

Sec. 2—Interstate Comity

Cl. 3—Fugitives From Labor

brought before the courts of a state for an offense against its laws, from trial and punishment, even though he was brought from another state by unlawful violence,²⁴⁹ or by abuse of legal process,²⁵⁰ and a fugitive lawfully extradited from another state may be tried for an offense other than that for which he was surrendered.²⁵¹ The rule is different, however, with respect to fugitives surrendered by a foreign government, pursuant to treaty. In that case the offender may be tried only “for the offense with which he is charged in the proceedings for his extradition, until a reasonable time and opportunity have been given him, after his release or trial upon such charge, to return to the country from whose asylum he had been forcibly taken under those proceedings.”²⁵²

Clause 3. 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.

FUGITIVES FROM LABOR

This clause contemplated the existence of a positive unqualified right on the part of the owner of a slave which no state law could in any way regulate, control, or restrain. Consequently the owner of a slave had the same right to seize and repossess him in another state, as the local laws of his own state conferred upon him, and a state law that penalized such seizure was held unconstitutional.²⁵³ Congress had the power and the duty, which it exercised by the Act of February 12, 1793,²⁵⁴ to carry into effect the rights given by this section,²⁵⁵ and the states had no concurrent power to legislate on the subject.²⁵⁶ However, a state statute providing a penalty for harboring a fugitive slave was held not to conflict with this clause because it did not affect the right or remedy either of the

²⁴⁹ *Ker v. Illinois*, 119 U.S. 436, 444 (1886); *Mahon v. Justice*, 127 U.S. 700, 707, 712, 714 (1888).

²⁵⁰ *Cook v. Hart*, 146 U.S. 183, 193 (1892); *Pettibone v. Nichols*, 203 U.S. 192, 215 (1906).

²⁵¹ *Lascelles v. Georgia*, 148 U.S. 537, 543 (1893).

²⁵² *United States v. Rauscher*, 119 U.S. 407, 430 (1886).

²⁵³ *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539, 612 (1842).

²⁵⁴ 1 Stat. 302 (1793).

²⁵⁵ *Jones v. Van Zandt*, 46 U.S. (5 How.) 215, 229 (1847); *Ableman v. Booth*, 62 U.S. (21 How.) 506 (1859).

²⁵⁶ *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539, 625 (1842).