A REVIEW

OF THE

TRIAL, CONVICTION AND SENTENCE,

OF

GEORGE F. ALBERTI, FOR KIDNAPPING.

INTRODUCTION.

A citizen of Philadelphia is confined in the Eastern Penitentiary of Pennsylvania under a sentence of a fine of one thousand dollars and imprisonment, at hard labor, for the term of ten years. Had his skin been *black*, considerable sympathy would have been excited in a certain portion of this community; but he is a *white man*, and very few, comparatively, appear to evince an interest in his fate. This individual is in the sixty-sixth year of his age, and it is, therefore, probable that this sentence (for *ten years*) will terminate *with* his existence, if it does not *terminate* his existence. His separation from his family and friends is as permanent as if pronounced by death; yet he and his sufferings, mental and bodily, are as unheeded by many among whom he has so long lived, as if he had never been born. Imprisonment for life is regarded, by *all*, as an exceedingly severe punishment; there are *many* who deem it an appropriate one for the murderer; but, in this case, no blood has been shed; curiosity might, therefore, be justly excused for wishing to know the particulars of this case. What was the offence? Has the defendant had a fair and impartial trial? What were the reasons for inflicting this heavy penalty? Sometimes, in the best regulated societies, the population, under a momentary irritation, caused by the commission of an aggravated offence, are incited to acts of unnecessary severity; but subsequent sober reflection, founded upon justice and humanity, though tardy, never fails to come to the rescue; consequently, a review of such a case as this is, if well-timed, always beneficial. Our code of criminal jurisprudence secures (or, at least, purports to secure) to every one, even the vilest assassin, a fair trial,—an impartial jury,—

a learned and dispassionate judge; and the *people* are the ultimate judges whether the accused has had the benefit of these wise provisions. Pennsylvania has been long and far-famed for the mildness of her criminal laws; but the presses of some of our sister States have stamped upon this case the word "*injustice.*" Have they been authorized in so doing, or have our judicial functionaries been slandered? These are grave questions, which nothing but a candid review of the facts is wanting to enable us to answer. If an aggravated crime has been committed, if the defendant has had a fair trial, if he has been properly convicted, and his sentence has been founded upon law and tempered with mercy, not only he, but the public must be satisfied—for the law must be supreme; but should it appear that any of these prerequisites was wanting, something must be done; for, in this age of light and reason, it will never do to admit that the people's power to make the laws is uncontrolled, and yet that a wrong exists without a remedy.

CASE.

James S. Mitchell, a citizen of Maryland, and resident of Cecil county, was the owner of a negress slave, aged about 28 years, named Betsey Galloway, afterwards called Catharine Thompson. She ran away from him in the year 1845, in company with Peregrine Berry, alias William Thompson, a negro who lived on the next plantation to Mitchell, and within half a mile of his residence. This negro knew Mr. Mitchell, and was well acquainted with Betsey, and cognizant of her being a slave. She left behind her a husband and two children, and he a wife. They went to Burlington county, New Jersey, where a child was born of the said Betsey, who was called Joel Henry Thompson.

On the 17th of December, 1847, Mitchell made a power of attorney to George F. Alberti, authorizing him to apprehend the said slave Betsey, and deliver her to the jailor of Cecil county, Maryland. This power was duly executed and acknowledged before a Justice of the Peace of the State of Maryland. On the 14th of August, 1850, Alberti arrested this slave in Philadelphia; William Allen, Esquire, one of the Aldermen of the County of Philadelphia, and ex-officio a Justice of the Peace, heard the case; several witnesses were examined, who proved her identity, and that she was the slave of Mitchell, and she voluntarily and fully admitted that she was Mitchell's slave, and had run away from him and the State of Maryland; whereupon the Alderman gave the usual certificate.

The arrest was made openly, in the day time, and Hugh W. Tener, a respectable member of the Philadelphia Bar attended as counsel for the claimant, at the instance of his agent, Alberti. The slave Betsey requested Mr. G. T. Price, merchant, Bank street, Philadelphia, to be sent for, which was done, and he and Betsey had a conversation in private. When arrested, Betsey had with her the above-named Joel, who was then about one year and seven months old—having been born the 16th January, 1849. He was sick of the summer complaint, and was still at the breast. Alberti, in presence of the counsel and the Alderman, requested the said Betsey to leave the child behind, and assured her that he would have it taken care of and returned to its father; the alderman, also, gave her the same advice and assurance; but she positively refused, and insisted upon taking the child with her. The said slave was then conveyed to Elkton, Maryland, and delivered to Mitchell, who did not enter the State of Pennsylvania. Alberti did not touch the child; it was carried by its mother. Mitchell has never been requested to give up the child, nor has he ever claimed it as a slave; but he has allowed it to remain with its mother.

On the 23d of September, 1850, a warrant was issued by Mr. Alderman White, of Philadelphia, against Frisby Price, for kidnapping Joel; and on the 2d of October, in the same year, he was recognised to answer. The same Alderman, at the instance of the said Peregrine Berry, alias William Thompson, and his counsel, David Paul Brown, Esq., issued a warrant against Alberti, charging him with kidnapping the said child, Joel Thompson. A hearing took place on the 1st January, 1851, when Wm. S. Pierce, William Sergeant and David Webster, Esqs., appeared for the Commonwealth, (David Paul Brown, Esq. being otherwise engaged, and neither the District Attorney nor his deputy attending,) General H. Hubbell appeared for the defence. William Thompson and Thomas Richardson, a convict, were examined for the Commonwealth, and Alberti was bound over for trial in $3000 to the Court of Oyer and Terminer and Quarter Sessions, then sitting.

This warrant did not include Mitchell, and no hearing or binding over of him ever took place.

On the very next day a bill of indictment was found by the Grand Jury, containing nine counts, charging the defendants with fraudulently enticing and with forcibly taking and carrying away a male negro

child, named Joel H. Thompson, out of the State, with intent to sell him in slavery, and with conspiring to entice, and with force take him out of the State, to be sold in slavery.

To this indictment Price and Alberti pleaded not guilty. Mitchell was not arraigned, nor did he plead.

THE TRIAL.

The trial took place the 28th of February, 1851, before the Hon. A. V. Parsons. D. Webster, W. S. Pierce and David Paul Brown, Esqs., for the prosecution, (the District Attorney and his deputy not acting,) and A. H. See, W. E. Lehman, Jr., and H. Hubbell for the defence.

Mr. Webster, in his opening, said that this was a case well calculated to rouse the feelings of the jury,—that the defendants had conspired to abduct the woman; but *he granted that she was Mitchell's slave*, and the injury complained of was the taking away, by force or fraud, the child, who was free, according to the decision of Commonwealth *v.* Holloway, 2 Sergt. & Rawle, 305; that it would be pretended that the child was too young to be separated from the mother, whose care it required, and that she desired to have it with her.

William Thompson was then sworn, and said that Joel was his child, born in Burlington county, New Jersey; that J. F. Price came to his house about the 13th of August and invited the mother to come to Philadelphia, which she did about the 15th, taking the child with her, since which he has seen neither of them. That he (the witness) was born a freeman, in Delaware State; that he was married to Betsey in 1845, in Wilmington, Delaware, by Andrew McIntyre, a white man;* that he had known Betsey a year or two before that time, but he most thought that she was not at service; that she never told him she was a slave; that they moved to New Jersey in a week after the marriage, and had had two children there, of which Joel was the youngest.

Thomas Richardson was called, and objected to by defendant's counsel, as incompetent, having been twice convicted of larceny.

Judge Parsons.—"Produce the record."

Mr. Lehman.—"The clerk has gone into the office for it, and will be here immediately."

* Diligent inquiry has been made, and no such person as Andrew McIntyre is known or believed to have lived in Wilmington in 1845.

Judge Parsons.—"We cannot wait; it was your business to have had the record ready, here, in Court. Swear the witness."

Mr. Lehman.—"We endeavored to do so, and I spoke to the clerk, but he did not go for the record till this moment."

Judge Parsons.—"You should have had exemplifications; we cannot wait. Swear the witness."

During this colloquy the record was brought into Court by the clerk, and was put in evidence by the defendant's attorney.

It then appeared that the witness offered, viz., Thomas Richardson, had, on the 19th day of October, 1835, in this Court, been convicted of larceny, in stealing the goods of John M. Pugh, value $25, and been sentenced to two years and nine months imprisonment at hard labor in the Eastern Penitentiary of Pennsylvania. He was also, in March, 1847, convicted of larceny, and sentenced to fifteen months at hard labor.

The counsel for the Commonwealth then produced two pardons, granted by His Excellency the Governor of Pennsylvania, the last dated the 27th of February, 1851, the day previous to this trial.

Richardson was then sworn, and testified that he drove the carriage in which Betsey and Joel were conveyed to Elkton; that the mother carried the child in her arms. He was also allowed to state that Alberti has told him that he had used violence to the person of the slave Betsey.

A number of females who resided in the vicinity of J. F. Price's house, testified to having seen Betsey and Joel at Price's house during the month of August.

The innkeepers at Marcus Hook, and Hare's Corner, near Wilmington, testified to the carriage with Alberti, Richardson and the woman and child stopping at their taverns.

The Commonwealth here rested their case.

The defence was opened by Mr. See, who narrated the facts.

Hugh W. Tener was sworn, and proved that he was an Attorney of the Court; that he advised Alberti as to the course to pursue, and that, as far as Betsey would permit him, that he (Alberti) acted as he was advised. That he told Alberti that the courts of Pennsylvania would most probably hold the child to be free, and advised him to leave it behind. [Judge Parsons said that he would not permit the witness to testify what was his advice to Alberti.] The witness further stated, that the woman Betsey voluntarily and fully acknowledged that she was the slave of Mitchell, and that no one touched

the child but the mother; that she was repeatedly requested, by both Alberti and the Alderman, to leave the child behind, but that she constantly and unhesitatingly refused to do so.

The letter of attorney from Mitchell to Alberti, duly executed and acknowledged, was offered in evidence, but was objected to by the counsel for the Commonwealth, and rejected by Judge Parsons, who said, "produce the subscribing witness to its execution; I would not admit it without—if it had all the seals in Maryland to it."

The defendants' counsel then offered the declarations of the slave, Betsey, made at the time of the examination before W. Allen, but Judge Parsons overruled the evidence, stating that the woman herself ought to have been produced; that in Pennsylvania a slave was a competent witness.*

Alderman Allen was then offered to prove the proceedings before him in relation to the slave, and that he had granted the certificate, but Judge Parsons overruled the evidence, saying, that no alderman in Pennsylvania had any authority to act in the matter, and if Alderman Allen testified that he had done so, he would bind him over to answer for it criminally.

Several respectable witnesses were then sworn, and testified that they were acquainted with Richardson, and his general character for veracity, which was *very bad;* that they would not believe him upon his oath.

The evidence being closed, the cause was summoned up by D. P. Brown, Esq. He was followed by Messrs. Lehman and Hubbell for the defence. After which Mr. Brown concluded.

On Gen. Hubbell attempting to argue to the jury that the act of 1847 being but a re-enactment of the act of 1826, which the Supreme Court, in Priggs' case, held to be unconstitutional; that Priggs' case was applicable in deciding this case on the same grounds, and that under its ruling the act of 1847 was also unconstitutional.

Judge Parsons interrupted him, and told him he would not permit him to argue so to the jury, that if he persisted in doing so, he would commit him. However, Gen. Hubbell persisted in his argument notwithstanding, but the Judge did not execute his threat.

* The 7th Section of the Act of Assembly of Pennsylvania declares that so much of the act of 1780 as prevents a slave from giving testimony *against* any person whatsoever be and the same is hereby repealed. The 7th Section of the act of 1780 had declared that *negroes* were to be tried like other inhabitants, except that a slave shall not be admitted to bear witness against a freeman. It might therefore admit of a doubt, whether a slave can be a witness *for* a freeman.

CHARGE OF THE COURT.*

Judge Parsons, in his charge, told the jury that they must take the law from him. That Alberti had shown no authority for taking away the woman, and that if he had been indicted for that offence, likewise he would have been convicted. That when the alternative was presented to him to take the child with the mother or separate them, if he could not have separated them, he should have left them both, and liberated the mother as well as the child, and have declined taking either into slavery; that the child was free.†

SENTENCE.

March 24th, 1851, *Judge Parsons thus addressed the defendants:*—You are both convicted of an offence which is made highly penal by the Act of Assembly of 1847, a crime that is second only to homicide. It is one that is revolting to humanity, and in direct opposition to every principle of manhood. Think for a moment how great the magnitude of stealing an infant, born in a free State, and binding it in the galling chains of slavery for a little money. The crime is increased by the fact, that you are both inhabitants of a free State; a State that does not recognize the barter of any human creature of whatever color. The law of our State imposes it, and we will protect those colored persons *who are in a free land.*

This case is without a parallel in atrocity, and is the most aggravated, legally, of any of its kind that has been presented to an American Court of Justice. The child was taken without the least color of law to warrant such an inhuman act. Had you been tried for kidnapping the mother, in conjunction with the child, I should have charged the jury to render a verdict of guilty; for the law would have justified such a sentence. I am of opinion that you, Price, was nothing more than the dupe of Alberti. You acted in a most unmanly way, by inviting an unprotected female to your house, for the purpose of transferring her to the custody of those who were leagued with yourself in this affair. In conclusion I would say to you—think while you are in the gloomy cells of the penitentiary of the helpless child you have caused to be confined in the realms, and in the chains of slavery. Think of the mother whom you have rended from the home that was dear to her, and the child who seemed to be her chief care, and her only solace while on her way to the land of slavery. You, Alberti, are an old man whose worldly race is nearly run, and ere long you must stand before one who is a higher judge. Therefore, while you are paying the penalty of the law, improve what time is left you on earth. If I have erred in your sentence, it is on the side of mercy; but I hope it will prove a terror to others engaged in this business.

Alberti was then sentenced to pay a fine of $1000, and undergo an imprisonment at hard labor for ten years; and Price to pay a fine of $700, and undergo an imprisonment at hard labor for eight years in the Eastern Penitentiary.

* Judge Parsons was requested to furnish us with a copy of his charge, but has not done so.

† Reasons for a new trial were filed, but the Judge dismissed them without reading or hearing them read.

REVIEW.

Upon the trial of the foregoing case, several very important questions arose, which it is now our province to notice.

As the gravamen of the offence charged against Alberti is, that the child, Joel, said to have been taken away, was *free;* that allegation being found in every count in the indictment; we will commence in that quarter.

Was Joel free? That Betsey was the slave of Mitchell at the period of the birth of Joel, is admitted. That the child follows the state and condition of its *mother*, and not that of its father, even when there had been a lawful marriage, is a rule as ancient as the institution of slavery, and so well settled that it has grown into a maxim of both the civil and common law, "Partus sequitur ventrem." It was uniformly acknowledged as a principle of the law of Pennsylvania, before and after her constitution of 1776, and down to the very day of passing the act for the gradual abolition of slavery, viz: the 1st of March, 1780, for the 3d Section of that act refers to and recognizes "the slavery of children, in consequence of the slavery of their mothers." (See 1st vol. Penna. laws, McKean's ed. p. 282.) But it is said that Joel's case is taken out of the general rule; and if so, those who claim the benefit of the exception, must bring themselves strictly within its provisions,—the onus lies upon them. In order to do so, they cite, and rely upon the case of the Commonwealth *vs.* Holloway: 2 Sergeant and Rawle, 305. It would have been more correct to have cited and relied upon the abolition law of 1780, and to have adduced the case of Commonwealth *vs.* Holloway, to show how it had been judicially interpreted; but let that pass. The Act of Assembly is insufficient for their purpose, and the decision in Commonwealth *vs.* Holloway, is not in point. It is true that Mr. Justice Gibson, in delivering his opinion in the above case, obscurely hints at the *natural* right of freedom; but he, as well as the rest of the Judges, who decided that case, rely solely upon the terms of the Act of Assembly of 1780; and they could not have done otherwise, for if the child of a fugitive slave had a *natural* right to freedom, it would have stood out, independently, in bold relief, not requiring the bolstering of any Act of Assembly. If the Act of 1780 was merely declaratory of the natural law, instead of enacting that all such slavery of "children born within the State," "from after the passing of the act," should be "*thereby* taken away, extinguished and abolished," it would have declared that all such children, wherever

born, then were, and ever had been free. The Act of Assembly would not have been one "for the gradual abolition of slavery," by the legislature; but, like the Declaration of Independence, (the words of which were still sounding in their ears,) a recognition of negro liberty, by the laws of God. We will be obliged to dwell upon this part of our subject a little longer, to show the gradual abolitionists of the present day, who, as we have a right to presume, are disposed to follow in the footsteps of their predecessors, who framed the act of 1780, how different they were from the *ultra* abolitionist. If all negroes held in bondage are free by the laws of God, how came the framers of the act of 1780 to confine the emancipation to those who should be born *after the passing of that act?* How came they, even in the case of birth after the passage of the act, to allow the children, who would otherwise have been slaves, to be retained at service until they arrived at the age of twenty-eight years? The answers to these questions are obvious; the emancipation was *conferred by the legislature*, and they had a right to point out its limits and dictate the conditions. The question in Commonwealth *vs.* Holloway, then was, whether *by virtue of the Act of Assembly of* 1780, being begotten and born in Pennsylvania, gave freedom to the child of an absconding slave? That Chief Justice Tilghman and Mr. Justice Yeates were sensible that they were venturing upon untrodden and undulating ground, in deciding as they did, is evident from the tenor of their several opinions. Chief Justice Tilghman, in the language of hesitancy, says, "It *appears* to me, that, under the Act of Assembly, the child is entitled to freedom;" and immediately, as if conscious that he might have been precipitate, he adds, "But I desire it, however, to be understood, that it is not intended to intimate any opinion on the case of children of domestic slaves attending upon members of Congress, foreign ministers or consuls, *nor on the case of a child, with which a slave absconding from another State should* BE PREGNANT AT THE TIME WHEN SHE CAME INTO THIS STATE."

But the words of the 3d Section of the Act of Assembly of 1780, upon which the chief justice here relies are, that "*all* servitude for life or slavery of children, in consequence of the slavery of their mothers, in case of *all* children BORN *within this State*, from and after the passing of this act as aforesaid, shall be, and hereby is utterly taken away, extinguished, and for ever abolished." The Act of Assembly founds the freedom, exclusively, upon the fact of having been *born* in Pennsylvania, but the chief justice warns us, that if the child is born, but not also *begotten* within the State of Pennsylvania, that

he is not free. Is it not plain to be seen that the mind of the chief justice was laboring under the weight of a decision which should recognize that an Act of the Pennsylvania Legislature should compromit the right of property of citizens of other States, without their consent, and when they were guilty of no laches. It is true that he further remarks, that the cases are distinguishable; and that they may, perhaps, be found to turn upon a different principle; but how they can be distinguished, or what are those principles, he has not stated, and they are not readily conceived.

So Mr. Justice Yeates says, that the *words* of the Act of Assembly are general and comprehensive, and include the cases of *all* children of slaves who should be born within the State, after the day of passing the act of 1780. That the expressions are strong and imperative, and cannot be got [gotten] over. Yet in the next breath he admits that we are not bound to adhere to the *words* of an act where the result would involve a palpable absurdity or cause gross injustice. But surely it would be most absurd and unjust in the legislature of one State to interfere with the right of property of the citizens of another, where they had given no consent, and had been guilty of no laches.

Were *we* called upon to interpret the Act of Assembly of 1780, we would say, that by the comprehensive terms, "ALL children of slaves, &c.," the legislature meant to include *all* cases over which they had jurisdiction; that is to say, all cases of slaves belonging to Pennsylvanians,—their constituents,—or of citizens of other States, voluntarily coming into Pennsylvania, bringing with them their slaves,—thus submitting to the temporary jurisdiction of the State; but excluding the children of fugitive slaves, they being the property of strangers over whom they have no jurisdiction or control.

It matters not how general or comprehensive are the words used in legislative proceedings, they must never be construed so as to include cases of absolute absurdity, or to make the legislature guilty of injustice. This is exemplified in the familiar case, found in all our text books, of a statute decreeing the punishment of death to *all* who should draw blood in the streets, but it was held not to apply to the surgeon who opened a vein to relieve a patient.

It is a rule for the construction of statutes, that *all* the sections should be compared, with the view of ascertaining whether the provisions agree. Upon examining the Act of 1780 with this object, it will be found that the construction we have suggested will be sustained by the 11th Section, which reserves the rights of the owners

of absconding or runaway negro or mulatto slaves, with the *same right and aid to demand, claim, and take them away*, as he might have had in case that act had not been made.* But if, by the provisions of the Act of 1780, the offspring of an absconding negro cannot be claimed and taken away, then the owner has not the *same right and aid* under the rule of partus sequitur ventrem.

2d. But the case of Commonwealth *v.* Holloway is a decision upon the *words* of an Act of Assembly of Pennsylvania, which determines that, to make the child of a fugitive slave free, it must be *begotten and born in Pennsylvania*. It is a local decision, upon a local law, and can, by no art or ingenuity, be extended to the case of the offspring of a fugitive slave *begotten and born in another State*. Joel was born *in New Jersey*, and if free from the *place of his birth*, it must be by virtue of an Act of Assembly of New Jersey, or a decision of a court of that State. Whether the Legislature of New Jersey have ever passed any such act, or the judges of their courts have made any such decision, did not appear at the trial of Alberti.†

This hyperbolical notion that the atmosphere of England or Pennsylvania is too rare, and the soil too pure, for the continuance of slavery, might serve for the declamation of a law student on the 4th of July, but can hardly be tolerated from one whose judicial appointment gives assurance of a sound legal education. From the earliest period of the introduction of negro slavery into the British colonies, until the decision of Lord Mansfield in Somersett's case, this system had been supported by their lawyers and judges of the greatest abilities, sanctioned by the practice of the nation. The real question in that case was only that a slave could not be taken from England, in irons, and carried back to the West Indies, to be restored to the dominion of his master; and even Blackstone, although he contends that a slave or a negro, the moment he lands in England, *falls under the protection of the laws, and* SO FAR *becomes a freeman*, admits that *the master's right to his service may, possibly, still continue.* (See vol. 1, p. 127, Col. ed.)

But in 1827 the question came up directly for decision. In 1822, Mrs. Allen, of Antigua, went to England, taking with her Grace, her female attendant, who was, by birth and servitude, a domestic slave.

*This Section was repealed by the 11th Section of the Act of 1826, but that law was declared void by the Supreme Court of the United States. (See Prigg's case, 16 Peters' S. C. Reports.)

†In pronouncing sentence, Judge Parsons said that Joel was born in a free State, but does not state what State that was. See post.

She resided there, with her mistress, until 1823, and then returned with her to Antigua, where her freedom was claimed upon this ground, that she had breathed the air and had trodden upon the soil of the mother country. But the Vice Admiralty Court of Antigua, after argument, *restored her to her mistress*, with costs and damages for her detention; and on an appeal to the High Court of Admiralty of England, the Right Honorable Lord Stowell, as learned and accomplished a judge as ever had a seat upon that bench, *affirmed the sentence of the Court below*. This case was not cited at the trial of Alberti, but his counsel so stated the law, when Judge Parsons interrupted them, and declared that the opposite was the law of England and Pennsylvania.

It is true that Mr. Tener, the counsel of Mitchell, employed by his agent, Alberti, with abundant caution advised Alberti to leave the child behind. And it is also true that Alberti not only consented to be governed by that advice, but that both he and the respectable Alderman importuned Betsey to leave it behind; but after all, there was no Act of Assembly of New Jersey, nor any decision of a court of that State, produced, either at the hearing, or on the trial of Alberti, to show that Joel was not a slave; and, perhaps, if this point ever reaches the Supreme Court of the United States, he may be pronounced to be a slave.

Before we leave this part of the case, let us review it under another point of light. Whatever might have been the doubt or uncertainty as to the state or condition of Joel,—whether he were bond or free,—and whatever may have been the desire of Mitchell's agent and attorney to allow the doubt to enure in favor of his liberty, there was no such doubt or uncertainty as regarded the bondage of Betsey; she was the proven, confessed, and admitted slave of Mitchell, and as such, Alberti, his agent, had a clear, indisputable and undisputed right to remove her to the State from which she fled. He employed learned and respectable (Pennsylvania) counsel; he called in the aid of a respectable Alderman of the County of Philadelphia, both of whom are sworn to support the Constitution and laws of Pennsylvania, and by their advice, and under their guidance, he acted openly, in the broad light of day. The most scrupulously careful could have done no more, and it is difficult to imagine how any one can be convicted of having acted unlawfully while proceeding with the advice, in the presence and under the guidance and supervision of the sworn officers of the law. Suppose Mitchell himself, or any other, the most respectable person, of the highest character and standing, of another

State, on a visit to Philadelphia, were to meet one of his runaway slaves in a street of our city,—suppose he were to employ counsel, and, through him, to call in the aid of the Mayor or one of our Aldermen,—suppose that, under the best advice he could obtain, and with the aid of the city authorities, he were to arrest and take away with him his proven and confessed slave, and with her an infant in her arms, with whom she pertinaciously refused to part,—suppose all this; we ask, with confidence, would it be tolerated that such a respectable stranger should be arrested, tried, and convicted of kidnapping, under a law of Pennsylvania, and consigned for ten years to a dungeon in our State Penitentiary? And if every body answers that it would not be tolerated, then would we ask, where is the difference between the case supposed and the real one, of Alberti, except it be the immaterial one that, in the first, the acts are supposed to have been done by the *principal* and Alberti acted as an *agent?* If one had right upon his side so had the other; and neither can be legally or justly convicted of a crime.

Would it not be well, for such Philadelphians and Pennsylvanians as desire not to cut off all communication with our respectable brethren of the South, and to encourage an unnatural and impolitic strife between brothers, to ponder upon what has been done in the case under review, and ask themselves whether the zeal for abolition of slavery has not been carried a little too far in the case of Alberti? It often happens that, in a moment of excitement, a cord may be stretched too far, and it is an act of wisdom, arising out of reflection, to slacken it again, ere it ruptures some *union* desirable to be retained.

3d. Suppose, for the sake of argument, what is by no means admitted, that Joel was free, the next question which occurs is, did Alberti, (to adopt the words of the Act of Assembly of 1847, and of the indictment,) *by fraud or false pretence, entice,* or by *force or violence take* him and *carry* him away, and out of our State?

That an infant of such tender age as Joel was at the period of these transactions—who could not understand one word that was said to him—could not be *enticed,* seems to be too apparent to require a serious argument. To *entice,* or seduce, to allure, or draw by blandishments or hopes, presupposes that the object must have mind to understand, and memory to retain, the matter urged.

Did Alberti, by *force or violence,* take him and carry him out of the State? It will be borne in mind that this is not a question whether there existed a *constructive force* sufficient to justify the common

terms, "*with force and arms*," descriptive of a trespass; but the law requires proof of *actual force* exercised, in both the caption and carrying out of the State. It might, therefore, be well questioned whether, since it was proved that Alberti never laid a finger upon Joel, he could, under any circumstances, be convicted under this act or that indictment. But we have much stronger reasons to urge in his behalf. We deny that the lawful arrest and removal of a mother, who has an infant at her breast, can be construed into an act of force or violence against the child. This is not a new case, but one of every day's occurrence in this, and probably in other places. A female, with a child in her arms, is arrested upon a criminal charge, and upon sufficient probable cause shown, and for want of security to answer, she is committed to prison. We confidently believe that no instance has ever occurred where the officers of justice, by allowing her to retain the child, have been considered as having falsely imprisoned it. What is to be done in such a case? Are you to *tear* the child from its natural guardian and nurse? The law does not require it,—humanity forbids it,—and we venture the opinion, that no public officer of our City or County has ever been guilty of such an outrage.

But the case of Alberti presents a further appeal to humanity and law. It was in evidence that Joel was not only held in the embrace of his mother—his natural guardian and nurse,—but that he was sick—sick of that complaint so fatal to persons of his years—and that, therefore, he was peculiarly in need of that mother's milk which a wise and good God had provided at once for his sustenance and his cure—his food and his medicine. This was doubtless the reason which induced the defendant to allow Betsey to retain it at the breast; for whatever else may be said of George F. Alberti, he possesses as tender a heart as ever animated a human bosom. And now we inquire whether it is not monstrous that he should be incarcerated in a prison, for having done an act which, in all human probability, saved the life of the infant he has been charged with injuring? We appeal to you, the jurors who passed upon his case; we appeal to you, the abolitionist, who exults in his conviction—you, who know so well how to depict the horrors of slavery, and who never fail, among the greatest of them, to denounce the *separation of children from their parents*—we appeal to you to say, what you think of George F. Alberti having been convicted of kidnapping, and sentenced to imprisonment at hard labor for ten years, *because he did not tear a sick child from its mother's breast!* What an awful dilemma was *that* in which this unfortunate man was placed; had he

forced the child from its nurse and natural medicine, it would, in all probability, have died, and he would have been charged with its murder: having left it, and saved its life, he is convicted of kidnapping! To one person in particular, who has the power to re-review this case, we very respectfully appeal and inquire, "In such a dilemma, what would *you* have done?" And even if he would have acted otherwise, yet, if his conscience tells him that Alberti erred, *on the side of humanity*, whether he is not entitled to *mercy?*

But it was said by Judge Parsons, that if Alberti could not separate the mother and child without danger to the latter, that he was bound to *liberate both.* This is an error. Alberti was acting as the agent of Mitchell, the acknowledged owner of Betsey, and having arrested her, he was bound to convey her to her master, pursuant to his instructions. Nor was Mitchell called upon to surrender his property in Betsey, because she had, without his knowledge, and while a fugitive, given birth to this child. In order to test the right to arrest Betsey and detain her, with the child in her arms, if she refused to part with it, let us suppose that the arrest and detention had been upon a charge of murder, or of any other crime, of which there was well founded evidence, of probable cause, that she had been guilty; would the officers of justice have been bound to release her because her detention would affect the child, with which she refused to part? Would any other judge of this Commonwealth discharge her on that account? And if the answers to both these questions are in the negative, it is a new fangled notion to suppose that Mitchell was bound to manumit his runaway slave, because she had given birth to a child, begotten by the person who decoyed her from his service, or that Mitchell's agent was justified in manumitting her, without the consent of his principal, for any such supposed reason, or upon any such frivolous pretence.

There are numerous cases in the books which decide that no person can, through the medium of a *fraud or wrong*, gain any right or privilege to themselves or their children. It is a mistake to suppose that the positive and unqualified right of a master to his slave can be thus frittered away; on the contrary, the Supreme Court of the United States, in the case of Prigg in error *v.* The Commonwealth of Pennsylvania, in 16 Peters' S. C. Reports, p. 539, declare, that the object of the clause in the Constitution of the United States, relating to fugitives from labor, was to secure to the slaveholding States the COMPLETE *right and title of ownership;* that a FULL recognition of such right is indispensable to their security, and was so vital, that

without this *fundamental* article the Union could not have been formed. That the design of the provision was to guard against the *doctrines* and *principles* of the non-slaveholding States,—preventing them from *intermeddling* with or *obstructing* the rights of slaveholders. That no State has a right to *qualify, regulate, control* or *restrain* this right; and that any law or regulation which *interrupts, limits, delays,* or *postpones the right of* the owner to the *immediate* command of the services of the slave, operates, pro tanto, as his discharge. That the question can never be *how much,* but whether he is discharged from *any* of the service. That there can be no question of *quantity or degree,* since the right of service is *positive.*

This is the decision of the highest tribunal of the country, and to it every lover of law and union should conform. Those who feel a desire to "*intermeddle*" with this "positive, unqualified," and constitutional right, or to "interrupt, limit, or delay" it, should read this decision, and reflect upon what they are about; for, depend upon it, they are inflicting a deeper wound upon our beloved country than was inflicted by even negro slavery. Their motives may be good, but to the owner of a mansion that is burned to the ground, it would be little satisfaction for him that introduced the lighted torch to protest that *he had no bad motive.*

In the fourth place. Was Joel taken out of this State with any such *design* or *intention,* on behalf of Alberti, as is mentioned in the Act of Assembly and the indictment, viz., "*with the design and intention of selling and disposing of him as a slave?*" Before a conviction could legally or justly take place, there should have been testimony of such design and intention. This *animus* was of the very essence of the crime; yet there was not only no evidence of it at the trial, but the contrary was distinctly proved by the circumstances of the case. If Alberti's design and intention was to sell the child in a *slave* State, and he urged so strongly that it should be left in a *free* one, he is a fitter inmate for a lunatic asylum than of a State Penitentiary. If Alberti had designed to remove Joel for the purpose above mentioned, how came it that *his* name was not introduced in the certificate of Mr. Alderman Allen? If Mitchell and his attorney had any design to claim Joel as a slave, it was a strange commencement of the brief of title to acknowledge that he was free. But all these absurdities and contradictions have been overlooked in the overstrained zeal to emancipate the slaves of our neighbors. Mitchell received Betsey, when she was brought to him, and did not tear the

child from her bosom; this is the head and front of *his* offending; but it has been attempted to bring him to our State, and sentence him, also, to prison.

5th. Had Alberti a fair trial? To answer this question correctly, requires a review of some of the circumstances attending the arrest, as well as those that transpired in court. The warrant to arrest the co-defendant, Price, was issued the 23d of September, 1850, and he was bound over to answer as early as the — of October, in the same year. The warrant against Alberti was delayed until the 2d of January, 1851; the hearing and binding over took place the same day, and was to the Court of Oyer and Terminer, *then in session,* and the *next day* a long bill of indictment, containing nine counts, was found by the Grand Jury; which shows, that although all things were prepared by his prosecutors, the *defendant* was taken by surprise. Again, upon the trial of the cause, the pardon of Richardson, the convict, was produced, dated at Harrisburg, the preceding day. Neither at the hearing, nor at the trial, did either of the public officers appointed to conduct such cases for the Commonwealth attend; but the prosecution was commenced, carried on, and consummated entirely and exclusively by *private counsel,* employed and paid by some body behind the curtain. The cause was not conducted with that calmness, mildness and serenity which should characterize every legal proceeding, especially one which, in its result, involves the liberty of the accused. The Judge lost his temper, and with it, self-control. The counsel of the defendant were treated contumeliously, and their rights abridged; his witnesses were threatened; and the ultimate decision of the law, *by the jury,* was called in question. It is absolutely indispensable to a fair trial to have a *dispassionate* Judge; one who sits in judgment on the passions of other men, should be particularly careful to control his own; he should never forget that *he,* too, was once at the bar, and that, peradventure, he *may* be again exalted to that honorable station. If a junior counsel or a clerk of the court has even been tardy in preparing or producing documents, they should be treated with civilty, if not with some little degree of indulgence. If it is legal and expedient to reprimand counsel for not having exemplifications in readiness, the Judge ought to be *quite sure* that it is a case where they are required; for where (as in the case of Richardson) the conviction took place in the *same court* where the record is required to be produced, no exemplification is necessary, for the original is, in contemplation of law, constantly before the eyes of the Judges.

Judge Parsons erred in interrupting General Hubbell, and in threatening him with commitment for arguing that the Act of Assembly of 1847 is unconstitutional, as will appear more fully by the following exposition:

Upon the 25th day of March, 1826, the Legislature of Pennsylvania passed an act, which provided, that if any person shall, by force and violence, take and carry away, or shall by fraud or false pretence, attempt to take, carry away or seduce any negro or mulutto from any part of the Commonwealth, with a design or intention of selling and disposing of, or keeping or detaining such negro or mulatto as a slave or servant for life, or for any other term whatever, such person, and all persons aiding and abetting him, shall, on conviction thereof, be deemed guilty of felony, and shall forfeit and pay a sum not less than five hundred dollars, nor more than three thousand dollars, and shall be sentenced to undergo a servitude for any term or terms of years not less than seven years, nor exceeding twenty-one years, and shall be confined and kept at hard labor.

Margaret Morgan was the slave for life, under the laws of Maryland, of Margaret Ashmore, a citizen of that State. She escaped and fled to the State of Pennsylvania. Edward Prigg having been appointed the agent of Margaret Ashmore, arrested Margaret Morgan *and her three children*, and conveyed them into Maryland, and delivered them to their owner. *One of the children was born in Pennsylvania more than a year after Margaret Morgan had escaped from Maryland.*

Prigg was indicted in York County, Pennsylvania, and convicted; but the case was removed to the Supreme Court of Pennsylvania, and thence to the Supreme Court of the United States, where the judgment of the County Court and of the Supreme Court of Pennsylvania were reversed, and the Act of Assembly of Pennsylvania of 1826, upon which the indictment against Prigg was founded, *was declared to be unconstitutional and void*, inasmuch as it purported to punish as a public offence against the State, the act of seizing and removing a slave by his master, which the Coustitution of the United States was designed to *justify* and *uphold*.

Upon the trial of Alberti, his counsel, General Hubbell, proposed to show, that the Act of Assembly of 1847, under the 1st Section of which Alberti was indicted, was a re-enactment of the law of 1826, and to argue that it was also unconstitutional and void, upon the ground taken by the Supreme Court of the United States in Priggs'

case. But Judge Parsons interrupted him, declaring that he would not permit him so to argue to the jury, and that if he continued to do so, he would commit him.

General Hubbell had a right to submit this argument to the jury, who, notwithstanding Judge Parsons told them that "they must *take the law from him*," were the constitutional and the legal judges of both the law and the facts; and it will now be for the *people* to determine, whether Alberti, thus interrupted in his rights, and his counsel threatened with imprisonment if he performed his duty, had a fair and impartial trial. The correct way to do this is, for each citizen to make the case his own, and ask his conscience, whether *he* would be satisfied to serve ten years in a dungeon of the State Penitentiary upon *such a hearing?* The Constitution of the State says, that every one has a *right* to be heard by himself and his counsel, and the question to be decided now is, whether Alberti has been restricted in this right?

Judge Parsons also erred in refusing to allow Mr. Alderman Allen to prove the proceedings which took place before him, and in threatening to bind him over if he testified that he had heard the case of Betsey, or had granted the certificate.

By the 10th Section of an Act of Congress, passed the 10th day of February, 1793, it was provided, that the owner of a fugitive slave or his agent or attorney, might arrest such fugitive and take him before any Judge of the Circuit or District Court, or before any magistrate of any county, city or town corporate where such seizure was made; who, upon proof made, should give a certificate, which should be sufficient warrant to remove the fugitive. The 9th Section of the Act of Assembly of the 25th of March, 1826, enacted that no alderman or justice of the peace of Pennsylvania should have jurisdiction, or take cognizance of the case of any fugitive from labor, &c., under the above cited Act of Congress; nor should any alderman or justice of the peace of the Commonwealth, issue or grant any certificate or warrant of removal of any such fugitive from labor, except in the manner and to the effect provided in the 3d Section of that act. It also provided that, if any alderman or justice should do as thus prohibited, he should be guilty of a misdemeanor in office, and on conviction, should be sentenced to pay a sum not less than five hundred, nor more than one thousand dollars; one-half to the party prosecuting, and the other half to the use of the Commonwealth. The 3d Section, there referred to, provided for an application to a judge, justice of the

peace or alderman of Pennsylvania, and for the issuing of process in the name of that Commonwealth, directed to a sheriff or constable of the same; and upon the arrest and hearing, in the manner particularly provided for by that act, the judge, &c. to grant his certificate to the claimant.

This Act of Assembly, purporting to repeal the Act of Congress of 1793, and to substitute State regulations, was decided by the Supreme Court of the United States to be unconstitutional and void.* And yet Judge Parsons decided, that no alderman in Pennsylvania had any authority to hear the case under the Act of Congress of 1793, nor to grant the certificate offered in evidence, which was founded upon the provisions of that act; and that if Mr. Justice Allen should testify that he had done so, *he* would bind him over to answer criminally. Here then we find Judge Parsons in error in three important particulars, viz: 1st. In setting up an unconstitutional and void Act of Assembly in opposition to the constitutional and valid Act of Congress. 2dly. In publicly threatening to bind over criminally, where at most, the remedy was by a *qui tam* action. 3dly. By rejecting the acts and certificate of Mr. Alderman Allen, as evidence for Alberti; when, whatever might have been the consequences to Mr. Allen, they were evidence to show the *motives of the defendant.*

We are sensible that this review of the trial of Alberti has been a large draft upon the patience of the reader; nevertheless, we feel compelled to crave a little more indulgence, while we make a few observations upon the *discourse* of Judge Parsons, when he passed the sentence; because that document contains the *key* to the secret of the defendants' prosecution and conviction.

"Stealing an infant born in *a* free State."

It is remarkable that the Judge lays stress upon Joel having been born in "*a* free State," without mentioning in what State he was born, thus keeping up the delusion under which Alberti was tried, that Joel was born in Pennsylvania.

"The law of our State imposes it, and *we* will protect those colored people who are *in* a free land."

This mistaken notion that colored persons are to be *protected* from

*Judge Story, in giving the opinion of the Supreme Court of the United States, in Priggs' case, says, "As to the authority so conferred upon State Magistrates, while a difference of opinion has existed, and may still exist on the point, in different States, whether State Magistrates are bound to act under it, none is entertained by this court, that they may, if they choose, unless prohibited by State legislation.

the operation of the fugitive slave law, merely because they are found *in* a non-slaveholding State, when we know that the country is overrun with runaway slaves, has been the cause of much evil. Mr. Meredith, in his argument, in Priggs' case, 16 Pet. R. 559, justly remarks that, "to the interference of State legislation (he might well have added *judicial* interference) may justly be ascribed much of that exasperation of public sentiment which unhappily prevails upon a subject, which seems, every day, to assume a more malignant and threatening aspect." Who, that has not caught the infection of ultra abolitionism, can read the remarks of Judge Parsons about "*the galling chains of slavery,*" and "*the realms of slavery,*" &c., without acknowledging the truth and justice of Mr. Meredith's remarks?

"The child was taken without the least color of law to warrant such an inhuman act."

Was there no color given by showing that the mother pertinaciously refused to surrender it, and that nothing short of force could have effected the separation? Was it nothing to show that it was sick and required her constant assistance? Was it *inhuman* to leave a sick child with its mother, when it required her milk, not only for food, but medicine? Judge Parsons, in another part of this harangue, says, that the child seemed to be "her chief care and her only solace;" and yet he accuses Alberti of *inhumanity* for allowing her to retain it.

"Had you been tried for kidnapping the mother, in connection with the child, *I* should have charged the jury to render a verdict of guilty."

When we read this sentence, need we be surprised at Alberti's conviction and sentence? Mr. Webster, the counsel, who opened the cause on behalf of the Commonwealth said, that he "GRANTED THAT BETSEY WAS MITCHELL'S SLAVE;" and yet Judge Parsons publicly declares that, if *he* had had it in his power, he would have caused Alberti to be convicted of kidnapping her. This explains his meaning when he said that he would protect those colored people who are *in* a free land. It matters not what is their state and condition. It matters not what are the guarantees of the Constitution of the United States, and the Act of Congress, "*we* will protect those colored people who are *in* our State." This is the unhallowed doctrine of ultra abolitionism, which, if allowed to pass unrebuked, must inevitably lead to heart-burnings and retribution on behalf of our *brethren* of what Judge Parsons, very improperly, calls the "realms of slavery," if it does not end in a dissolution of our glorious Union. We therefore feel ourselves called upon, in the name of thousands of our citizens who

support the Union, with heart and soul, to protest against such doctrine in the most solemn manner.

"*For the law* would have justified such a sense." By "the law," Judge Parsons, doubtless, referred to the Act of Assembly of 1847; and if *it does* "justify such a sense," then *it*, like the Act of Assembly of 1826, is unconstitutional and void, and General Hubbell had a right to point out this similarity to the jury, but he was stopped by Judge Parsons, and threatened with a prison if he did this duty!

The Judge told Price that he considered him nothing more than the dupe of Alberti, yet he fined him $700, and imprisoned him at hard labor for eight years. Why this unusual severity was exhibited on "a mere dupe" will be seen presently.

He condemns Price for having seduced Betsey to his house for the purpose of being delivered to her master. Here is, therefore, the most appropriate place to inquire *how* the master of a fugitive slave is to obtain possession? If he goes to his residence, he encounters the bowie knives and revolvers of the slave and the other inmates, who are well known, now, to be amply supplied with those weapons. If the master escapes being murdered, he will be sure to be indicted under the 4th Section of the Act of 1847, for attempting to retake his property in a violent and tumultuous manner. If he applies to a justice of the peace or an alderman for assistance, he is told that the 3d Section of the Act of Assembly of 1847 makes it a misdemeanor for them to interfere. Should he call in the aid of the fugitive slave law of 1850, it is denounced as unconstitutional. If he decoys the slave, Judge Parsons brands him with inhumanity, and consigns him to a dungeon.

If *this* is carrying out the provisions of the Constitution, adopted by the unanimous consent of its framers; if this is obeying the injunctions of the Act of Congress; if *this* is respecting the decision of the Supreme Court of the United States,—then the citizens of "the realms of slavery" must be contented to be deprived of their property, and those of "a free land" to be fined and imprisoned at the will and pleasure of such as consider it lawful "to protect those colored persons who are *in* a free land."

"If I have erred in your sentence, it is on the side of mercy."

Gracious heaven! To think, that in pronouncing such a terrible sentence as that of George F. Alberti's, upon an "old man whose worldly race was nearly run," not to be content with insulting him, by exulting over his fate, but to profane the divine attribute of mercy!

It has been truly said that man is the most cruel, to his fellows, of all animals.

"But I hope it [will] prove a terror to others."

What others? To those who infract the laws? No.

"To others *engaged in this business.*"

Here is the key that unlocks the secret of this prosecution; here is the touchstone by which the reader can determine which is the gold and which the base metal; this shows the great desire that prevailed to convict Alberti;—it was not that he had been guilty of any crime, but he had been heretofore engaged in assisting the owners of fugitive slaves in retaking their property. He had been "engaged in *this business*," and the colored persons were to be protected from the operation of the Constitution and Act of Congress merely because they were *in* a free land; and this was to be effected by passing such an awful sentence upon Alberti as would be "*a terror to others engaged in this business.*"

But the mask has, inadvertently, fallen off, and the motives of the prompters and scene-shifters, behind the curtain, are exposed, and we make no doubt but that the jury who have, innocently, been made their instruments, will regret that they should have concurred in the conviction.

"Think of the mother who you have rended from the *home* that was dear to her," &c.

It will be a subject of lasting regret, with the admirers of the pathetic, that Judge Parsons should have stopped so abruptly in his eloquent career, when he might, with so much feeling, have proceeded to point out the miseries to which his heroine was doomed by being taken back to the real husband, from whom she had eloped, and the two legitimate children she had abandoned in "the realms of slavery."

In refusing to *hear* the motion for a rule for a new trial, and in overruling the reasons, *without reading them or hearing them read*, Judge Parsons was guilty of another error; for not only does the Constitution guarantee *the right to be heard* to every citizen charged with an offence, but the judge, if he condescends to examine his commission, will find that *he* is to hear *and* determine—and not hear *or* determine—nor determine *without hearing*—any man's cause.

"He who answereth a matter before he heareth it, it is folly and shame unto him."—*Proverbs.*

According to every rule of right and reason, *the hearing must precede the determination*, or the decision loses its characteristic of deli-

[illegible]ation and sinks into a *mandate*. It ceases to be the voice of reason, dictated by learning and experience, founded upon fixed principles, to which republicans pay a willing obedience, and is degraded into the expression of the arbitrary will of a despot, which merits nothing but contempt. It was, therefore, an insult to the PEOPLE OF PENNSYLVANIA, thus (in the humble person of Alberti) to set at naught *their* sacred rights, and disrespect *their* inalienable privileges, for which *he* must answer before that "*higher Judge*," to whom he refers in the sentence; but whose infinite justice and mercy is not always appreciated by the dwellers upon this earth.

Since writing the foregoing review we have received the following letter, which we publish without comment:

Cecilton, May 15, 1851.

P. A. BROWNE, ESQ.—*Sir:*—Your letter of the 8th inst., re-mailed to me from Elkton, has been received, and I proceed to answer your questions in the order presented.

1. The black man who called himself Wm. Thompson, upon that trial, was free.
2. He was born in Fredericktown, Cecil county, Maryland.
3. He was born free.
4. He was a married man in 1845, and his wife lived with Dr. Evans, of Elkton.
5. He lived about half a mile from me, in a small house, with his mother, and was in the habit of coming frequently to my house. He knew me and my woman well.
6. He did entice her away. A few days before she ran away, I was told that on a certain Friday night my woman would run away with this Thompson, whose real name is Perry (Peregrine) Berry. I kept awake until 12 o'clock, when I heard some one come into the kitchen. I went down and Perry was there. When asked what he wanted, he said he came in to see the people. (The negroes are in the habit of going from farm to farm at all hours of the night.) The next morning she left my house, and that night she and Perry went away, and Perry has not been seen in Maryland since. Her real husband, Moses Wright, went, about a year after she ran away, to New Jersey, to see her. He found her and Perry living together, and was advised by her to leave, or he would be killed. He, also, is a free negro, and did then, and does now, live at Fredericktown, near my farm.

Previous to marrying the woman at Elkton, he [Berry] had married and abandoned a woman named Maria Brooks of this neighborhood.

Respectfully yours, JAMES S. MITCHELL.