of its power came to be questioned.[289] In *Prigg v. Pennsylvania*,[290] decided in 1842, the constitutionality of the provision of the act of 1793 making it the duty of state magistrates to act in the return of fugitive slaves was challenged; and in *Kentucky v. Dennison*,[291] decided on the eve of the Civil War, similar objection was leveled against the provision of the same act which made it "the duty" of the chief executive of a state to render up a fugitive from justice upon the demand of the chief executive of the state from which the fugitive had fled. The Court sustained both provisions, but upon the theory that the cooperation of the state authorities was purely voluntary. In *Prigg*, the Court, speaking by Justice Story, said that "while a difference of opinion has existed, and may exist still on the point, in different states, whether state magistrates are bound to act under it, none is entertained by this Court, that state magistrates may, if they choose, exercise that authority, unless prohibited by state legislation."[292] Subsequent cases confirmed the point that Congress could authorize willing state officers to perform such federal duties.[293] Indeed, when Congress in the Selective Service Act of 1917 authorized enforcement to a great extent through state employees, the Court rejected "as too wanting in merit to require further notice" the contention that the Act was invalid because of this delegation.[294] State officials were frequently employed in the enforcement of the National Prohibition Act, and suits to abate nuisances as defined by the statute were authorized to be brought, in the name of the United States, not only by federal officials, but also by "any prosecuting attorney of any State or any subdivision thereof."[295]

In *Dennison*, however, the Court held that, although Congress could delegate, it could not require performance of an obligation.

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[289] For the development of opinion, especially on the part of state courts, adverse to the validity of such legislation, *see* 1 J. KENT, COMMENTARIES ON AMERICAN LAW 396–404 (1826).

[290] 41 U.S. (16 Pet.) 539 (1842).

[291] 65 U.S. (24 How.) 66 (1861).

[292] 41 U.S. (16 Pet.) 539, 622 (1842). *See also* Kentucky v. Dennison, 65 U.S. (24 How.) 66, 108 (1861). The word "magistrates" in this passage does not refer solely to judicial officers but reflects the usage in that era in which officers generally were denominated magistrates; the power thus upheld is not the related but separate issue of the use of state courts to enforce federal law.

[293] United States v. Jones, 109 U.S. 513, 519 (1883); Robertson v. Baldwin, 165 U.S. 275, 280 (1897); Dallemagne v. Moisan, 197 U.S. 169, 174 (1905); Holmgren v. United States, 217 U.S. 509, 517 (1910); Parker v. Richard, 250 U.S. 235, 239 (1919).

[294] *Selective Draft Law Cases*, 245 U.S. 366, 389 (1918). The Act was 40 Stat. 76 (1917).

[295] 41 Stat. 314, § 22. In at least two States, the practice was approved by state appellate courts. Carse v. Marsh, 189 Cal. 743, 210 Pac. 257 (1922); United States v. Richards, 201 Wis. 130, 229 N.W. 675 (1930). On this and other issues under the Act, *see* Hart, *Some Legal Questions Growing Out of the President's Executive Order for Prohibition Enforcement*, 13 VA. L. REV. 86 (1922).