

THE CINCINNATI FUGITIVE SLAVE CASE.

Decision of Commissioner Pendery--The Fugitives remanded back to Slavery.

At half-past one o'clock Friday afternoon, Commissioner Pendery opened his Court in the U. S. Court Rooms, (Judge Leavitt giving way,) and gave his decision. He commenced by saying.

Previous to the disposition of the cases now before us, we shall pass upon the motion "That we discharge Margaret Garner, Simon Garner, senior, Simon Garner, junior, and Mary Garner, from the custody of the U. S. Marshal, and deliver them into the possession of said Sheriff." This motion is based upon an indictment found by the Grand Jury of Hamilton County, Ohio, charging them with the crime of Murder in the First Degree, and a *capias* issued upon said indictment for their arrest. We find no law to warrant us in making such order, and therefore overrule the motion.

He then proceeded to consider the claim of Marshall to Simon Garner, sen., Simon Garner, jr., and Mary Garner, reviewing the testimony and circumstances of the case, citing the decision of various Courts in regard to the law applicable to it, and concluding as follows.

"The question is not one of humanity that I am called upon to decide. The laws of Kentucky and of the United States make it a question of property. It is not a question of feeling, to be decided by the chance current of my sympathies. There are to be adjudicated the rights of an institution so agreed to in the formation of our Government as to make it both municipal and federal in its character. It is the essence of the institution that the slave does not possess equal rights with the freeman. The abstract rights to life, liberty and property are in his case replaced by statutes providing expressly for his condition. It has been our duty, as a Court, to listen with attention, and, we trust, with courtesy to all of those arguments which have urged the decision of the question upon moral rather than legal grounds. We conceive that our highest moral obligation in this case is to administer impartially the plain provisions of the law.

"However painful the result may be to the defendant in this case, it is my duty to deliver them, Simon Garner, Sr., Simon Garner, Jr., and Mary Garner, fugitives from service, into the custody of the claimant, James Marshall."

The claim of Gaines to Peggy, Tom, Sam and Silla, was then taken up and considered in the same manner, the Commissioner remarking that the question presented in this case was the same as that in the former, and that the decision in the one applied equally to the other. He therefore made an order that the parties named be delivered up to the claimant, Archibald K. Gaines.

An application for a writ of *habeas corpus* was made by the United States Marshal to Judge LEAVITT, to obtain from the Sheriff the custody of the fugitives. It was expected that the Judge would render his decision yesterday morning. The slaves would be retained in the county jail until the decision was given.

The *Gazette* further states that though entitled to Margaret's three children, by the decision of Commissioner Pendery, Mr. Gaines has as yet made no attempt to remove them from the County Jail. The reason probably is, that in the present state of the river (the ice running) it would be impossible to get them over to Kentucky. Margaret has heard of the decision, and is enduring great agony, not knowing what moment her babe will be taken from her arms.