

DECISION OF THE COMMISSIONER.

I will state briefly the conclusions arrived at on the examination of the claim of Hiram McElroy to the rendition of a negro named Frederick, alleged to have escaped from the service of his owner, in the State of Kentucky; after a careful scrutiny into the testimony, and full deliberations upon all the points raised and argued in the case.

The alleged fugitive is before me by virtue of a warrant obtained on affidavit, as authorized by the law of Congress, entitled "An act to amend, and supplemental to the act entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters.'" (Approved Feb. 12, 1793). And the supplemental law which this title refers to, was approved September 18, 1850.

It is here proper that I should say that the Court has observed not even an indication to obstruct or hamper the execution of the law.

As an act of courtesy, and to advance the ends of justice, the Court has allowed suitable counsel to be present in the examination, and has allowed them in behalf of the alleged fugitive to present, for the consideration of the Court, whatever evidence was deemed necessary and proper by them to protect the interest of the person claimed; to cross examine claimant's witnesses; introduce testimony in his behalf, and argue the case at full length.

The duty which the Court would wish to observe in this case, is the compliance with the Constitution and the laws of Congress; and if the negro is properly claimed, to remand him to his master or authorized attorney, or to discharge him, as the testimony may require.

Objections have been urged by counsel to the sufficiency of the power of attorney, and its authentication. These objections are, that the power of attorney does not express that Frederick (the fugitive claimed) "owed service," but that he was a "slave" to McElroy, and that there is not in the power of attorney any legal evidence of the "legal" existence of the Court whose seal is attached to the certificate of acknowledgment to the said power of attorney.

I would here briefly say, that there seems to be a difference, as urged by the counsel for the fugitive; that the power of attorney and the law under which this claim is set up, are at variance with each other, and that therefore the power of attorney is not valid.

The law of Congress uses the words "fugitive from service or labor;" the power of attorney says a "negro man slave by the name of Frederick."

I have endeavored to examine the point raised as to the legality of the power of attorney, upon the exceptions as above stated; and I can only come to the conclusion, in view of the law under, and by which this court is required to act, and the meaning and construction of that law so far as these exceptions are concerned; that I can not see any material difference in the meaning or definition of the words employed in the law, or the power of attorney. They seem to be, and I believe they are so regarded, as synonymous terms, a "slave" being "a person who is wholly subject to the will of another; one who drudges or labors like a slave; a bond servant, a slave."

The words "owed service" as claimed to be the language of the law, is to the mind of the Commissioner, synonymous as before stated with that of "slave," in the sense in which it is used in the laws referred to; and under which this complaint is now, or has been heard. I do not think this objection to be well taken.

As Commissioner I am bound under the laws of Congress to recognize the certificate and seal to be what it on its face purports.—Such is the rule with reference to public records of one state when offered in evidence in the Courts of another; and I perceive no distinction as to the credit due to them from the credit due to the certificate and seal under consideration; as they are both placed on the same footing by the laws of Congress.

Although McElroy in his power of attorney does not use the words "owing service" (which words by the way are not to be found in the Statute Law of '50, respecting fugitives from service or labor) it is quite clear, that his intention was to authorize his attorney to reclaim and take back the negro Frederick.

I have examined the whole instrument to ascertain its true purport and intention, and as ascertained will give effect to it. I consider this power of Attorney sufficient to authorize the claim and the delivery up of the fugitive, if the evidence otherwise establishes the right of the claimant.

To express my opinion clearly, it is not necessary to detail the evidence introduced, but simply state the main points of the evidence and the requirements of the law. The law in substance is this, that when a person "held to service or labor" in any one State or Territory shall escape into another, he shall, on claim of the person to whom the service is due, be delivered up. The law involves the facts of the negro being held to service or labor, ownership of the escape and the claim, and of course the identity of the person escaping with that of the one claimed.

The facts in the present case are, that Hiram McElroy, of Union county, Kentucky, has been in that State in the possession, under a claim of ownership, of a negro man named Frederick, for about seven years; that Frederick was in his service during the time under such claim, that he was bought by Mr. McElroy as a slave, that Frederick is about fifty years of age, and that his description is otherwise such as to agree with that of the person who is pointed out by the witnesses as being the negro man Frederick, owned by McElroy in Kentucky; that Frederick left the residence of his owner in the month of June last; that he has not since that time returned; and that he was found on the 28th day of July instant, at or near Atlanta, in Logan county, in this State.

It has been urged by Counsel that Frederick came into the State with the permission of his master; and, he therefore has no right to retake him.

If the law should be correctly stated, the facts are, that McElroy has not for a year, or at least since last fall, permitted Frederick to come into this State. No evidence has been offered in behalf of the person claimed, although the claimant expresses his willingness that it should be done, and the Commissioner allowed the privilege of so doing.

It has been remarked by counsel that there is no evidence before the court of the existence of the institution of Slavery in Kentucky.

The existence of slavery in Kentucky has been established by the testimony in this case; identifying the fugitive as a slave belonging to a citizen of Kentucky, and also by the same witness, that this same McElroy and other citizens of said state held slaves. The presumption then from the evidence aside from the land of the United States which I am fully authorized as Commissioner of the United States Circuit Court to recognize, warrant me in the opinion that Slavery does exist in the State of Kentucky.

It appears then that the negro man Frederick is held to serve or labor in the State of Kentucky by Hiram McElroy of said State and county of Union, that he escaped from the service of his master into the State of Illinois, and is found here without any evidence of the consent or authority of said master. That the claimant now appears before me by his duly authorized attorney to reclaim his fugitive slave, and asks that he may be invested with the sanction of a legally authorized tribunal to protect him; in his claim.

I am therefore of opinion that, Frederick, the Fugitive claimed and now in court, is the person identified by the testimony, and the power of attorney, and should be delivered up to his master, and a certificate as required by the laws made out by me as commissioner demanding him into the hands of his legal owner.