugitive slaves was unconstitutional. A report of a committee of the house of representatives of the state of Indiana in 1846 asserted that it was doubtful whether the Indiana state legislature had any power to legislate on the subject of fugitives from labor, either for or against the master or slave, because since 1793 Congress had exercised the power to legislate on the subject. The committee chairman stated that where there is but one subject matter of legislation, the concurrent power of the states is wholly suspended by the action of the federal power.[29]

Nevertheless, efforts to enforce the state legislation continued. One such attempt occurred in Elkhart County in connection with an effort to capture a Negro claimed as a runaway slave. When the claimants attempted to arrest the Negro under the authority of a warrant issued by a justice of the peace and take him before a magistrate, a riot occurred.

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[28] *Ibid.*, 616, 622.

[29] *Indiana House Journal, 1846-1847*, pp. 613-614. In 1846 a petition was prepared by the Yearly Meeting of the Anti-Slavery Friends, asking the legislature to enact a law which would prohibit the use of state jails for holding fugitive slaves and which would inflict penalties on state officers who aided in the recapture of fugitives. Minutes of Indiana Yearly Meeting of Anti-Slavery Friends (Manuscript in Earlham College Library), 200.

The claimants were arrested and indicted for their part in the riot; upon trial, they were found guilty. At the trial, the judge of the circuit court, in his instructions to the jury, stated that the only question for consideration was as to the legality of the arrest of the Negro; that the warrant under which the defendants acted, being issued by a justice of the peace, was wholly void and afforded them no protection whatever; and that they had no right to proceed without such warrant as is provided for by the statute of the state. He asserted that the Indiana law was not in contravention of either the Constitution or laws of the United States. The Indiana Supreme Court, however, did not sustain this position and reversed the judgment of the circuit court, holding that the instructions to the jury were at variance with the doctrines established by the United States Supreme Court in *Prigg* v. *Pennsylvania.*[30]

In another case the Indiana Supreme Court found unconstitutional the provision in Indiana law which penalized the harboring of fugitive slaves. In this case a slave woman and her children had escaped from Kentucky and reached the vicinity of Clarksburg in Decatur County, Indiana, where there was a Negro settlement and nearby a community of white persons who were strongly opposed to slavery. Luther Donnell, one of the whites, assisted some of the Negroes in concealing the fugitives and starting them on their way to Canada. For this Donnell was indicted, under the Indiana law, charged with inducing a slave to escape and secreting her. He was convicted in the circuit court; but the Indiana Supreme Court reversed this decision, holding that the provisions of the state law were unconstitutional according to the decision in the Prigg case.[31]

Although the Prigg case invalidated state laws designed to protect persons claimed as fugitive slaves and thereby caused some consternation in anti-slavery circles, members of the latter groups were able to derive some comfort from that part of the opinion which said that state officers could not be compelled to enforce the federal law relative to fugitives. This led several legislatures in the northern states to

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[30] *Graves et al* v. *the State*, 1 *Indiana Reports*, 368-373 (1849).

[31] Decatur County's Part in the Underground Railway (Typed Manuscript in Indiana Division, Indiana State Library, Indianapolis); *Donnell* v. *the State*, 3 *Indiana Reports*, 480 (1852).

pass laws which by prohibiting state officers from assisting in the enforcement of the federal law had the effect of obstructing its execution. The first such state law had been passed in 1840, in Vermont, prior to the Prigg case. Under it, state magistrates were forbidden to take cognizance of any certificate in any case arising under the federal law. The Vermont law also prohibited, under penalty of fine or imprisonment, any officer or citizen from seizing, arresting, or detaining any person claimed as a fugitive slave. After the decision in the Prigg case other northern states passed similar laws, prohibiting state officers from taking part in the enforcement of the federal law of 1793 and barring the use of state jails for the detention of fugitive slaves. Indiana, however, did not follow these examples. Instead the Indiana revised laws of 1852 expressly provided: "Any county jail may be used for the safe keeping of any fugitive from justice or labor, in this State, in accordance with the provisions of any act of Congress."[32]

Personal liberty laws such as the Vermont law had the effect of virtually nullifying the federal law of 1793, which relied for its enforcement principally on state magistrates. There were not enough federal judges to enforce the act. This state of affairs, plus the fact that some anti-slavery groups in the North were systematically aiding slaves to escape to Canada via the underground railroad, caused louder demands from the South for more effective federal legislation for the recapture of runaway slaves. The result was the Fugitive Slave Law of 1850, which was incorporated into the series of Congressional measures known as the Compromise of 1850. The new measure, which was in the form of amendment to the act of 1793, created federal commissioners to enforce the act. The commissioners were to be appointed by federal judges and to have concurrent jurisdiction with them in hearing fugitive slave cases. In determining such cases, a commissioner was expressly prohibited from admitting the testimony of the alleged fugitive. If, from the evidence presented to him, he decided in favor of the claimant, he was to issue a certificate authorizing the removal of the fugitive

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[32] Homer C. Hockett, *The Constitutional History of the United States* (2 vols., New York, 1939), II, 190; *Revised Laws of Indiana*, 1852, I, 347.

to the state from which he escaped. Further, any person knowingly hindering the arrest of a fugitive from service or labor, or attempting to rescue one from custody, or aiding to escape, or harboring such a fugitive, was to be fined and imprisoned. If the claimant had reason to fear that there might be an attempt at a forcible rescue it was the duty of the officer making the arrest to return the slave to the state from which he had fled; the officer was to employ such aid as might be necessary, the compensation and expenses to be paid out of the treasury of the United States. Private citizens could be compelled to render assistance in the capture of fugitives.[33]

Indiana's delegation in Congress divided over the measure. The two United States senators were in favor of the law (although circumstances prevented their voting for it), while the delegation in the House of Representatives was split, six of the ten voting in favor of it, four against.[34]

Among the people of Indiana reaction to the law was mixed. The more extreme anti-slavery groups were bitter in their condemnation. The following resolution passed by an abolition convention at Centreville in Wayne County was typical: "*Resolved,* That the blood hound fugitive slave bill recently enacted by Congress, outrages humanity, violates the plainest provisions of the Constitution of the United States, and is without parallel in the legislation of any civilized people." A meeting in Fayette County declared: "We will not assist (if called upon) in capturing or securing a fugitive slave under this act, though the penalty for refusing should deprive us of all our possessions, and incarcerate us between dungeon walls."[35]

The expressions of these extremists were not, however, representative of the feelings of the majority of the people of Indiana. Although some provisions of the act might be offensive, most people of the state appear to have acquiesced in them as a means of preserving national unity. The *Indiana State Journal* asked that agitation cease and that the law be given a fair trial. "If it only secures the object of the

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[33] *United States Statutes at Large,* IX, 462-465.

[34] Charles H. Money, "Fugitive Slave Law of 1850 in Indiana," *Indiana Magazine of History* (Bloomington, 1905-), XVII (1921), 167-168.

[35] *Indiana State Sentinel* (Semiweekly), November 12, 1850; *ibid.,* November 19, 1850.

Constitution, without unjust requirements at the hands of the people of the free States, then let it remain as it is."[36]

In his first message to the legislature after the passage of the law, Governor Joseph Wright urged that all of the compromise measures be carried out in good faith and deplored the ultraism and fanaticism which had been manifested by both sides on the debates preceding the compromise. "Above all," he said, "Indiana recognizes the imperative duty, by every good citizen, of obedience to the laws of the land." He added: "Indiana takes her stand in the ranks, not of *Southern destiny,* nor yet of NORTHERN DESTINY. She plants herself on the basis of the Constitution; and takes her stand in the ranks of AMERICAN DESTINY."[37]

In the middle fifties, after the slavery controversy had once more been intensified as the result of the Kansas question, northern states began to enact a new series of personal liberty laws, designed to impede the enforcement of the hated Fugitive Slave Law of 1850. Typical of these was the Massachusetts law of 1855. It guaranteed the writ of habeas corpus to every person imprisoned or restrained of his liberty; it provided that the state should furnish legal counsel for persons claimed as fugitive slaves and guaranteed a trial by jury to such persons; and it placed the burden of proof on the claimant. The use of state jails for the detention of fugitives and of persons arrested for helping fugitives to escape was prohibited. Similar laws were adopted in all the New England states and in Ohio, Michigan, and Wisconsin. Attempts to nullify the federal law, these laws were clearly in conflict with the principles set forth in the Prigg case.[38]

Attempts to enforce the law of 1850 led to a number of conflicts between state and federal authorities. The most notorious case arose in Wisconsin where Sherman M. Booth was indicted for violating the federal fugitive slave law by aiding the escape of a fugitive slave but was discharged from the custody of a United States marshal, Stephen V. R. Ableman, on a writ of habeas corpus issued by a justice of the state supreme court. Booth was later convicted in a federal court

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[36] *Indiana State Journal,* May 10, 1851.

[37] *Indiana House Journal, 1850-1851,* pp. 40-42.

[38] *Massachusetts Acts and Resolves,* 1855, pp. 924-929; Joel Parker, *Personal Liberty Laws* (Boston, 1861), *Passim.*

but was again released on a writ issued by the state court. Ultimately his case reached the Supreme Court of the United States. Chief Justice Roger B. Taney delivered the opinion of the Court, which upheld the supremacy of the federal law and the federal judiciary over state courts, in an opinion which was to be regarded as a masterpiece and quoted time and again by his colleagues and successors.[39]

Legislation of the sort passed in Massachusetts and defiance of federal authority like that which occurred in Wisconsin had no counterparts in Indiana. The Indiana legislature enacted no legislation in contravention to the federal law on fugitive slaves; and Indiana courts made no attempt to question the authority and supremacy of the federal law and federal courts. Nevertheless, issues arising out of cases begun under the federal fugitive slave law were in some cases taken to state courts. One such instance grew out of the attempts of a Missouri slaveholder to claim as his escaped slave a Negro resident of Indianapolis named William Freeman. The case, the most famous ever brought under the 1850 law in Indiana, was heard by a United States commissioner. A group of able lawyers came to Freeman's defense and were able to prove that he was in reality a free Negro and that the slave the claimant sought had escaped to Canada.[40]

The cost of the trial exhausted Freeman's savings as well as causing him discomfort and humiliation. Accordingly he instituted a damage suit for $10,000.00 against the claimant in the Marion County Circuit Court. During the course of the trial, counsel for the defendant agreed that a verdict of $2,000.00 should be awarded to Freeman. This legal victory was in reality meaningless, however, since the defendant disposed of his property and moved away from his residence in St. Louis, thereby making it impossible to collect the award.[41]

Freeman also brought suit in the same court against John L. Robinson, the United States marshal who had arrested and held him. He charged the officer with assault and battery and with extortion for compelling him to pay three dollars a

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[39] *Ableman* v. *Booth* and *United States* v. *Booth*, 21 *U. S. Reports*, 506-526 (1858).

[40] A detailed account of the case is given in Money, "Fugitive Slave Law of 1850 in Indiana," *Indiana Magazine of History*, XVII, 180-198.

[41] *Ibid.*, 194-195.

day for sixty days. The circuit court gave final judgment in this case to Robinson. Freeman appealed to the Indiana Supreme Court. Robinson admitted that he had committed the acts of which Freeman complained, but insisted that in doing them he was acting in the official character of United States marshal, and hence that the state court did not have jurisdiction over the subject matter of the action. Nevertheless, the Indiana Supreme Court held that the state court had jurisdiction over the action. It declared that assault and battery and extortion of money were no part of the marshal's official duties under the fugitive slave law or any other act, and were unlawful. While admitting the exclusive right of Congress to legislate on the subject of fugitive slaves, it added: "We perceive no conflict between any provision of the fugitive slave law, and the common law right to maintain an action for personal injury."[42]

In 1857 another case arose in which a group of anti-slavery lawyers tried to use state laws and the state courts to thwart the recapture of a boy claimed as a fugitive slave under the federal law. The boy, who was called West, had escaped from Kentucky some four years previously and had been captured in Illinois, apparently without a warrant or certificate for his removal. When the captors reached Indianapolis with the boy a writ of habeas corpus was served on them just as they were ready to board the train for Jeffersonville. The writ had been secured by three lawyers, at the instigation of some Negro residents of the city who had learned of the boy's plight. The fugitive was taken before the judge of the court of common pleas, who ordered him discharged under the sixth section of the federal fugitive slave law.[43] The discharge had been anticipated by the claimant, who had the boy immediately re-arrested by a deputy

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[42] *Freeman* v. *Robinson*, 7 *Indiana Reports*, 321-324 (1855).

[43] Indianapolis *Daily Journal*, November 26, 1857. The Indiana law on the issuance of writs of habeas corpus provided: "Every person restrained of his liberty, under any pretence whatever, may prosecute a writ of *habeas corpus* to inquire into the cause of the restraint, and shall be delivered therefrom when illegal." *Indiana Revised Statutes*, 36 Sess., 1852, II, 194. The grounds on which the judge discharged the boy are not entirely clear from the report. The sixth section of the 1850 law prescribed the method of retaking a fugitive from labor. It provided that fugitives could be reclaimed by securing a warrant from a state magistrate or could be arrested without a warrant and taken before a United States Commissioner. Since the claimant had followed neither of these courses the judge apparently decided that he held the boy illegally.

United States marshal and taken before a United States commissioner under the authority of the federal law. The lawyers defending West included such well-known anti-slavery men as George W. Julian and John Coburn, who used every conceivable stratagem to win the freedom of their client, or at least to delay his return to Kentucky and to increase the cost of retaking him. Nevertheless, after five days of testimony and argument the commissioner awarded the Negro to the claimant. While the hearing was going on, however, Julian and Coburn had caused the claimant to be charged with violating the law of Indiana against kidnaping. The man was arrested and taken before the judge of the Court of Common Pleas and released on bail. He was never tried, however; the kidnaping charges were dropped after the United States commissioner made his award.

The decision of the commissioner did not end the efforts of Julian and Coburn. They next had a writ of habeas corpus served by the county sheriff on the United States marshal, who had the Negro in his custody, ordering him to bring the Negro into the court of common pleas. In that court the anti-slavery lawyers submitted a long argument in which they assailed the integrity of the commissioner and insisted that, regardless of the federal law, Indiana had a right to protect herself against kidnapers. Hence, they insisted that the matter should be adjudicated in a state court. The judge, however, upheld the authority of the deputy marshal, who was acting under the authority of a warrant issued by a United States commissioner. He was reported as declaring that: "A United States commissioner had concurrent jurdisdiction with a Judge of the United States Circuit Court. The law made it so, and it was not for him to determine whether the law was right and proper. With that law, and with the Act under which the arrest of West as a fugitive from labor was made, no matter how odious it might be, he had nothing to do except to be governed by it in his official action. If the laws were wrong, appeals should be made to the legislative branches of government. The Courts had to deal with laws as they found them." He held that in this case the authority of the federal government was paramount and denied that he could discharge a person held under the authority of the United States.[44]

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[44] Indianapolis *Daily Journal*, December 7, 1857. A complete account of the West case is found in *ibid.*, November 26-December 7, 1857, and in the Indianapolis *Daily Sentinel*, November 26-December 8, 1857.

So the Negro boy was carried back to Kentucky under the guard of a deputy marshal and a posse of five citizens, and the authority of the federal government was maintained. An editorial in the conservative *Indiana State Sentinel* assailed George W. Julian and his associates for defending West. It asserted that Julian "knew that every step he was taking from the beginning was in contravention of all law and authority," but that he had persisted "until he morally, at least, put himself in open rebellion against the government." It suggested that he deserved five years in the penitentiary for obstructing the operation of the Fugitive Slave Law.[45]

The writer of the editorial showed a lack of prescience which was not unusual in men of his vocation. In 1857 he could not know that the time was short in which cases such as this could occur. Within a few years Julian and men of his views would be in the ascendancy, and the Fugitive Slave Law would be merely a matter of historic interest. In the meantime the editorial writer probably expressed the views of the majority of the citizens of Indiana when he voiced satisfaction at the result of the trial of West. "The people of Kentucky, of the South, and of every portion of the confederacy [sic], North, East and West, know now that the laws, State and Federal, are impartially administered in Indiana."

The foregoing account shows that the course followed by Indiana officials with regard to the fugitive slave question ran counter in some respects to the pattern set in some of the other northern states. As early as 1810 and 1816, when the anti-slavery movement was in its infancy, Indiana lawmakers attempted to implement the federal fugitive slave law so as to protect free colored persons from kidnaping and illegal enslavement. In a long controversy with Kentucky the governor and legislature of Indiana insisted that a state had the right to pass such legislation and denied that Congress had exclusive power to legislate on the subject of fugitive slaves. At no time however did they deny the right of slaveholders to recover their property; nor did they deny that the authority of the federal government was paramount to state authority.

The 1824 law of Indiana marked a turning point. It was a concession to the interests of the slaveholders, designed to

[45] *Ibid.*, December 7, 1857.

facilitate the recovery of fugitives. In the words of Governor Noble quoted above, it was framed "with a view to protect the interests and rights of the citizens of those States where slavery has been established, and to furnish all just facilities for the reclamation of that species of property." At the same time it retained some measure of protection for the rights of fugitives beyond the procedure prescribed in the federal law of 1793.

Both the Supreme Court of Indiana and the legislature acquiesced in the principles of the decision of the United States Supreme Court in the Prigg case, in which it was held that Congress alone could legislate in the matter of fugitive slaves. While other northern states passed personal liberty laws after the Prigg decision, Indiana took no such action; nor did it attempt to nullify or obstruct the enforcement of the act passed by Congress in 1850. After the Indiana law of 1824 was held to be unconstitutional Indiana lawmakers made no further attempt to protect persons claimed as fugitive slaves. In a period when the legislation of many northern states reflected increasingly the demands of anti-slavery groups, Indiana's legislators and courts appear to have ignored these groups and to have adopted a policy which placed the preservation of national unity above the protection of the rights of fugitive slaves or free colored people.