Introduction

by

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The information below is a reflection of the research I conducted during my time at the New Jersey Historical Society (NJHS) this semester, as well as my time spent perusing secondary sources and the work of other scholars who have investigated the Garden State's role in the peculiar institution. First, I want to thank Professor Elise Boddie for her guidance, trust, and belief in my abilities as a scholar and a future attorney. My work would not be possible without her direction—and I would not be in New Jersey if it was not for her. Indeed, I do not stand alone when it comes to the lives she has touched through her commitment to justice and a brighter tomorrow. I would like to thank the staff at NJHS, especially Dr. James Amemasor, for assisting me with locating documents and helping me transcribe documents that are nearly two centuries old. Finally, I want to thank the Black women and men who are both reflected and not reflected in this research. Their remarkable resilience during the darkest period of our country's history is a testament to the will that continues to channel through every Black New Jerseyan today. Indeed, they touched every part of this state and left behind a legacy that anticipated our arrival and embraced us.

Part I draws upon the research the research of James J. Gigantino, II and his 2015 book, *The Ragged Road to Abolition: Slavery and Freedom in New Jersey, 1775-1865*. His work provides comprehensive details about the start of slavery in New Jersey and the effects of the state's 1804 Gradual Abolition Act. The book also serves a guide for analyzing the way enslavement was heavily concentrated in areas like Bergen County. Undoubtedly, Gigantino's

work is the definitive study on enslavement in New Jersey from the early American to the antebellum period.

Part II continues with my use of secondary sources, particularly from legal historian Paul Finkelman's 1997 work, *Slavery and the Law*. Finkelman sets the Garden State apart from other northern states that were more concerned about ending slavery in relatively quick fashion. Furthermore, while other states in the North during the early to mid-nineteenth century positioned themselves as havens for fugitive slaves, New Jersey had to grapple with fugitive slaves from within its borders and those traveling from Pennsylvania who likely made their trek from West Virginia, Maryland, and Virginia. The selections I chose also provide a summary of New Jersey Supreme Court Chief Justice Joseph Hornblower's opinion in *State v. The Sheriff of Burlington* (1836), one of the most important legal opinions before *Dred Scott*.

Part III gives some of the statutes that applied to enslaved Black people during the seventeenth and eighteenth centuries when New Jersey was not fully wrestling with the question of slavery's existence in the state. The statutes detail the standards for the application of the death penalty of the enslaved, engaging in trade with an enslaved person, and the prohibition of enslaved people owning property. Part II also reproduces two cases, *State v. Oliver* (1787) and *Stoutenborough v. Haviland* (1836). *State v. Oliver* concerned the abuse of an enslaved woman named Kate. Her enslavers refused to answer the charge about their likely abuse of Kate "until a sufficient Prosecutor should be indorsed [sic] on the Habeas Corpus, and Security given for the Costs." The court overruled Kate's enslavers and the enslavers' lawyers provided the court assurance that Kate would not be abused. Reproduced in full, the court in *Stoutenborough* held that black people in New Jersey will no longer be presumed enslaved. This case is fourteen years prior to the Fugitive Slave Act of 1850 and thirty-two years after the Gradual Abolition Act of

1804. As a scholar of early American literature and enslavement, this is the first case I have found where the court explicitly declares that black people are not to be presumed enslaved.

Parts IV and V juxtapose the triumph and tragedy of slavery in New Jersey. Part IV starts with secondary sources that provide interesting facts about Newark's involvement with the industry of enslavement. It also points readers in the direction of alternative histories of black people in the state in the context of slavery. The section then moves into a complicated history of Chief Justice Hornblower. Despite issuing one of the most important legal opinions on the institution of slavery in the first half of the nineteenth century, Chief Justice Hornblower, at an earlier age, manumitted an enslaved person who was owned by his family. While the circumstances that led to the enslaved person's freedom are not fully known, what is known is that his father owned at least five enslaved individuals, with Justice Hornblower serving as the estate's executor. The bulk of the section reproduces Justice Hornblower's opinion in *State v. The Sheriff of Burlington* in its entirety. His dicta in the case served as an intellectual compass and victory in declaring in inapplicability of the 1793 Fugitive Slave Law in the Garden State.

Concluding my findings is Part V, which is a Bill of Sale of "Negro Slave George" from 1806-1808. The bill of sale shows George being sold multiple times with the same contract changing hands each time he was sold.[1] I place this document at the end to anchor the harsh reality of this institution in New Jersey. The bill of sale does not tell George's entire story. However, the document situates his life in the grim institution that has shaped the trajectory of black people both in the Garden State and this country.

[1] I thank Dr. James Amemasor for assisting me in the transcription of this document. As the scholar in charge of the archives at the New Jersey Historical Society, he did much of the difficult transcription of this work.

A final note: the sections that I found to be important are in bold print. This is to take the readers focus to what may prove most useful in terms of the nature of slavery in New Jersey. Also, the reader will find commentary throughout the sections. My commentary attempts to couch slavery in New Jersey within the national context. It also explains passages to give the reader a guide to understanding some of my findings.

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Part I

Passages from *The Ragged Road to Abolition: Slavery and Freedom in New Jersey* (2015).

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09/06/19

The Ragged Road to Abolition: Slavery and Freedom in New Jersey, 1775-1865 by James J. Gigantino, II. Published by University of Pennsylvania Press in 2015

From Introduction:

Start of Slavery in New Jersey:

- "Slavery's beginning in New Jersey cannot be divorced from its interaction with the Atlantic World and its relationship with neighboring New York. In 1626, the first African slaves arrived in New Netherland to work for the Dutch West India Company and soon became incredibly important since the new colony suffered chronic labor shortages as few white immigrants chose to settle there…By 1630, Dutch and Walloon settlers had established themselves on the west bank of the Hudson River in present-day Bergen County and brought the first enslaved Africans to what would become New Jersey." (11-12).
- "Slavery in the North never attained the same position in the economy as it did in the Caribbean, the Chesapeake, or the Low Country since the North remained a society with slaves rather than a slave society" (1).
- "**The 'Garden of America' [New Jersey] had more enslaved blacks than all of New England combined and almost the slave to total population ratio as the much larger New York. Of course, the slave populations in most of the South easily outpaced New Jersey, though from 1790 to 1830 the state had more than twice as many slaves as Delaware…Bergen, for example, counted over 18 percent of its population as**

slaves at the time. Slaves likewise made up almost 15 percent of Somerset's population, while Middlesex and Monmouth had a slave population of just under 10 percent" (2).

New Jersey slavery divided by region:

- Even though East and West Jersey operated as separate proprietary colonies for only twenty-eight year (1674-1702), the division had massive repercussions for the growth and eventual decline of slavery in New Jersey. **West Jersey quickly became linked to Quaker dominated Pennsylvania and colonists swarmed into the region, picking up where the failed New Sweden colony had left off. Likewise, as the Caribbean embraced, sugar, planters pushed out because of the sugar boom from Barbados in the 1660s and 1670s sought new homes in both Carolina and East Jersey.** Barbadian planters, turned off by the harsher climate and disease around Charleston, saw New Jersey as a fertile and relatively untapped land ripe for settlement. They and their slaves came in droves to both East Jersey and New York so that by 1700 Barbadian immigrants owed the largest concentration of slaves…These Barbadians quickly established towns such as New Barbados in northeastern New Jersey and made East Jersey a colony strongly attached to a slavery informed by years in the Caribbean. **This experience also influenced non-Barbadians and led East Jersey to quickly outlaw the harboring of fugitive slaves, trading with slaves, and prohibiting slaves from carrying guns."** (13-14)

Slaves for a term:

- "The abolition law provided for the freedom of children born to slave after July 4, 1804, once they served a specified number of years (twenty-one or twenty-five) to their mother's master. These children, whom I call *slaves for a term*, were bought, sold, whipped, worked, and separated from their families just like slaves before them" (7).

Gradual Abolition

- **"Indeed, white New Jerseyans routinely sold their slaves and slaves for a term out of state to subvert gradual abolition and support slavery's overall national expansion" (7).**

- "With the crisis over the extension of slavery into Missouri coming on the heels of public concern over this slave trading ring, white New Jerseyans began to inculcate a proto-free soil ideology that opposed slavery's westward expansion into Missouri but supported its continuation in the South and New Jersey. This ideology, though antislavery, was not abolitionist and did little to alter the perceived link between the newly freed and the enslaved, which whites used to prevent their inclusion into the body politic. **This was most readily apparent in the 1807 abrogation of voting rights for free black men and women, which began a systematic process of stripping legal and political rights from former slaves."** (7)

General understanding of gradual abolition:

- "In each case, [gradual abolition] laws freed only the children born to slaves after a certain date and only after a period of service to their mother's master. Slaves in these states therefore never participated in a true *emancipation* or the decisive release from a system of control. Emancipation was the process by which an actual slave moved from a state of slavery to one of freedom. Instead, most of these states utilized the term *abolition*, meaning an end to slavery's existence by eliminating its perpetuation. It is no

coincidence then that New Jersey's early abolitionists fully embraced the term *abolition* by supporting a program that mediated black freedom with white supervision, in this case by slaveholders" (5).

- "New Jersey delayed enactment of gradual abolition until 1804, later than any other northern state" (3).
- "Indeed, if slavery had been so marginal to New Jerseyans in the 1840s, the legislature would have simply abolished it and freed not only the remaining slavers but all the slaves for a term as well. Instead, they continued the state's gradual approach to abolition, but not because of an inherent need for slavery…**Slavery persisted because of the engrained association between race and slavery in the antebellum period. Most white New Jerseyans were comfortable with slavery's existence because they believed it had been marked for destruction and would die a natural death without violating the racial order. As blacks gradually gained freedom and pressed for more autonomy and power within the state, whites felt threatened and feel back on the racial status quo that had historically defined the relationship between the races.** Most white New Jerseyans continued their gradual stance on black freedom even as late as 1865 to maintain the status quo…Therefore, gradual abolition's complicated and convoluted nature over six decades yields much more about how northerners understood the place of blacks in the new nation than what legislators thought in the statehouse in 1804. Even after their decision to begin gradual abolition, freedom remained a highly contested battleground." (250)
- "New Jersey's 1804 Act for the Gradual Abolition of Slavery could not have passed the legislature without the support of Democratic Republicans and Governor Bloomfield.

Jeffersonian abolitionists worked for legislative abolition and even pressured West Jersey Federalists, including almost the entire Burlington County delegation, to support it. However, abolition was helped more by the Democratic Republican caucus system that united eastern and western interests. Like the national caucus system, the state caucus forced representatives from counties that still had a viable slave system (Essex, for example) to support the legislation by appealing to party unity based on the concept of individual honor. This system, a product of the partisan battles of the 1790s, allowed abolitionism to move forward despite disagreements over slavery. The system proved so efficient that abolitionists used it between 1805 and 1811 to produce party line votes on three additional antislavery bills, uniting East and West Jersey in spite of their long antagonism." (92-93)

- "This 'horrible gift of freedom' [gradual abolition] privileged slaveholders and gave them power in arbitrating black freedom because few whites actively defended blacks. Like other such laws, New Jersey's failed to free any slave immediately; those New Jersey slaves born before July 4, 1804, continued to live in the same manner as they always had, bound for life. It did not, as a newspaper reported, wipe 'off the foul stain of slavery from the character of the state.' Instead, the law changed the nature of slavery by introducing a new category of bound laborer, children born to slaves after July 4, 1804, who would be owned by their mother's master for upward of twenty-five years. These children served slaveholder interests and provided them the tools they needed to defend the continuation of the institution. The slaveholder, now supposedly in the role of educator and arbiter of the freedom process, used his power to limit black access to freedom. Over the next four

decades, Jersey slaves and their freeborn children struggled to achieve real freedom and a place in American society." (94)

Ratification of the Thirteenth Amendment

- "The legislative debates on the amendment were exhaustive, with Republicans arguing that the destruction of slavery was a necessity and that a formal emancipation would safeguard the peace by confirming what Union troops had already done in the field. Democrats, on the other hand, opposed the Thirteenth Amendment, believing as Democratic legislator James Goble claimed, that northerners had been 'so misled on this subject of slaver that they are blind, deaf, and dumb to the rights of the slaveholding states.' Men like Goble feared that immediate abolition would unleash a torrent of uneducated and uncontrolled former slaves who would wreak havoc on American society and 'bring disaster to both races.' Goble, for instance, believes that if abolition were to come, blacks 'soon will be not only equal but superior to the white race,' objecting to the abolitionist attempts at stopping the white race from being 'uncontaminated in general.' **They likewise opposed the seizure of private property without southern consent or compensation, especially in the loyal board states of Delaware and Kentucky.** Just as Jersey politicians had done before, legislator Leon Abbett claimed that the state 'abolished [slavery] by state legislation' and has 'always upheld and asserted the rights of states to control local matters to suit themselves, without national interference.' Likewise, William Iliff reiterated that new Jerseyans had decided to abolish slavery themselves and 'then, as now, consider slavery a local institution.' Since the South had 'conceded the right' to abolish slavery to New Jersey, Iliff asked 'should we not then act in the same spirit to them?' **Therefore, Democrats in the legislature firmly believed that ratification would signal the end of state power, a retrenchment of federalism, and**

would be 'a roadblock to reunion' instead of a way to secure the peace. Thus, they continued to favor gradual abolition as a solution to slavery even in late 1865 when many slaves in the Confederacy had already been freed." (246-247)

- "Above all, however, the debate over the Thirteenth Amendment was a partisan one. Conservative Democratic newspaper editors rallied the party together by warning moderate Democrats who favor emancipation of the dangers of supporting [Abraham] Lincoln's amendment. **Fearful of challenges from their own party in subsequent elections, moderate Democrats joined conservatives in defeating ratification of the Thirteenth Amendment in 1864 along a strictly party line vote."** (247)

Slave concentration in Bergen County

- "Wills and probate records for Bergen County from 1804 to 1846 reveal that sizeable number of estates held slaves or slaves for a term throughout the abolition period (17.3 percent of 1698 estates). **Almost all slaveholders, even into the 1840s, did not free their bound property and instead transferred them to willing buyers or family members. Only 9 of the 763 slaves and slaves for a term mentioned in wills gained freedom and even these owners seemed exceptional.** Three of the six owners provided both freedom and financial support. For example, Henry Spear freed Caesar and his wife Hannah, and left them forty acres of land, a house, oxen, a cow, sheep, and a plow in 1820 to ensure the couple's ability to support themselves. Spears also transferred the couple's two children, Leah and Harry, both slaves for a term, to their parents' guardianship, which essentially granted them freedom.

  Those slaveholders like Spear did exist, most slaves and slaves for a term in Bergen County wills remained bound to their masters' descendants or were sold in order to perpetuate slavery. Peter Merseles, at his death in 1832, for example, ordered, that his

four slaves for a term (Cate, Harry, Phebe, and Pegg) all be sold along with the parents, Susan and Dinah. Similarly, in 1833 John Hopper, by that point one of the larger slaveholders in the county, transferred his five slaves and five slaves for a term to his wife Maria and son Jacob. Although Hopper's will made clear distinctions between slaves and slaves for a term, specifically referencing the 'five blacks who are born under the manumission act,' his executors continued to view them as property, assigning them values ranging from $25 for Grace to $150 for Ant. Not surprisingly, his executors computed the value of his five slaves for a term at $95 more than his five aging slaves. The higher value of slaves for a term convinced slave owners like Hopper to oppose immediate abolition and continue the institution." (232-233).

Part II

Passages from *Slavery & The Law* (1997)

Chapter 4: "Chief Justice Hornblower of New Jersey and the Fugitive Slave Law of 1793" from *Slavery & The Law*, edited by Paul Finkelman. Published by Madison House in 1997

Chief Justice Joseph C. Hornblower of New Jersey:

- "In 1836, in *State v. The Sheriff of Burlington*, Chief Justice Joseph C. Hornblower of New Jersey ordered the release of Alexander Helmsley, who was then being held as a fugitive slave in Burlington, New Jersey. In deciding this case Hornblower wrote a strongly abolitionist opinion, implying that the federal Fugitive Slave Law of 1793 was unconstitutional. However, Hornblower did not declare the federal law void, because he did not have to do so. Helmsley had been seized and incarcerated under a state law. Thus, Hornblower was able to order his release when he determined that the New Jersey law under which Helmsley was held violated the state constitution. Because neither the sheriff who held Helmsley nor the slave owner who claimed him raised the federal law of 1793, Hornblower did not have to explicitly address its constitutionality." (113)
- "Some newspapers, especially the antislavery press, communicated Hornblower's decision. As far west as Ohio the antislavery attorney Salmon P. Chase, a future chief justice of the United States Supreme Court, cited it for authority in a fugitive slave case" (113).
- **"In the 1850s some judged cited the previously unpublished opinion as a legal precedent; but more importantly Hornblower's opinion emerged as an intellectual, moral, and political argument against the Fugitive Slave Law"** (114).

- "Nathan Helmsley…relocated a few times [in New Jersey from where he escaped in Maryland] to avoid capture, and he managed to live in the state for a number of years before he was discovered and seized by a slave catcher. As the Helmsley case suggests, New Jersey was neither entirely hostile to fugitive slaves nor especially welcoming. New Jersey was no Vermont or New Hampshire; but neither was it a Maryland or a Virginia." (115)

Fugitive Slaves in New Jersey:

- **"Because New Jersey was the last northern state to abolish slavery, during much of the antebellum period New Jersey was concerned about its own runaway slaves as well as those escaping from Southern bondage. This is just one of the peculiar aspects of New Jersey's relationship to the peculiar institution" (114).**
- "There is a striking contrast on statewide abolition between New Jersey and New York. New York was slow to join the "first emancipation," passing its Gradual Emancipation Act in 1799. But New York quickly made up for lost time. In 1817 New York adopted a law freeing all its slaves on July 4, 1827. **Meanwhile, in New Jersey slavery lingered. As late as 1845, the New Jersey Supreme Court held, in *State v. Post*, that the 'free and equal' clause of the state constitution of 1844 did not emancipate the approximately seven hundred slaves remaining in the state. Only the aged Chief Justice Hornblower supported the abolitionists who brought this case." (115)**
- "In 1846…[a] new law changed the status of the state's remaining slaves to "servants for life." Although a 'free state,' New Jersey was home to some blacks still in servitude when the Civil War began. These superannuated blacks remained in a state of semibondage until the adoption of the Thirteenth Amendment ended all involuntary servitude in the nation." (115).

- "Although a 'free state,' New Jersey was not always considered a safe haven for escaped slaves. Bondsmen from Delaware and Maryland who came into New Jersey were well advised (if they could find someone to give them such advice) to continue north…On the other hand, in the 1830s negrophobes [sic] in southern Cumberland County complained that they were about to be overrun by fugitive slaves. One racist politician claimed that these 'vicious intruders' threatened the stability of the entire county, if not the state." (115)

Politics of Ending Slavery:

- "Despite New Jersey's slow movement towards abolition, the state's representatives in the new Congress often opposed slavery and supported the rights of free blacks. In 1793 all four of New Jersey's congressmen—Elias Boudinot, Abraham Clark, Jonathan Dayton, and Aaron Kitchell—voted for the Fugitive Slave Law…The history of the first fugitive slave law suggests that its supporters thought the law was a fair compromise between the needs of slaveowners to recover their fugitives and the needs of the Northern states to protect their free inhabitants from kidnapping." (116)
- "In 1797 New Jersey's Isaac Smith argued in favor of federal legislation to protect free blacks from kidnapping. Congressmen smith argued that it 'was impossible' for the states to protect against kidnapping because when the kidnapper reached a new jurisdiction, he was safe from arrest and prosecution. Smith was particularly worried about those free Blacks who might be kidnapped and taken to the West Indies. He wanted a federal inspection law to help prevent this. Smith could see no reason why such legislation would give 'offence or cause of alarm to any gentlemen.'" (116)

Statutory Regulation of the Enslaves and Freepersons:

- "The history of New Jersey's statutory and judicial regulation of slavery during and after the Revolution reveals the contradictions within the state on the issue. **In 1786 New Jersey virtually abolished the further importation of slaves as merchandise from Africa or other states by establishing fines for brining slaves into the state. However, illegally imported slaves were not freed. Furthermore, this statute prohibited free blacks from moving to New Jersey…the statute also encouraged private manumission and the decent treatment of slaves within New Jersey."** (117).
    - **Commentary:** prohibiting free black people from moving to New Jersey squarely places the state in company with southern states like Missouri, a state that not only did not permit free black people to become residents in the state but also required manumitted enslaved persons to leave the state within six months of acquiring their freedom.
- "The 1786 statute also allowed for private manumission without requiring either that the ex-slave leave the state or that the owner give a bond to guarantee that the ex-slave would not become a public charge."
    - **Commentary:** note how concerns about "public charge" have some beginnings in eighteenth-century enslavement in the northeast, well before current discussion regarding immigration and public charge.
- "In 1788 the legislature strengthened the prohibition on the slave trade and also attempted to prevent the kidnapping of free blacks. The statute prohibited the removal of slaves from the state without their consent. This law also removed some disabilities of free blacks while simultaneously requiring slaveowners to teach their young slaves to read and write…While the literacy provision was certainly 'a step in preparing them for

freedom,' the New Jersey legislature was not ready to take the final step of adopting an emancipation scheme." (117)

- "In 1798 New Jersey adopted a new, comprehensive slave code as part of a general revision of the state's laws…**One significant change was to allow free Blacks from other states to enter New Jersey as long as they could produce proof of their freedom. This made New Jersey virtually unique among slave states in that it allowed the unrestricted immigration of free blacks." (118)**
    - **Commentary:** while unique and, in some sense, a repeal of the 1786 statute, notice how black people moving into the state *must* show proof of their freedom. I write about this in my dissertation: "considering how difficult it was for black people to keep their free papers, along with the frequency by which such papers were destroyed by slave catchers or kidnappers, demanding proof of freedom further established how black people were both enslaved until proven free and guilty (fugitive slaves) until proven innocent" (97).
- "The 1798 law also supplemented the federal Fugitive Slave Law of 1793 by providing mandatory rewards for anyone seizing a runaway slave and by holding liable for the full value of the slave anyone harboring a fugitive slave or helping such a slave escape" (118).
- "In 1804 the state finally passed a gradual emancipation statute, giving freedom to the children of all slaves born in the state but requiring that they serve as apprentices, the females until age twenty-one, the males until age twenty-five. In the next seven years, the legislature fine-tuned this law, but none of these amendments and changes significantly altered the status of slaves in the state and or affected fugitives there." (118)

- "In 1821 New Jersey adopted a comprehensive revision of its slave laws. The provision of the 1798 law regarding fugitives remained intact. However, the 1821 law also punished severely anyone unlawfully removing a black from the state. **This new provision was at least in part the result of petitions from Middlesex County calling for a law to 'prevent kidnapping and carrying from the State blacks and other people of color.'"** (118)
- "The laws of 1788, 1798, 1804, and 1821 reflected the tension between the need to support the constitutional claims of Southerners and the almost universal belief in the North that slave catching was a dirty business, to be avoided by decent people. Indeed, throughout the North individual fugitive slaves often gained the sympathy of people who opposed abolitionists, believed in supporting the Union at all costs, and supported the South in politics. Thus, New Jersey's citizens were usually not inclined to support the return of fugitive slaves. Moreover, as the statute of 1798 indicates, they felt an obligation to protect both the liberty of their free black neighbors and some basic rights of the slaves living within their midst.

  "At the same time, however, unlike every other free state, as late as the 1830s New Jersey had a substantial slave population. New Jersey's legislators, and no doubt many of their constituents, were inclined to protect the property rights of their slaveholding neighbors. Thus, in New Jersey a tension existed between protecting local slaveowners whose human chattel might escape and protecting free blacks and fugitives from other states who lived in New Jersey." (119)
- "In 1826 New Jersey fundamentally altered its approach to fugitive slave rendition with the adoption of a new statute regulating fugitive slaves. This law required a claimant to

apply to a judge for a warrant ordering a county sheriff to arrest allege fugitive slave. The judge would then hold a hearing and, if convinced that the person before him was a fugitive slave, would issue a certificate of removal. This law was designed to provide more protection for blacks living in New Jersey than was afforded by the federal Fugitive Slave Law of 1793. It was, as Chief Justice Hornblower asserted, 'more humane and better calculated to prevent frauds and oppression' than the federal statute. But, as Hornblower would also conclude, this law did not adequately protect against fraud and oppression." (120)

- **Commentary:** I will look into this again, but this does not seem much different from what other slave states did, especially once the 1850 Fugitive Slave Act took effect. The important question is how faithful was New Jersey to this regulatory scheme.

Cases for Further Research (summaries from the author):

- "In *The State v. Heddon* (1795), the New Jersey Supreme court released Cord, a black man who claimed he had gained his freedom during the Revolution. At the time, Cork was imprisoned in Essex County as a runaway slave, claimed by a man named Snowden. In a habeas corpus proceeding, the court ruled that Snowden's claim to Cork was insufficient and released the alleged slave.

  "*Heddon* illustrates that before 1804 New Jersey treated blacks the way other slave states did. Officials presumed Cork was a slave, arresting him when he appeared to be wandering about without a master. The New Jersey court did not actually declare Cork to be free, but only determined that Snowden was not his owner, and since no one else claimed him, Cork had to be released from jail." (119)

- **From the endnotes, no. 16:** "…In *State v. Quick*, 2. N.J.L (1 Pennington) 393, 413e (1807), the New Jersey court refused to free a slave who was illegally exported from New York to New Jersey" (136).
- "The Gradual Emancipation Act of 1804 did not end New Jersey's willingness to help in the return of fugitive slaves. In *Nixon v. Story's Administrators* (1813), a trail court awarded judgment against a man who had carried slaves from New Jersey to Pennsylvania. Although the Supreme Court reversed the verdict on technical grounds, the original judgment reveals the state's willingness to aid slave owners seeking their runaways." (119)
- "In *Gibbons v. Morse* (1821) and again in *Cutter v. Moore* (1825), the New Jersey court decided in favor of master suing ship owners or captains who had allowed slaves to escape. New Jersey continued to enforce the provisions of the 1798 law that punished those who helped slaves escape. In both case the plaintiffs did not allege any intent to help the slave escape. These were not the actions of abolitionists trying to undermine slaver; rather, they were the acts of common carriers who negligently allowed slaves to escape. In these civil suits motive was not an issue. In both cases the owners recovered for the value of the lost slave." (119-120)
- "For blacks in New Jersey—free people, local slaves, or fugitives—these two cases set ominous precedents. In *Gibbons* the chief justice of New Jersey 'charged the jury, that the colour [sic] of this man was sufficient evidence that he was a slave.' In upholding the jury's verdict, the New Jersey court of Errors and Appeals also affirmed that 'the law presumes every man that is black to be a slave.' The headnotes to the official report of the case confirmed that 'In New Jersey, all black men are presumed to be slavers until the

contrary appears.' *Cutter* explicitly reaffirmed this analysis. Unlike all other northeastern states, New Jersey accepted the Southern view that all blacks were presumed to be slaves until they could provide otherwise." (120)

Part III

Statutes

Capital punishment of the enslaved.

An Act concerning Negroes.

East New Jersey Laws, February-March 1695

[§1] BE IT ENACTED by the Governor, Council and representatives in General Assembly met and assembled and by the authority of the same, that when any negro, negroes, or other slaves, shall be taken into custody for felony or murder, or suspicion of felony or murder, that three justices of the peace, of that county where the fact is committed, one being of the quorum, shall with all conveniency meet and try the said slave or slaves, and upon conviction by a jury of twelve lawful men of the neighbourhood, pronounce the sentence appointed for such crimes, and sign the execution. [§2] *Be it further enacted* by the authority aforesaid, that if any negro, negroes, or other slaves shall steal, or be found stealing, any swine, or other cattle, turkeys, geese, or any other kind of poultry and provisions whatsoever, or any kind of grain, and shall be convicted thereof before two justices of the peace, one whereof being of the quorum, the master or mistress of such negroes, or other slaves, shall within ten days after conviction, pay the value of what he or they have stolen to the party from whom the same is stolen, and in default to be levied by distress and sale of goods, of the said master or mistress, by a warrant from the justices before whom such conviction is made directed to the constable of the town where the master or mistress resides: And the said negro or negroes or other slaves, being so convicted, shall be publickly punished with corporal punishment, not exceeding forty stripes, the master or mistress of such negro, negroes or other slaves, to pay the charge thereof.

March 11, 1713/14

Buying from or selling to an enslaved person

[§1] *Be it Enacted by the Governour, Council and General Assembly, and by the Authority of the same,* That all and every Person or Persons within this Province, who shall at any time after Publication hereof, buy, sell, barter, trade or traffick with any *Negro, Indian* or *Mullatto Slave,* for any Rum, Wine, Beer, Syder, or other strong Drink, or any other Chattels, Goods, Wares or Commodities whatsoever, unless it be by the consent of his, her or their Master or Mistress, or the person under whose care they are, shall pay for the first Offence *Twenty Shillings,* and for the second and every other Offence, *forty Shillings,* Money according to the Queens Proclamation, the one half to the Informer, the other half to the use of the Poor of that Place where the Fact is committed, to be recovered by Action of Debt before any one of Her Majesties Justices of the Peace.

Enslaved person found five miles away from his enslaver without permission is to be whipped

[§2] *And be it further Enacted by the Authority aforesaid*, That all and every Person or Persons within this Province, who shall find or take up any Negro, Indian or Mullato Slave or Slaves, five Miles from his, her or their Master or Mistresses habitation, who hath not leave in writing from his, her or their Master or Mistress, or are not known to be on their service, he, she or they, so taken up, shall be Whipt by the party that takes them up, or by his order, on the bare back, not exceeding Twenty Lashes; and the Taker up shall have for his reward Five Shillings, Money aforesaid, for every one taken up as aforesaid, with reasonable Charges for carrying him, her or them home, paid him by the Master or Mistress of the Slave or Slaves so taken up; and if above the said five Miles, *six pence per Mile* for every Mile over and above, to be recovered before any one Justice of the Peace, if it exceeds not Forty Shillings, and if more, by Action of Debt in the Court of Common Pleas in the County where the fact shall arise.

Enslaver requesting jury trial for enslaved person

[§6] And whereas such Negro, Indian or Mullato Slave is the Property of some of her Majesties Subjects in this or the neighboring Provinces, *Be it therefore Enacted*, That any Master or Mistress of any Negro, Indian or Mullato Slaves, supposed to be Guilty, as aforesaid, may, upon their desiring the same, have a jury to try the said Slave Returned by the Sheriff, and the said Master or Mistress may have Liberty to make such Challenges to the jury as is admitted to be made in other Cases of the like Nature.

No formerly enslaved person can own property

[§13] *Be it further enacted by the authority aforesaid,* That no Negro, Indian or Mullatto Slave, that shall hereafter be made free, shall enjoy, hold or possess any House or Houses, Lands, Tenements or Hereditaments within this Province, in his or her own Right in Fee simple or Fee Tail, but the same shall Escheat to Her Majesty, Her Heirs and Successors.

Former enslaver to provide 200 pounds to formerly enslaved person

[§14] *And Whereas* it is found by experience, that Free Negroes are an Idle Sloathful People, and prove very often a charge to the Place where they are,

Be it therefore further Enacted by the Authority aforesaid, That any Master or Mistress, manumitting and setting at Liberty any Negro or Mullatto Slave, shall enter into sufficient Security unto Her Majesty, Her Heirs and Successors, with two Sureties, in the Sum of *Two Hundred Pounds*, to pay yearly and every year to such Negro or Mullatto Slave, during their Lives, the Sum of *Twenty Pounds.* And if such Negro or Mullatto Slave shall be made Free by the Will and Testament of any Person deceased, that then the Executors of such Person shall enter into Security, as above, immediately upon proving the said Will and Testament, which if refused to be given, the said Manumission to be void, and of none Effect.

Dec. 16, 1748 - An Act to enable the Inhabitants of the County of Middlesex to build a Work-House and House of Correction within the said County, and to make Rules and Orders for the Government of the same

[§18] AND BE IT FURTHER ENACTED by the Authority aforesaid, that it shall and may be lawful for the said Justices, or any of them, to commit to the said Work-House, to hard Labour, all or any white Servant or Servants, Slave or Slaves, which may or shall be brought before him or them, by their Masters or Mistresses, or others, Inhabitants of the said County, for any Misdemeanor, or rude or disorderly behaviour [sic] committed within the said Cities or County, and to order such rude and disorderly Servant or Slave to receive the Correction of the House, as shall be thought reasonable by the said Justice, not exceeding Thirty Lashes for any one Offence.

Commentary: Below I have reproduced the entire case. However, I think its most important aspect is how the court declares that black people in New Jersey will no longer be presumed enslaved. This case is fourteen years prior to the Fugitive Slave Act of 1850 and thirty-two years after the Gradual Abolition Act of 1804. This is the first case I have found where the court explicitly declares that black people are not to be presumed enslaved. Also notice Hornblower's concurrence.

Cases:
15 N.J.L. 266
Supreme Court of Judicature of New Jersey.

Stoutenborough
v.
Haviland.

February Term, 1836.

A person in possession of a colored boy under fifteen years of age, and selling him as his own, is held to implied warranty of title, and is subject to the same rule as the seller of any other chattel. ***The presumption that every colored person is a slave till the contrary appears, ought no longer to be admitted, both from the fact that the generality of such persons in this State, are not slaves, as from the natural operation of the statute for the gradual abolition of slavery.***

This was a *certiorari* directed to the Common Pleas of the county of Monmouth, on a matter of appeal from a Justice's court. The plaintiff in the court below, the defendant in this court, sued the now plaintiff, and recovered in a plea of trespass on the case. The declaration before the Justice contains two counts-- the first of which need not be noticed, as it was not supported by the proofs. The second count sets out an exchange of a negro boy and twenty dollars, for a wagon, and warranty by the defendant below, ***"that the said boy was bound to serve according to the laws of New Jersey, till he was twenty-five years of age, (he then being fourteen years***

and six months and fourteen days old) and that the defendant had good right and title to said boy, and to make sale and disposition of him."

Commentary: Keep in mind that this is based on the state's Gradual Abolition Act of 1804.

The declaration then avers, "that the said negro boy was a free boy, and that the defendant had no right and title to him, and to dispose of him, in consequence of which he became of no value to plaintiff." It was found on the trial, that the sale or exchange was made by the agent of the defendant, and that he traded the boy "as Williams" (the defendant's) "boy," but made no special declaration or warranty as to the right of Williams the defendant, nor was it at all named at the time.

Ryall and *Vredenburgh,* for plaintiff in *certiorari.*

Randolph and *W. L. Dayton, contra.*

The opinion of the court was delivered by RYERSON, J.

Before the court below, two principal questions were made, which have been reviewed here.

Does the declaration contain a sufficient specification of a legal cause of action?

Was it supported by proofs?

[page 267]

I am of the opinion that the second count in the declaration, is sufficient to support this action in a Justice's court, although it does not show any disposition of the boy; which I shall presently notice further. ***But the most important question in the case is, whether a person in possession of a colored boy under fifteen years of age, and selling him as "his boy," is by the law of this State, held to an implied warranty, a right to dispose of him, until he attain the age of twenty-five years.***

It was once the doctrine of this court, that every colored person was presumed a slave till the contrary was shown.

At that time, the seller of such a person, being in possession, would be under an implied warranty of title. And, although in the Oyer and Terminer, I have more than once expressed an opinion, that this presumption ought no longer to be admitted, both from the notorious fact, that the generality of persons of this description in this State, are not in truth held as slaves *now,* as well as from the natural consequence which must be supposed to follow our statute for the gradual abolition of slavery, yet it by no means would follow that a person in the actual *possession* of such a colored man, would not be affected by an implied warranty of title. For even at this day, such a property may exist in New Jersey; and the person in possession and selling as his own, must be subject to the same rule as the seller of any other chattel. Much *more* therefore may the seller of such a boy as the one in question, be held to an implied warranty of the right. Such a

boy cannot be a slave here. But the presumption that he is subject to service till the age of twenty-five, is much stronger than that the aged man of color, is a slave. The possessor of such a boy, may have a qualified property in his services, with a right to dispose of the same with a control of his person. And selling him without a special disclosure of his right, he must from analogy to the law of chattels, be held under an implied warranty of such a right. It further appeared in evidence, that the boy was, in truth, an indented servant, bound to serve to the age of twenty-one years. But that would not authorize a sale in this manner. Besides, the presumption, and of course the implication is, not that he is [page 268] such an *indented* servant, but as it were, a special apprentice under our act of assembly.

The only question remaining is, whether a breach is sufficiently alleged and proved? It appeared on the trial that the defendant below, tendered an assignment of the indenture. The operation of such an assignment, I think may well be questioned in any case. But this is a point I do not mean to decide. It is enough that it is not what the plaintiff had contracted for, as I have endeavored to show, and therefore he was not bound to accept of it.

But it was insisted that this action could not be maintained, till the plaintiff had been lawfully dispossessed of the boy. If this were a valid objection, it would seem to extend to the count, as well as the proof. No such dispossession is alleged; and the evidence is, that on the discovering of the true situation of the boy, the plaintiff offered to restore and tendered him to the defendant, and demanded the wagon again. It was refused by the defendant, and the boy was abandoned by the plaintiff. I hold, that the plaintiff was not bound to expose himself to an action for false imprisonment, or other remedial proceeding, wherein the recovery could not be limited by matter of calculation, but might be extended in the discretion of a jury, to any amount, not giving strong presumptive evidence of undue feeling, passion or prejudice. The case is not within the reason of that rule of law, if it should extend at all to a mere chattel, which requires a plaintiff to rest contented with the possession of the thing in question, till his right was questioned and disproved; where the recovery against him would be limited by fixed and known rules of law. If it were undoubtedly true, that the assignment of the indenture would pass a valid right to the possession and services of the boy, till the age of twenty-one; the plaintiff even then, according to what the counsel insisted on, could not abandon, but must still await the trial of his right. That is, must actually sustain a prosecution, which might result in unknown damages, not the subject of calculation, before he could have an action for a breach of warranty, no matter in how strong terms the contract might [page 269] have been made. This is a hazard to which the defendant has no right to expect the plaintiff to submit.

Upon the whole, I perceive no sufficient reason for disturbing the judgment of the court below, and it should be *affirmed.*

HORNBLOWER, C. J. and FORD, J. concurred.

Commentary: The case below is interesting in two ways. First, it looks as if the court orders that Kate's enslavers do not send her out of the state until the court can take a look at the case. Secondly, notice the note. Kate's enslavers will not answer the charge about their likely abuse of Kate "until a sufficient Prosecutor should be indorsed [sic] on the Habeas

Corpus, and Security given for the Costs." The court overruled Kate's enslavers and the enslavers' lawyers provided the court assurance that Kate would not be abused.

September Term, 1787.

The STATE *against* JOHN B. OLIVER *and his* Wife

On Habeas Corpus *of Negro* Kate.

The Court after hearing the Arguments of Counsel, *are of Opinion*, that the said John B. Oliver enter into Recognizance in Five Hundred Pounds, conditioned that he do [sic] not send or suffer to be sent, the Negro Kate mentioned in the said Habeas Corpus, out of this State, till the Court shall take further Order therein at the next Term. Recognizance entered into accordingly by the said John B. Oliver.

The Attorney General and Elisha Boudinot for State.

Elias Boudinot and Aaron Ogden for Defendants.

Note, *The Counsel for the Defendants in this Case, contended that they ought not be compelled to answer the Allegation of Abuse, because, as the Habeas Corpus, was in common form to bring the Body, and no Cause in particular alledged* [sic], *they could not be presumed to come prepared to answer any thing* [sic] *but the illegal Detainer of the Negro as a Slave, and insisted that they ought not to be compelled to answer this until a sufficient Prosecutor should be indorsed* [sic] *on the Habeas Corpus, and Security given for the Costs. All this the Court over ruled* [sic]. *The Counsel for the Defendants undertook that the Negro should not be ill-treated, and the dispute was afterwards settled and the Court heard nothing further of the Affair*.

Part IV

Passages from books in the New Jersey Historical Society, Hornblower's Biography, and Hornblower's Opinion

-*Twin Rivers: The Raritan and the Passaic*, Harry Emerson Wildes, Farrur and Rinehart, Incorporated. New York, 1943.

"Newark was a workshop for slaveowners; it shod the South supplied it with saddles, bridles, whips and harness, built the carriages in which the gentry rode, wove cloth, made hats and ground flour for the use of Dixie. Princeton was the slavemasters' preferred college, Elizabeth their social outpost in the North…" (297).

"For every Negro imported [from the slave trade], a Jerseyman received a bonus of 175 acres" (297).

-From Jack Cudjo: *Newark's Revolutionary Soldier & First Black Businessman*. Kirkus. New York, 2012. Kofi Ayim

"Cudo was a Newark slave who fought on behalf of his master, Benjamin Coe during the Revolutionary War. According to Charles Cummings, Cudjo's 'military service was associated with Morris County and not his home county of Essex. The reason for this was that he chose to serve under Captain Peter Dickerson" (48).

-Was a member of the 1st Battalion, 1st company of the Revolutionary Army.

-The Trouble with Minna: A Case of Slavery and Emancipation in the Antebellum North, by Hendrik Hartog. UNC Press, Chapel Hill, (2018).

Below is a passage on Chief Justice Hornblower

"Now let's consider the early legal life of another important character in our history, Chief Justice Joseph Hornblower…After his death in 1862, Hornblower's biographers and memorialists all emphasized and celebrated his antislavery credentials. One obituary characterized him as always 'a practical anti-slavery man,' who did his best to extinguish the last remnants of the Slavery institution which lingered in some portions of his State.' In 1836, he had challenged the enforceability—or at least the reach—into New Jersey of the federal Fugitive Slave Act. In 1844, as a member of the convention convened to draft a new state constitution, he argued strenuously for an absolute abolition of slavery, with no success. In 1845, in *State v. Post,* he argued that the constitutional statement of rights that opened the new state constitution made slavery an impossibility. Once again, though, he argued as a dissenter, without success. In 1857, as an old man, he wrote a young admirer that he despaired for his country because of the power of that slaveholders wielded nationally. He had 'lived to see my country in the hands of, and under the despotic rule of a few hundred thousand of lordly, slaveholding aristocrats, who are trampling out the very life blood of all American patriotism, and making the whole machinery of our government tributary to the perpetuation of the most anti-republican, soul-destroying, unchristian, inhuman and cruel institution, that ever cursed the human family.'

"Earlier on, however, as a family member and a young lawyer, he had lived and practiced law within New Jersey's regime of slavery and very gradual emancipation. How comfortably he lived within that regime it is impossible to say. But we have to assume that he managed to reconcile his work life and his household and family life with his principles, even as he maintained his membership in manumission societies. He knew how to be a

slaveholder, at least a New Jersey slaveholder, and he understood and worked within the terms of New Jersey law.

"In 1823, he and his siblings manumitted a slave, Sarah, identified as having been their father's slave. Josiah Hornblower, Joseph's father, had died in 1809, fourteen years earlier. After his death, the inventory to his estate, for which Joseph served as executor, had included five enslaved people: two men each worth $200, one man worth $120, a "Negro Girl" worth $50, and a second "Girl" named Sal, who was worth only $20.

"I suspect that Sal was the same woman that Joseph Hornblower and his brothers (and one brother-in-law) manumitted fourteen years later, as Sarah. But where had she lived between Josiah's death and her manumission? Presumably, the slaves Josiah Hornblower had possessed at his death had either been sold or, more likely, been distributed among his four children (with appropriate accounting and setoff). Thus, it is possible that she lived as a slave in Joseph Hornblower's household."

"In 1817 and 1818, Joseph Hornblower, who lived in Newark, manumitted his own slave: a woman, Molly [or Mary – I confirmed this in the archive], and a man, Benjamin. Obviously those acts required us to conclude that up until that point, well into his adulthood, he had kept slaves in his own household. Census records for 1820 no longer exist in New Jersey, so it is impossible to know if he still had slaves after 1818. There were, however, no slaves listed on his 1830 census form, although there were 'free colored persons' living in his household: a male between the ages of ten and twenty-three, and two women—one between theages of twenty-four and thirty-five, and the other between the ages of thirty-six and fifty-four. They might well have been his former slaves." (41-42)

…

Opinion of Chief Justice Hornblower on the Fugitive Slave Law.

This pamphlet was published in 1851, one year after the passage of the Fugitive Slave Act of 1850. I have written the pamphlet in its entirety. Be sure to see the attached linked to see how the pamphlet looked:

https://archive.org/details/opinionofchiefju00horn/page/n5

Commentary: Hornblower makes a number of points in his decision. One of the most salient is that although the Fugitive Slave Act of 1793 requires that fugitive slaves be returned to their enslavers, there is nothing stated in the act that regulates how a state is to determine one's status as an enslaved person. That question is left to the states to decide. Furthermore, the burden is on the enslaver to prove that the alleged fugitive slave is, in fact, a slave that he owns. Since that is a question of fact, Hornblower believes it is one for a jury to decide. This is a different reading and a unique opinion during its time.

…

"The following is the opinion of the distinguished Chief Justice of New Jersey, an extract from which was quoted at a late political convention in Ohio, and reported in our columns. Though it was given fifteen years ago, we are happy to say that its opinions continue to be the opinions of the venerable author, while the argument is as impregnable and unchangeable as the everlasting principles of truth and justice."

New Jersey Superior Court, February Term, 1836.

The State v. The Sheriff of Burlington.—In Habeas Corpus: in the case of Nathan, al dict: Alex. Helmsly, a colored man.

"Upon application in behalf of the prisoner, the writ of Habeas Corpus was allowed by the Chief Justice, returnable at chambers. When the prisoners was brought up, the care

presenting some difficulties, the Chief Justice remanded the prisoner with instructions to the Sheriff to have him, together with the cause of his caption and detention, at the bar of this court on the first day of this term.

"By the Sheriff's return, it appears that the prisoner had been arrested on a warrant issued by Judge Haywood, of the county of Burlington, and committed to the common jail of said county at the instance of one Wiloughby, acting as the agent of a man by the name of _____, in the state of Maryland, and who, as executor of a deceased person, claimed the prisoner as a runaway slave.

"The case was argued by Mr. W. Halsted and by Mr. Frelinghuysen, in behalf of the prisoner, and by Mr. Clark and Mr. Brown for the claimant.

"The Judges delivered opinions *seriatim*; all, however, concurring in discharging the prisoner out of the cutstody of the Sheriff.

"Hornblower, Ch. Just.—By the 3d clause of the 2d sect of the 4th art. of the Constitution of the United States, it is declared that "No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequences of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

"Upon this subject, both the Congress of the United States and the General Assembly of this state have undertaken to legislate, and have passed conflicting laws in regard to it, not indeed in direct opposition to each other, but nevertheless conflicting, because dissimilar laws. They prescribe different modes of proceeding, and seek to enforce them by different sanctions. Both cannot be pursued at one and the same time, and one only, I apprehend, must be paramount.

"By the 3d sect. of an act of Congress passed the 12th February, 1793, entitled 'An act respecting fugitives from justice, and persons escaping from the service of their masters, it is enacted that the person to whom such service or labor may be due, his agent or attorney may seize or arrest such fugitive, (without proof or warrant,) and take him or her before any Judge of the Circuit or District Court of the United States, or before any magistrate of a county, city, or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, taken before, and certified by, a magistrate of any such state or territory that the person so seized or arrested doth, under the laws of the state or territory from which he or she fled, owe service or labor to the person claiming him, when it shall be the duty of the judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be a sufficient warrant for removing the said fugitive from labor to the state or territory from which he or she fled.'

(page 4) "**This, it must be admitted, is a summary and dangerous proceeding, and affords but little protection or security to the free colored man, who may be falsely claimed as a fugitive from labor, or whose identity may be mistaken.**

"The provisions of the act of this state (Harr. comp. 146) are more humane and better calculated to prevent frauds and oppression. But the question arises, which shall prevail, the act of Congress, or the law of this state?

By the second clause of the sixth article of the Constitution of the United States, it is declared that the constitution and the laws of the United State, '*made in pursuance thereof*,' shall be the SUPREME law of the land, and that the judges in every state shall be bound thereby, 'any thing [sic] in the constitution or laws of any state to the contrary notwithstanding.' If, then, Congress has a right to legislate on this subject, the act of Congress must prevail, and the statute

of New Jersey is no better than a dead letter. They cannot both be the SUPREME law of the land and constitute the rule of action in one and the same matter. The judges of this state are bound by the act of Congress, any thing in the constitution or law of this state to the contrary notwithstanding. If both acts were precisely the same in all their provisions and sanctions, yet a proceeding in conformity therewith would derive all its authority from the act of Congress and not from the law of this state. But the provisions of the two statutes are very dissimilar, and as the proceedings of this case profess to be in pursuance of the act of this state, it follows, of course, upon the supposition that Congress has a right to legislate in the matter, that the prisoner has been unlawfully committed and ought to be discharged out of the custody of the Sheriff. Upon this ground I might refrain from all further discussion, and render my judgment at once; **but then I should be understood as fully admitting the right of Congress to legislate upon the subject, an admission I am by no means prepared to make, any more than I am to express a contrary opinion. I intend only to assign the reasons why I do not at once admit the supremacy of the act of Congress, reserving to myself the right of forming and expressing a final decision hereafter, if in this or in any other case such a decision shall become necessary.**

"The 1st and 2d sections of the 4th article of the Constitution of the United State are declarative of certain international principles, agreed upon between the parties to that instrument: 1st. That full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. 2dly. That the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. 3dly. That persons fleeing from justice, and found in another state, shall be delivered up &c [et cetera]. And 4thly. That persons held to labor or service in one state, and escaping into another shall be surrendered to the party to

whom such labor or service is due. By adopting the constitution, the several states became bound to carry out in practice these several constitutional principles; but whether the manner of doing so is to be regulated by state legislation, or by general acts of Congress, is the question. The framers of the constitution thought proper (and it is to be supposed that they did so for some sufficient reason) to arrange the four particulars above mentioned under two distinct sections. By the 1st, it is provided that full faith and credit shall be given in each state to the public acts, records, &c. of every other state. But it does not stop here: if it did, this provision would stand in the same category with those contained in the next section, and there would seem to have been no reason for the distribution of these principles in to [sic: into] distinct sections. But it is added: 'And the Congress *may*, by general laws, prescribe the *manner* in which said acts, &c., shall be proved, and the effect thereof.' This follows the 2d section, embracing the other three principles above mentioned, but *without* annexing to them, or to either of them, the right of legislation by the general government. Hence there seems to arise a fair argument that the framers of the constitution had no idea that the simple statement of these several international stipulations, would confer on Congress any legislative power concerning them, but as they designed to subject the first particular to the control and regulation of the general government, they arranged it under a distinct section, and in express terms annexed to it the power of legislation, and then throw the other three stipulations together with another section of the instrument, without saying anything more, because no such power was intended to be given to Congress respecting them. A different construction would expose the authors of the constitution to the charge of encumbering it with a useless provision, worse indeed than useless, because, if simply writing down and adopting the several conventional principles comprehended in the second section, carried along with them a right in the general government to provide by law for the manner in which they

should be executed, the express grant of such a power in the preceding section was not only useless, but calculated to create doubt and uncertainty as to the right of Congress to legislate on matters contained in the second section. For if the power of legislation is impliedly annexed to the simple stipulations of the second section, it is difficult to perceive why the same implication would not have arisen upon the simple declaration that full faith and credit should be given to the public acts of one state, in the courts of every other state. That the constitution has in express terms given the **(page 5)** right of legislation to Congress in reference to one of the four conventional items above mentioned, and remained silent in respect to the others, is to my mind a strong argument that no such power was intended to be given in connection with them.

"Again. Are there no sound political as well as judicial reasons, for granting Congress the power of legislation in one case, and withholding it in the other? No one state could prescribe the manner in which its own public acts, records and judicial proceedings should be proved in the courts of another state. The rule of evidence is *lex loci*, and every court might have required a different mode of proof. This would have been very inconvenient. It was desirable, therefore, that there should be one uniform rule throughout the country on the subject. But the manner and form in which public acts and records should be exemplified, was a matter about which Congress might safely legislate without discomposing the pride and complacency of state sovereignty, and without the danger of coming into conflict with state institutions and local jurisprudence. Not so in respect to the other stipulations. Legislation by Congress regulating the manner in which a citizen of one state should be secured and protected in the enjoyment of his citizenship in another, would cover a broad field, and lead to the most unhappy results. So, too, general acts of Congress prescribing by what persons of officers, with or without process, refugees from justice, or person escaping from labor may be seized or arrested in one state, and forcibly carried into

another, can hardly fail to bring the general government into conflict with the state authorities, and the prejudices of local communities. Such to some extent has already been the case in this and other states. A constructive power of legislation in Congress is not a favorite doctrine of the present day. **By a large portion of the country, the right of Congress to legislate on the subject of slavery at all, even in the district and territories over which it had exclusive jurisdiction, is denied,** ***and surely by such it will not be insisted that Congress has a constructive right to prescribe the manner in which persons residing in the free states, shall be arrested, imprisoned, delivered up, and transferred from one state to another, simply because they are claimed as slaves.***

"In short, if the power of legislation upon this subject, is not given to Congress in the 2d section of the 4th article of the constitution, it cannot, I think, be found in that instrument. The last clause of the 8th section of the 1st article, gives to Congress a right to make all laws which shall be necessary and proper for carrying into execution all the *powers* vested by the constitution in the government of the United States, or in any department or office thereof. But the provisions of the 2d section of the 4th article of the constitution covers no grant to, confides no trust, and vests no *powers* in the government of the United States. **The language of the whole office of that section is to establish certain principles and rules of action, by which the contracting parties are to be governed in certain specified cases. The stipulations respecting the rights of citizenship, and the delivery of persons fleeing from justice, or escaping from bondage, are not grants of power to the general government, to be executed by it, in derogation of state authority; but they are in the nature of treaty stipulations, resting for their fulfilment upon the enlightened patriotism and good faith of the several states.**

"The argument in favor of Congressional legislation, founded or the suggestion that some of the states might refuse a compliance with these constitutional provision, or neglect to pass any laws to carry them into effect, is entitled to no weight. Such refusal would amount to a violation of the national compact, and is not to be presumed or anticipated. The same argument, carried out in its results, would invest the general government with almost unlimited power, and extend its constructive rights far beyond any thing [sic] that has ever been contended for. The American people would not long submit to a course of legislation by Congress founded on no better authority than the unjust assumption that the states, if left to themselves, would not in good faith carry into effect the provisions of the constitution.

"But as I have said before, it is not my intention to express any definitive opinion on the validity of the act of Congress, nor is it necessary to do so in this case, as the proceeding in question has not been in conformity with the provisions of that act, but in pursuance of the law of this state. The counsel for the prisoner have [sic] insisted upon his enlargement, on the ground that his arrest and commitment were irregular, and unauthorized by the statute. But a preliminary, and to my mind, a very grave and important question arises. **Admitting the right of state legislation on this subject (which I am not disposed to deny,) is the law of this state a constitutional one? It authorizes the seizure, and transfer out of this state, of persons residing here, under the protection of our laws, claiming to be, and who in fact may be, free-born native inhabitants, the owners of property, and the fathers of families, upon a summary hearing before a single judge, without the intervention of a jury, and without appeal! Can such be a constitutional law?** ***Neither the prisoner at the bar, nor the most wretched and obscure individual in the state, whether young or old, bond or free, can be deprived of his liberty or his property, or be subjected to any forfeitures, pains or penalties,***

without a trial by jury in the due course of law. If the prisoner at the bar, instead of being arrested as **(page 6)** a slave, had been sued for forty shillings, it could not have been recovered of him, but by a verdict of a jury. If a man had come from another state and laid claim to any chattel in the possession of the prisoner, he could not have taken it from him, but by due course of law. And yet, by this act, a man may be compelled to join issue before a single judge—a judge of his adversary's own choosing, and in a summary way, not according to the course of common law—an issue, it may be, more awful, more agonizing to his soul, than one involving his *life* and *death*—an issue, on the decision of which hangs that tremendous question, whether he is to be separated forcibly, and for ever [sic], from his wife and children, or be permitted to enjoy with them the liberty he inherited, and the property he has earned. Whether he is to be dragged in chains to a distant land, and doomed to perpetual slavery, or continue to breathe the air and enjoy the blessings of freedom. An issue, not only involving the question whether he was liberated, or actually fled from his master; but, it may be, involving the identity of his person. ***He may be falsely accused of escaping from his master, or he may be claimed by mistake for one who has actually fled. These are questions of fact, upon proof or failure of proof of which, depend results of deep and affecting interest to the individual. If every colored man, woman and child were slaves, the danger of oppression and injustices by an unfounded or mistaken claim would be of little consequence. But such is not the fact.*** On the 4th of July next, there will not be a slave in the state under the age of thirty-two years. All that have been born since the 4th July, 1804 [Gradual Emancipation Act], are *freemen*; and by the laws and constitution of this state, every question affecting their rights to property, or of personal liberty and security, is to be *tried* and settled in the same solemn manner and by the same tribunals by which the rights of others are to be determined. **By the 23d act of our constitution, the trial by jury is guaranteed and**

preserved to us. Who, then, shall take it away from any human being living under the protection of our laws? But, it is said, the Constitution of the United States is paramount to that of our state, and by the former we are bound to deliver up persons escaping from labor or service. Granted; and let it be executed fully, fairly, and with judicial firmness and integrity. **But what does it require? That the person *claimed* shall be given up? If it did so, I admit there can be no trial, no appeal—the *claim* would be final and conclusive. But such is not the language or the meaning of the constitution.** In respect to refugees from justice, the case is very different. The constitution declares that persons *charged* with crime in any state, shall on demand of the EXECUTIVE authority of that state, be delivered up (Clark's case, 9 Wond: p. 212). Here is to be an official act—the demand is made by the public authorities, founded simply upon a *charge* of crime.

"**This accused is to be delivered up, not to be punished, not to be detained for life, but to be *tried,* and if acquitted, to be set at liberty.** Not so in the matter under consideration. The person claimed is not to be delivered up *unless* he was 'held to labor or service' in another state; that is, unless he was *lawfully* held to service or labor there; nor *unless* he has *fled* or *escaped* into this state; that is, come into this state without the consent of his owner. **And he is delivered up, not to the claimant but only to the person 'to whom such labor or service is due.' *Here then are facts to be ascertained, not to be taken for granted, but to be lawfully proved and judicially determined; facts which lie at the foundation of the claimant's rights; facts which involve the dearest rights of a human being, and which the claimant must establish according to law, before he can acquire any right to carry away his victim.* And what legislator, under our constitution, has a right to say that these facts shall be tried and definitely settled in a summary manner, and without the verdict of a jury? The**

Constitution of the United States does not require any such departure from first principles. It only demands that we shall deliver up to his owner *a runaway slave,* when he has been proved to be such in due course of law. It does not require us to do it without proof, nor upon less or different proof than such as would be sufficient to establish any other issuable fact in our courts of justice.

A case has been cited from 5 Searg & Rawl 62, in which it is said that the Court of Pennsylvania decided, that it would not review the proceedings before the inferior magistrate, because the Constitution of the United States requires *the slave* to be given up; and when it was urged that whether *slave* or *not slave* is a question to be settled *here*, the answer borrowed from that case was, that no injustice would be done to the prisoner, because he can assert his freedom in the place to which he may be transported, and we are bound to presume that he will there have a fair trial. **So long as I sit upon this bench, I never can, no, I never will, yield to such a doctrine. What, first transport a man out of the state, on the charge of his being a slave, and try the truth of the allegation afterwards—separate him from the place, it may be, of his nativity—the abode of his relatives, his friends, and his witnesses—transport him in chains to Missouri or Arkansas, with the cold comfort that if a freeman he may there assert and establish his freedom!** No, if a person comes into this state, and *here* claims the servitude of a human being, whether white or black, *here* he must prove his case, and here prove it according to law, and if our legislature have a right to create and regulate a tribunal before whom such proof is to be made, this court, unless restrained (7) by the same authority, have a right and are solemnly bound to review and correct its proceedings.

"But without pronouncing a settled opinion that the act of this state is unconstitutional on the ground that it deprives the accused of a trial by jury, it remains to be considered whether the provisions of the statute have been complied with.

…

"The remainder of the opinion is occupied in showing, that the proceedings under the statute of New Jersey were irregular, and that the prisoner was entitled to his discharge. It is interesting to observe, that the doctrine maintained by the Chief Justice, that the constitution gives no power to Congress to legislate respecting fugitive slaves, but imposes the obligation of surrendering them on the state authorities, is most fully supported by so distinguished an expounder of the constitution as Mr. Webster. In his speech of 7th March, 1850, he thus frankly and boldly expressed himself:

> 'I have always thought that the constitution addressed itself to the legislatures of the states themselves, or to the states themselves. It says that those persons escaping into other states, shall be delivered up, and I confess I have always been of opinion that that was an injunction upon the states themselves. It is said that a person escaping into another state, and coming therefore within the jurisdiction of the state, shall be delivered up.'

It seems to be me that the plain import of the passage is, that the state itself, in obedience to the injunction, shall cause him to be delivered up. This is my judgment. I have always entertained it, and I ENTERTAIN IT NOW."

"Of course, if this 'judgment' be correct, the acts of 1793 and 1850 are both unconstitutional. Mr. Webster submits, indeed, to the decision of the Supreme Court, but, notwithstanding that decision, his judgment, he tells us, remains unchanged. One would think others might be permitted, without insult, to hold the same judgment with himself, but it seems

not. In his letter to the New York Union-Saving Committee of October, 1850, he says of the Fugitive law—"I have heard no man whose opinion is worth regarding, deny its constitutionality;" and in his Albany speech, last May, he was pleased to tell the crowd—"You can't find a man in the profession in New York, whose income reaches thirty pounds a year, who will stake his professional reputation against it."

The Chief Justice's judgment on the want of constitutional power in Congress to pass the Fugitive law, like Mr. Webster's, remains unchanged; but the following lines from a letter recently addressed by him to a gentleman in New York, shows that, unlike Mr. Webster, he freely permits others to hold the same judgment with himself:

"Be assured, my dear sir, my judgment, whether it may be worth, has been for years, and now is, in perfect accordance with yours, in relation to the unconstitutionality of the Fugitive Slave laws of 1793 and 1850. The enactment of those laws, and the fierce and unforgiving temper in which they are justified by 'strict constructionists,' who can find no authority in the constitution to create a national currency, to protect American industry, or to improve internal navigation and harbors, illustrate the melancholy fact, that among men, interest imaginary or real, pecuniary or political, too often controls the judgment and overrules every principle of virtue, integrity, humanity, and the plainest precepts of Christian morality."

Part V

Bill of Sale of Negro George

"Know all men by these presents that we John J. Faesch and Eben H. Peirson of the Executors of the estate of John Darbe deceased of County of Morris and State of New Jersey for and in consideration of the sum of three hundred Dollars to us in hand paid at and before the unsealing and delivery of these presents by Moses Tuttle Esq. of the said County of Morris the receipt whereof we do hereby acknowledge and ourselves to be therewith fully satisfied and intended and paid have granted, bargained, sold, released and by these presents do fully, clearly and absolutely grant, bargain, sell and release unto the said Moses Tuttle Esq. a Negro Slave named George. To have and to hold the said Negro man unto the said Moses Tuttle his executors, administrators, and assigns forever. And we the said John J. Faesch and Eben H. Pierson executors afs^{d} [aforesaid] for ourselves, our heirs executors and administrators do covenant and agree to and with the said Moses Tuttle his executors, administrators and assigns to warrant and defend the sale of the above named Negro Slave against all persons whatsoever. In witness wherefore we hereunto set out our hands and seals this 23rd day May AD 1806.

John J. Faesch
One of the executors of John Darbe deceased

Eben H. Pierson
One of the executors of John Darke(?) Deceased

Signed Sealed and delivered
in the presence of

N.B. The words executors of the estate of John Darbe Deceased, between the first second line, and the words executors afs^{d} [afs^{d}] between the eleventh & twelfth the lines from the beginning being interlined(?) before sealing &c

Geo. D. Brinckerhoff
David J. Bates

Received July 19th 1806 of Moses Tuttle the full consideration of the within bill of sale.
John J. Faesch one of the executors
of John Darbe Deceased

For Value Rec^{d} I do hereby Assign and transfer all my right, title, claim, and demand to the within Bill of Sale, Likewise the within named Negro Slave George, to John M. Meeker of the Township of Chatham and County of Morris, and to his heirs and Assigns forever, and to his and their only proper use benefit and Behoof. In Witness whereof I have hereunto set my hand and seal this Fourteenth day of July One thousand eight hundred and eight.

Moses Tuttle

Signed, sealed, and delivered
In presence of
Thomas Price
Pohabod(?) Burnet

John Jacob Faesch &
David ------
Bill of Sale for George

Received in full by cash & date I pay by

Moses Tuttle

14 of ---- 1808

Valur Rec^{d} I do hereby assign Transfer and set over all my right Title Claim and demand to the within Bill of sale, Likewise the within named Negro Slave George to Archibald Sayre of the Township of Chattam County of Morris & to his heirs & assigns for the full Term of Nine(?) years and to his and their only proper use benefit & Behoof.

In Witness whereof I have hereunto set my hand & seal this first day of May(?) Eighteen hundred & Ten.

John Meeker

Signed, sealed & delivered
In presence of
------- Brittin