

REPORTS

OF THE

DECISIONS OF THE SUPREME COURT

OF row a,

FROM THE ORGANIZATION OF THE TERRITORY IN JULY,
18389

mo DECEMBER, 1839, INCLUSIVE.

PUBLISHED BY ORDER OF 'LEGISLATURE.

BY wnr. J. A. BRADFORD,
REPORTER TO THE SUPREME COURT.

CALENA.

PRINTED

C. TAYLOR •

1840.

0 *over 1840*

1840
1840
1840

JUDGES OF THE SUPREME COURT

DURING THE PERIOD OF THESE REPORTS.

HON. CHARLES MASON, Chief Justice.
HON. JOSEPH WILLIAMS, Associate Judges,
HON. THOS. S. WILSON,

APR 20 1938

FOREWORD

HIS volume is an exact photo-reproduction of •an original copy of Bradford's Iowa Supreme Court Reports, covering the years 1839, 1840 and 1841, in • the Library of the Iowa State Library in Des Moines, Iowa. Special acknowledgement is made to the Iowa State Library and to rvlr. Paul B. DeWitt, Librarian, for the kind permission to use the original volume. .

As a copy of the original is practically unobtainable, the volume is offered to enable law libraries to round out their Iowa collection, as this volume is an integral part of the Iowa Supreme Court Reports. The edition is a very limited printing, each copy being numbered, with the name of the purchaser and the corresponding number being kept on file in the office of

DECISIONS OF THE SUPREME COURT

O I^N 10 Waac

IN MATTER OF RALPH, (A COLORED MAN,) •ON HABEAS CORPUS.

Where A. formerly a slave, goes with the consent of his master, to become a per., manent resident of a Free State, he cannot be, regarded as a fugitive slave.

The act of 1820, for the admission of Missouri into the Union, which prohibits slavery north of 36 dem 30 min. was not intended).nerely as a naked déclaration, requiring legislative action in thé States to can•y it into effect, but must be regarded as an entire and final prohibition.

The master, who subsequently to this act, permits his slave to become a resident here, cannot afterwards exercise any acts of ownership over him within this territory•

Ralph, being within thig territory, was claimed by Montgomery, a resident of July, the Stato of Missouri, as his slave, and, by virtue of a precept from a Justice 1839• of the Peace, under the Act of the Legislative Assembly of Iowa, (satisfactory proof, under the Act, having been made* to such Justice, that Ralph was the property of the claimant) the Sheriff of Du Bunue county delivered the hegro into the custody and possession of the claimant, who took him on board a steamboat, bound for Missouri, and delivered him to the master of the boat, to transport him to Missouri, who confined him in the vessel.

A Habeas Corpus having been granted, upon the petition of A. Butterworth, Ralph was brought before the District Judge of the third district, whence, by -he consent of the parties, the proceedings were removed to this Court .

It was admitted, upon tho hearing of the cause, that Ralph came to Du Buque, now within this Territory, with the consent of his master, in the year 1834, and that, at that time, he was the slave of the claimant: That the claimant, at that time, entered into an agreement, in writing, with Ralph, to the eflbct that, upon the payment, by the slave of the sum of \$500, together with \$50 in addition for his hire, with interest from 1st January, 1835, he was to become free; and it was to earn the purchase money for his freedom that he left Mi+ souri, and came to Du Buque, when he commenced working in the lead mines and so remained working in the lead mines until the time of the proceedings before the Justice :—Then Ralph, -having failed to comply with his contract, .he r was reclaimed by his former master.

RORER, for the Petitioner, contended

Ist—That Ralph, being a resident of the Territory ot Wisconsin, at the time

July, both of the PASSAGE AND TAKING EFFECT of the Organic Law of that Territory 1835. —and also a resident of Iowa Territory, at the time of the passage

RALPH, (A COLORED MAN) ON HABEAS CORPUS.

and taking effect of the organic law of Iowa Territory, he became FREE by operation of the 12th section of said Organic Laws, which expressly extend to the inhabitants of said Territories of Iowa and Wisconsin, the benefits of the Articles of Compact contained in the Ordinance for the Government of the Territory north west of the river Ohio, by which the benefit of the writ of Habeas Corpus (the remedy here sought) is guaranteed to the inhabitants of said Territories north west of Ohio—and which also declares, "No man shall be deprived of his liberty, or property, but by the judgment of his peers, or the law of the land." —(See 2d Article of Compact, contained in the Ordinance of Congress of 1787.) And that' "There shall be neither slavery, nor involuntary servitude, in the said Territory—otherwise than in the punishment of crimes whereof the parties shall have been duly convicted."—(See 6th article of said Compact.)

2d—That, independent of the Articles of Compact and Organic Laws above cited, Ralph became free so soon as, by consent of his master, he became an inhabitant of what is now the Territory of Iowa, by virtue of the Act of Congress, entitled—"An Act to authorize the people of Missouri Territory to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and to prohibit slavery in certain Territories which it is declared, that "In all that Territory ceded by France to the United States, under the name of Louisiana, which lies north of thirty-six degrees, and thirty minutes north latitude, not included within the limits of the State contemplated by this act; slavery and involuntary servitude, otherwise than in the punishment of crimes, whereof the parties shall have been duly convicted, shall be, and is hereby, forever prohibited."— (See 8th Section of said Act. Ing. Digest of Laws of U. S. of America— 614.)—That the present Territory, being part of the country subjected to such prohibition, the petitioner, as there is no law by which he can be removed elsewhere, is FREE in the exercise of his right to remain here.—Where a West India Slave came to England with his master, and again returned with him to the West Indies, it was held, that, although he was still subject to servitude on his return to the Indies, yet "no coercion could be exercised over him while in England."—(2d Hugg. Adm. Rep. 94—2d KenPs Com. note to page 249.) —The claimant cannot possess any natural right to remove the petitioner to where he may, by the aid of human law, be reduced again to slavery—for such a state is declared to be 'repugnant to reason and the principles of Natural Law.'—(See mac. Com. coz. 1st, p. 423.)

And still stronger is the language of much earlier and higher authority. In the divine writings of Moses it is said, "Thou shalt not deliver unto his master the servant which is escaped from his master unto thee," &c.—(23d chapter Deut. 15th verse.) But this is not a case of an 'escape,' but emigration by consent of the master.

3d—That he cannot be considered as either coming into, or remaining in the Territory in violation of the law prohibiting persons of colour from settling in this Territory, without evidence of freedom, &c.; for it is in evidence that he was here at the time of, and previous to, the organization of the Territorial Government, and even at the time of the first extension of civil

government over the country, by the act of Congress of 1834, attaching it to the then Territory of Michigan for temporary government.

4th—That he cannot be reclaimed and delivered over to his former owner, under our statute, nor under the laws, ordinance, or constitution of the United States, providing for the re-taking of fugitive slaves who have escaped from Julv, service; for it is in evidence that he came to, and remained in the Territory, 18æh not as a fugitive from service, to which he was then legally holden in some State of the Union, but by the voluntary consent and agreement of his former owner, the present claimant.

5th—That the claimant, Montgomery, by permtting his slave to come to that portion of the "Territory of the United States in which slavery wag then, and still is, prohibited, for the purpose of remaining indefinitely, virtually manumitted such slave—that the very fact of his contracting with, presupposes a state of freedom on the part of the slave—that if Montgomery has any relief, it is on that contract, for the money agreed to be paid, which is neither conceded here, nor deemed in any manner essential to the adjudication of this question, which is a question entirely of freedom.

Lee versus Lee, 8 Peter's Rep. 44.—Fanny cersus Montgomery and Others, Breese's Reps. 188.—Act of Virginia for Cession of Northwest Territory, 5th vol. Laws U. S. A. 473.—John Merry oersus Tiffin and Menard, 1 vol. Misso. Rep. 725.—Winny versus Whitesides, ib. 472.—Ralph oersus Duncan, 3d Misso. Rep. 194.—Julia oersus Samuel McKinney, ib. 270.—1st Blac. Com. 127, ib. 423, 424, 425.—2d Rent's Cbm. 247, 248, 249.—Case of Sommerset, 11 vol. State Trials, p. 339.—Lofts' Reps. 1.—Case of Knight, a Negro Slave, in 1778.—Kajme's Principles of Equity, vol. 2d, 134.

J. D. LEARNED, for Montgomery, contended—That "the Act of 1820, for admitting Missouri into the Union, which contained a prohibition of slavery, north of latitude 36 deg. 30 min. except within the limits of Missouri, was not intended to have effect on the rights of individuals, without further legislative enactment—But that it was in'tended merely to direct the local Legislatures in passing laws to prohibit slavery within the described limits—that the Act of Congress contained no sanction, and, consequently, had no binding force."

BY THE COURT.

This case does not come before us in any of the ordinary methods of application to an appellate Court, so that it is, perhaps, not strictly regular for us to entertain jurisdiction of it at all. As, however, it involves an important question, which may, ere long, if unsettled, become an exciting one, and as it is by the mutual assent and request of all the parties interested, we concluded to listen to the argument, and make a decision in the case without intending it as a precedent for the future practice of this Court.

The petitioner, a colored man, who was claimed as a slave before the Justice of the Peace, and who was about to have been delivered up accordingly, asserts that he is-free. If this be actually the case, the writ of Habeas Corpus was properly brought, being the only means by which the Judge of the District Court could exercise a remedial control over the illegal acts of Justices of the Peace, in cases like this. The proceedings having been transferred to this Court, it will be proper for us to make such a disposition of the matter as might have been made by the District Judge while the subject was before him.

The claimant asks that the petitioner be restored to him as a slave, and principally for the following reasons the first place, that, by the Act of Congress of 1820, which authorized the people of Missouri to form a Constitution and State Government, and which prohibited slavery in all that portion of the old Louisiana Territory lying north of thirty-six degrees and thirty minutes of north latitude, not included within the then contemplated State, it is provided ('That any person escaping into the Territory thus set apart, from whom labor or

6

July, service is lawfully claimed, in any State or Territory of the United States, such 1-939, fugitive may lawfully be reclaimed and conveyed to the person claiming his said labour or **services.**"—Under this provision, we are called upon to decide that the petitioner is a fugitive slave, because, although the master consented that he should come to this territory, and, for aught that appears, remain here for four or five years, still there was an express stipulation that he should, at some future time, pay, to his former master, the sum of five hundred dollars, with interest—that, not having complied with this agreement, he is to be regarded as being here without permission. and, consequently, as having escaped into the Territory.

Such a construction would introduce almost unqualified slavery into all the Free States. The Constitution of the United States contains a provision in relation to fugitive slaves substantially the same as that embraced in the Act of Congress above referred to; so that, in this particular, all the Free States of the Union are in the same predicament as this Territory.—Suppose, then, the Southern Master should permit his slave to emigrate to some of the Free States, upon the express condition that he should remain for ever the slave, or (which is the same thing) the submissive servant of some particular individual, his heirs and assigns. While he fulfils this agreement, he is a slave to his new master in the North, and, as soon as he violates it, he becomes again the slave of his old one at the South. who may, forthwith, reclaim him as a fugitive. We cannot countenance such a doctrine.

From the facts agreed upon in this case, it seems that the claimant permitted his slave to come to this Territory. The permission seems to have been absolute; but there was also an understanding that the latter was to pay the former a certain amount, as the price of his freedom. How the failure to comply with this understanding could render a removal, undertaken with the master's consent, an escape, we are unable to comprehend. The petitioner is under the same obligation to fulfil this engagement as though, instead of its being the price of his freedom, the debt had been incurred for the purchase of any other species of property. It is a debt which he ought to pay, but for the non-payment of which no man in this territory can be reduced to slavery.

We do not say there can be no escape where the slave goes to a Free State by the consent of the master: If, sent upon an errand, or travelling in company of his master, he should refuse to return, he might probably be regarded as a fugitive. But this certainly cannot be the case where the journey was undertaken with the understanding of all parties that the slave was going to become a permanent resident of the Free State or Territory.

RALPH, (A COLORED MAN) ON HABEAS CORPUS.

But it is contended, on the part of the claimant, that slavery is not prohibited in this Territory—that the Act of 1820, above-mentioned, is a mere naked declaration, requiring further legislation to render it operative—that it merely imposes a duty on the States and Territories to be formed within the prescribed limits, but that, without further action on the subject, the law has no sanction, and, consequently, no force. This position, we think, cannot be maintained. Congress possesses the supreme power of legislation in relation to the Territories, and its right to prohibit slavery—at least in relation to slaves subsequently introduced—is doubtless legitimate. Has that right been exercised in relation to this Territory? The language of the Act of 1820, in relation to the district of country in which this Territory is embraced, is, that slavery therein "shall be, and IS HEREBY, for ever prohibited."—This seems to us an entire and final prohibition, not looking to future legislative action to render it effectual. But it is said that, although the act may prohibit slavery, it does not declare

The statute does not require the jury to assess damages in replevin, except when the plaintiff fails to prosecute his suit. 1b.
Verdict awarding legal damages is uncertain, and would be fatal if not cured by subsequent action in the Court below. 1b,