The Force Act in Pennsylvania

OF ALL ironies in the operation of American law, one of the wriest is the unlooked-for result of the Force Bill passed by Congress in 1833.[1] Designed as a countermeasure to South Carolina's nullification act, the Force Act was in its turn nullified by that state.[2] Few events in our history have been studied in closer detail than the dangerous situation which this act was expected to cure, the intensification of the crisis resulting from its enactment, and the compromise which allowed the nation to draw the deep breath of relief.[3] What turned out to be so startling about it was that in its first implementation this law was not called into action against South Carolina, or against any other southern state. Its enforcement was to be in a very different part of the country.

Rarely has the Congress found it necessary to force a state to stop obstructing a federal law. Congressional legislation is continually enacted over the opposition of representatives of some of the states or sections of the country, yet orderly enforcement is taken for granted, even if only by passive acquiescence or, at worst, grudging submission. Yet in 1832 a national law met utter rejection by a state; the federal and the state administrations then took what each considered its fundamental and final position, and the confrontation of powers seemed incapable of peaceful resolution.

Nullification was the settled policy of South Carolina, which insisted that she would use her full power to prevent the operation of the tariff law within her boundaries. To counter this threat the Force Act gave the President power to use the armed forces of the nation to collect duties, to seize ships and cargoes when duties were not paid,

1 *U. S. Statutes at Large*, IV, 632, Mar. 2, 1833.

2 *Statutes at Large of South Carolina*, I, 329, ff., 400–401, in H. S. Commager, ed., *Documents of American History* (Fifth Edition), 261, 269.

3 "The compromise tariff and the Force Bill became law with Jackson's signatures on the same day, March 2, 1833, thus offering to South Carolina the choice between peace and conflict." John C. Calhoun, among others, worked for her acceptance of the compromise. Charles S. Sydnor, *The Development of Southern Sectionalism* (Baton Rouge, 1948), 217.

and to suppress combinations of persons obstructing enforcement of national law.[4] So much for the specifically physical force. Further, to protect federal officers against interference or retaliation by a hostile state's police or legal process, Congress bestowed on such officers the right to remove into federal courts state prosecutions or civil suits started against them for having acted under revenue laws of the United States,[5] and to sue for any damage done to them for having enforced federal law.[6]

This removal of cases was, after all, only a re-establishment of procedures which had defended revenue officers in the past.[7] There was, however, another section of the Force Act which carried a new idea in general terms without reference to revenue laws or removal of cases. It provided that if a state imprisoned a federal officer, or any other person, who refused to obey a state's mandate or who violated state law through acting under national statutes or orders of a United States judge, then a federal district judge or Supreme Court Justice was authorized to issue a writ of habeas corpus to release him from state imprisonment, without any further process.[8] Plainly stated, the directly operative nature of the writ of habeas corpus meant that the federal judge ordered United States officers to wrest the prisoner out of the hands of state officers. Thus two sovereign powers, federal and state, could be brought to grips with each other.

Armed with this law the United States Government firmly faced an unflinching South Carolina. At the very least, any use of the Force Act would arouse the state's bitterest resentment; at worst, her armed response. Happily, as it turned out, the question of whether this law would or could be enforced in South Carolina in 1833 did not

4 *U. S. Statutes at Large*, IV, 632, sec. 1, 5. These sections expired at the end of the next session of Congress. *Ibid.*, sec. 8.

5 *Ibid.*, sec. 3.

6 *Ibid.*, sec. 2.

7 See *U. S. Statutes at Large*, III, 195, Feb. 4, 1815, sec. 8.

8 *Ibid.*, IV, 632, sec. 7: "either of the justices of the Supreme Court, or a judge of any district court of the United States, in addition to the authority already conferred by law, shall have power to grant writs of habeas corpus in all cases of a prisoner or prisoners, in jail or confinement, where he or they shall be committed or confined on, or by any authority or law, for any act done, or omitted to be done, in pursuance of a law of the United States, or any order, process, or decree, of any judge or court thereof, any thing in any act of Congress to the contrary notwithstanding."

come to the test. But it remained on the statute books, twenty years asleep.

The crisis of 1832–1833 had revolved around the question of the tariff; the central problem was how much of the nation's tax burden was to be shouldered by South Carolina and the South.[9] Indeed, the Force Act itself was entitled, appropriately enough, "An Act further to provide for the collection of duties on imports." The far-different occasion which was to call out this effective but risky instrument arose during the 1850's in the excitement over the recovery of fugitive slaves. This issue produced a situation of the gravest national danger and it was in dealing with this problem that the habeas corpus provision of the Force Act found its first usefulness.

Public disorder attendant on the recapture of a runaway was an old problem that had not been cured by the Fugitive Slave Law of 1793.[10] On the contrary, northerners were increasingly disturbed by the simplicity of the recovery procedure. The claimant seized his fugitive without a warrant, took him before any federal or state judge, and, after satisfying the court that the person did owe service under the law of the state from which he had fled,[11] received a certificate for the runaway's return to the slave state. Since there were so few United States judges, the state judicial and police machinery furnished the principal means of sending slaves back to the plantation.

Of course there were unintentional mistakes in identifying supposed runaways. There were also fraudulent claims upon free men[12]

9 Of course, South Carolina contended that any tariff for protection was unconstitutional. Commager, 261.

10 *U. S. Statutes at Large*, I 302, Feb. 12, 1793. General Washington wrote in 1786 that "there are numbers who had rather facilitate an escape than apprehend a runaway." Washington to William Drayton, Nov. 20, 1786, John C. Fitzpatrick, ed., *The Writings of George Washington* (Washington, 1939), XXIX, 78–79. Ten years later, when his wife's personal maid eloped with a Frenchman, he preferred to lose the slave rather than "excite a mob or riot, which might be the case if she has adherents or even uneasy Sensations in the minds of well-disposed citizens. . . ." Washington to Joseph Whipple, Nov. 28, 1796, *ibid.*, XXXV, 296–298.

11 A runaway could not invoke free state law to obtain freedom. United States Constitution, Art. IV, sec. 2, cl. 3.

12 According to Jacobus tenBroek, "the seizure of free Negroes, especially in the border states, who were unable in these circumstances to establish their freedom and who were hurried off to perpetual bondage under the force of law, was a frequent occurrence if not a systematic business." *Antislavery Origins of the Fourteenth Amendment* (Berkeley, 1951), 34.

and numerous outright kidnappings.[13] Many northerners became concerned that free persons were being taken into slavery; they questioned whether an alleged slave could really hope for trial in the state from which he was said to have run away, although southern statute books did contain provisions for determination of a claim of free status.[14] By the 1820's, free states began to scrutinize more carefully their public obligations toward people who were being removed to the South. Safeguards were instituted, notably trial by jury,[15] presumably only for the safety of free citizens. Slaveowners emphasized, however, that northern juries, tempted by antislavery principles, would make groundless findings of fact, and would release prisoners because the obligation of service, or identity, or the fact of an escape had not been proved.[16]

The situation changed somewhat, but from the southern viewpoint did not improve, when the United States Supreme Court held in Prigg *v.* Pennsylvania[17] that states had no obligation to assist in the recovery of fugitive slaves. Free states now forbade their agencies and officers to participate in any way in enforcing the Fugitive Slave Law.[18] Impossibly limited by withdrawal of state co-operation, faced

13 Professor Randall considered it "reasonably conjectured" that as many free persons were kidnapped into slavery as slaves who escaped from bondage. James G. Randall, *Civil War and Reconstruction* (Boston, 1937), 56.

14 See remarks of Senators Jeremiah Clemens of Alabama and James M. Mason of Virginia, *Congressional Globe*, 31st Cong., 1st Sess., App. 1124, 1125, Aug. 26, 1852. Allen Johnson, "The Constitutionality of the Fugitive Slave Acts," *Yale Law Journal*, XXXI (1921), 161–182, held that in some slave states provision did exist for hearing the claim of the slave in a summary manner and that it is not clear that "jury trial was either necessary or usual."

15 See, for example, *Acts of the General Assembly of the Commonwealth of Pennsylvania—Passed at a Session Which was Begun and held at the Borough of Harrisburg on Tuesday, the Sixth of December, 1825* (Harrisburg, 1826), 150–155. For summaries of other laws, see John C. Hurd, *The Law of Freedom and Bondage* (Boston, 1858–1862), II, 1–218.

16 If an owner brought his slave into a free jurisdiction and the slave refused to go back, the remedies of the constitutional fugitive slave clause were not available to the owner because there had been no "escape." Butler *v.* Hopper, 4 Federal Cases 904 (1806); *Ex parte* Simmons, 22 Federal Cases 151 (1823); Commonwealth *v.* Aves, 18 Pickering (Mass.) 193 (1836).

17 16 Peters 539, 613 (1842).

18 Pennsylvania punished public disturbances in recovering a slave with three months' imprisonment. Statute of Mar. 3, 1847, cited in Hurd, *Law of Freedom and Bondage*, II, 72–73. Massachusetts forbade the use of her jails to detain slaves. *Acts and Resolves Passed by the Legislature of Massachusetts in the Year 1843* (Boston, 1843), chap. 69, p. 33, Mar. 24, 1843, and so did Vermont, adding a penalty of five years in prison for state officials who helped federal officers. *Acts and Resolves Passed by the Legislature of The State of Vermont at their*

with the alternative of completely abandoning her right to runaways, the South called for help and received it in the broadened Fugitive Slave Law of 1850.[19]

The new law was effectively drawn. United States circuit courts appointed commissioners who were empowered to issue arrest warrants; federal marshals performed the arrests. Marshals who refused to execute the warrants or who allowed slaves to escape from custody were penalized.[20] A claimant need only make an affidavit that he feared an attempt was afoot to hinder his departure with his slave, and the United States government undertook at its own expense to deliver the runaway to him in his home state.[21] Anyone impeding the recovery of fugitives was to be punished severely.

Thus, Congress committed the national judiciary and its commissioners, the executive branch and its marshals, to the task of recovering fugitives. And thus federal officers replaced private persons as the direct antagonists of those who were opposed to the operation of the Fugitive Slave Law.

It did not necessarily follow that free states would allow federal officers to perform their duties unchecked. A respectable body of opinion supported the theory that in matters that were the concern of a state, especially personal liberty, a state could oversee all actions of national administrative officers. There was even some claim, at first cautiously advanced, that in extreme cases even the courts of the United States were not beyond the reach of a state's legal process.[22] Free states soon called these juridical principles into action.

October Session, 1843 (Montpelier, 1843), no. 15, 11–12. Other state laws are referred to in Charles Warren, *The Supreme Court in United States History* (Boston, 1932), II, 87, n. 2. Laws passed after 1850 are summarized in Marion G. McDougall, *Fugitive Slaves (1619–1865)* (Boston, 1891), 66–70.

19 *U. S. Statutes at Large*, IX, 462, Sept. 18, 1850.

20 Marshals in northern states might otherwise yield to pressure from neighbors, or to their own antislavery feelings.

21 Such a task could be expensive. Reclaiming one slave family caused such an uproar that it cost $30,000 to $40,000 to send them from Cincinnati back to Kentucky. Cincinnati *Daily Gazette*, Apr. 19, 1856.

22 Rollin C. Hurd, *A Treatise on the Right of Personal Liberty* (Albany, 1858), 166, 183, ff.; Hurd, *Law of Freedom and Bondage*, II, 522, n. If the matter were grievous enough, Jeremiah S. Black would intervene against a federal court. *Report of the Proceedings on the Writ of Habeas Corpus Issued by the Hon. John K. Kane in the Case of the United States of America ex. rel. John H. Wheeler v. Passmore Williamson* (Philadelphia, 1856), 42. So too would Chief Justice Lemuel Shaw of Massachusetts. Thomas Sims's Case, 7 Cushing (Mass.) 285, 309 (1851).

So, if there were those who hoped that the 1850 enlargements on the Fugitive Slave Law would be accepted by northerners who were already vigorously opposing the basic law passed in 1793, they were speedily disappointed. As with the tariff and South Carolina twenty years before, so now with the Fugitive Slave Law and the North. As the drive accelerated to repeal or to limit the statutes, both old and new, or to render them ineffective, the Federal Government's determination to enforce the law intensified. Conflict was inevitable between a state whose people were convinced of the wickedness of slavery and the Federal Government insistent upon obedience to the new law.

A fugitive slave episode which occurred in Pennsylvania, in 1853, raised direct questions, some legal, some practical. To begin with, as a result of the fierce hostility of many people toward slavecatchers, recovering fugitives in Pennsylvania had long been difficult. By 1850, it had even become dangerous.[23] Nevertheless, for its part the central government was fully prepared to cope with Pennsylvania's antipathy to the Fugitive Slave Law. When the statute of 1850 was adopted, United States Supreme Court Justice Robert C. Grier, himself a Pennsylvanian, vowed in the presence of a hostile courtroom audience in Philadelphia: "As the Lord liveth, and as my soul liveth, this court will administer this law in its full meaning and genuine spirit until the last hour that it remains on the statute book."[24] The very depth of this warning only reflected the justice's anticipation of continued resistance.

On September 3, 1853, a fugitive slave named William Thomas, who worked as a table waiter at Gilchrist's Phoenix Hotel in Wilkes-Barre, was surprised by two Virginians assisted by four United States deputy marshals. The party carried guns and a warrant issued under the Fugitive Slave Law. Thomas determined to resist. Armed only with the tools of his trade, he defended himself with two knives and a fork, wounding a deputy marshal in the head.[25] Although badly beaten after this initial success, Thomas managed to escape from the building and take refuge in a nearby pond, where he was found in the

23 As to the insurability of the life of a slavecatcher, see Hartman *v.* Keystone Insurance Company, 21 Pennsylvania State Reports 466, 471 (1853).

24 Charge to the Grand Jury (Judge Kane), Sept. 29, 1851, 30 Federal Cases 1047, 1048; Hurd, *Law of Freedom and Bondage*, II, 661, n. 1.

25 (Washington) *Daily National Intelligencer*, Oct. 14, 1853, citing *Philadelphia Inquirer.*

water by the arresting officers. Upon his refusal to come out and his swearing never to be taken alive, they fired several shots, probably inflicting a wound, but still Thomas would not surrender. In the face of the large crowd, which could generally be counted on to witness scenes such as this, and which had by now assembled, the marshals became uneasy. Concluding that Thomas would not give up, they announced that they did not wish to kill him and departed. With the help of local people Thomas then made his escape.[26]

Next, the power of the state was invoked to strike back at the United States officers. There came forward one William Gildersleeve, a Wilkes-Barre abolitionist, who complained to a justice of the peace that by their ferocious attack on the alleged runaway slave the officers of the national government had violated the laws of the sovereign Commonwealth of Pennsylvania. The state judge ordered the arrest of the federal marshals on a charge of assault and battery with intent to kill and they were seized and held to answer for their crime.

The questions in the case could be simple enough or difficult enough, depending on one's point of view. The Fugitive Slave Law made certificates issued under its authority conclusive of the right to remove the fugitive from the jurisdiction where found, and forbade interference or molestation by any process whatsoever.[27] But surely this did not mean that a federal officer could not be called to account for violating a state's criminal law. Even if such a violation might be justified as being required for enforcement of federal law, who was to decide whether this was or was not the case, or whether the violation was in fact unnecessary or, indeed, unauthorized by federal law? Finally, on the other side, who was to determine whether Pennsylvania's warrant of arrest might not be a mere subterfuge, a device for interfering with enforcement of national law?[28]

[26] *Philadelphia Public Ledger*, Oct. 6, 1853; *New York Times*, Oct. 26, 1853.

[27] *U. S. Statutes at Large*, IX, 462, sec. 6.

[28] Justice Grier put the subterfuge issue this way: "Let us look at the consequences. While the marshal's officer in this case is endeavoring to take the prisoner, a person swears to the information on which this warrant was issued, and puts it, we will suppose, into the hands of the sheriff, knowing the person charged to be acting under authority of the laws of the United States. Now, let us suppose the marshal's officer had succeeded in making the arrest, and the sheriff had attempted to execute process, what would have been the consequences? If the marshal resists, a contest ensues, which may be called, in fact, a war between officers, each acting

A nice dilemma! If a state punished officers of the central government who had pursued a course of conduct authorized under federal law, it was obvious that the operation of federal laws would be impaired to that extent. Yet, state courts might insist that constitutional rights invoked their dignity, independence, and responsibility for the protection of the personal privileges of the people within their jurisdiction. But the Federal Government and its courts felt an equal concern for the authority of the Constitution as they interpreted it. How could the United States come to the rescue of its officers, remove them from danger of state arrest, prosecution, and punishment?

The United States Marshal for the Eastern District of Pennsylvania, Francis M. Wynkoop, notified the authorities in Washington of the strong resistance he was meeting in enforcing the Fugitive Slave Law in Wilkes-Barre. Robert McClelland,[29] Secretary of the newly created Department of the Interior, telegraphed back that the law must be enforced. He ordered Wynkoop to use all reasonable means to that end. By direction of Secretary McClelland, United States Attorney J. W. Ashmead acted as counsel for the United States marshals.[30] Application for a writ of habeas corpus was made to Mr. Justice Grier who was then riding the circuit and the writ was issued.

Since the state authorities were acting on the theory that the matter was simply one of violation of state law, their return to Justice Grier's writ made no reference to the prisoners as United States officers. It recited merely that the subjects of the writ were properly detained on charges of crime against the Commonwealth of Pennsylvania. Generally, now as then, this answer can be depended upon to halt all further proceedings in the federal court, and the writ is not executed. Justice Grier, however, asserted his right to receive evidence of the actual nature of the facts in the state's criminal process

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and justifying his conduct under proof from his particular sovereign. If the sheriff succeeds, the fugitive is discharged and the officer of the United States is conveyed to prison. If such a state of affairs can be brought about at the instance of any person, who is willing to swear without scruple to that which he does not know to be true, or perhaps knows to be false, then indeed, has been discovered a safe mode of nullifying the constitution and laws of the United States." Thomas *v.* Crossin, *American Law Register*, III, 144, 151.

29 McClelland was born in Greencastle, Pennsylvania. When he was twenty-six he moved to Michigan where he made his career.

30 (Washington) *Daily National Intelligencer*, Oct. 7, 1853.

which proved that the prisoners were national officers arrested for doing their duty. Having examined the case he set the marshals free.[31]

In claiming power to release Wynkoop and his men from Pennsylvania's custody, Grier manifested the deep anger of United States authorities that a state should dare to punish federal marshals in such a case. "If any tupenny magistrate," he growled, "or any unprincipled interloper [*i.e., Gildersleeve*] can come in and cause to be arrested the officers of the United States whenever they please, it is a sad affair." Admittedly the United States can exercise only the powers granted to that government; still, in respect to the recovery of fugitive slaves the power "is clear, undoubted and conclusive, and theirs is the sovereign authority."[32] As to whether the marshals had exceeded the proper bounds of force, Justice Grier found them entirely blameless, excepting only for "perhaps a want of sufficient courage and perseverance"[33] in their effort to apprehend the runaway.

The marshals, having been rescued by Justice Grier from arrest under the warrant of the Pennsylvania justice of the peace, were next subjected to civil suits in the state courts for bodily injury inflicted on William Thomas.[34] Since arrest is allowed in certain kinds of civil action, of which assault is one, all the marshals were again taken into custody under an order signed by Justice George W. Woodward of the Pennsylvania Supreme Court.[35] Bail was fixed at $5,000, and when the marshals failed to post this sum they were remanded to jail in the custody of Sheriff Samuel Allen of Philadelphia County. There they sought a writ of habeas corpus to compel the sheriff to set them at liberty. United States District Judge John K. Kane held that arrest under a state's civil process, equally with a state's criminal prosecution, was subject to scrutiny by a federal court. He declared his right and intention to go behind the state's return to the writ and he did so. Once more the marshals went free.

31 *Ex parte* Jenkins, 13 Federal Cases 445, 451 (1853).

32 *Philadelphia Public Ledger*, Oct. 6, 1853.

33 *Ibid.*, Oct. 17, 1853; Thomas *v.* Crossin, *American Law Register*, II (1854), 144, 156.

34 *Ibid.*, III (1855), 207. Thomas could not sign an affidavit because he did not wish to disclose his whereabouts. The complaint was made by others on his behalf. When the first Thomas case came up in federal court, the judge refused to "permit mere volunteers to interfere for the purpose of embroiling the state of Pennsylvania against her will with the United States. . . ." *Ex parte* Jenkins, 13 Federal Cases 445, 446.

35 The order, *capias ad respondendum in trespass, vi et armis*, was signed on Jan. 31, 1854.

But Pennsylvania did not retire. The state authorities obtained an indictment, handed up by the Luzerne County grand jury, charging the marshals with the crimes of riot, assault and battery, and assault with intent to kill. This action was followed by a bench warrant of outlawry, issued from the Court of Quarter Sessions, and the luckless marshals were arrested for a third time. Neither the indictment nor the warrant set forth the fact that the defendants were United States officers, or that they had acted under national law. Once more the marshals sought relief in the federal court, coming once again before Judge Kane.

Kane freely conceded the general principle that one sovereign power cannot seize prisoners of another. Ordinarily, he acknowledged, if a federal court issues a writ of habeas corpus and the return shows that the person is in the custody of a state, the federal judge is powerless to interfere and must discharge the writ. However, if the petitioner is an officer of the United States, the federal court process need not be concluded by the fact that a state is involved. As in the earlier case before Justice Grier, evidence would be accepted to show that such prisoners were penalized because they had acted under the authority of United States law, and that they were consequently entitled to the protection of the Force Act.[36]

If, said Judge Kane, United States marshals abused the process under which they claimed their authority, the federal court from which the process had issued could punish them.[37] If marshals transcended the limits of official conduct and wilfully violated state law, they might be amenable to state prosecution, but this was not the case here, Judge Kane decided. In consequence, he ordered that the state release them at once, and his order was obeyed. The marshals were not disturbed again.[38]

36 *Ex parte* Jenkins, 13 Federal Cases 451, 452.

37 See *U. S. Statutes at Large*, IV, 487, Mar. 2, 1831, entitled "An Act declaratory of the law concerning contempts of court," empowering federal judges to "issue attachments and inflict summary punishments for contempts of court . . . [for] the misbehaviour of any of the officers of the said courts in their official transactions . . ." *Ibid.*, sec. 1.

38 The discharge of the marshals was absolute, and they were not tried in any federal court on the issue of assault. To the argument that this deprived the state of the right to try them by jury for their crime, Judge Kane replied that trial by jury is the right of an accused, not of government. 2 Wallace Jr., 531, 543.

This was not, however, the last of the Thomas fugitive slave case. The next step, which came about nine months after the marshals were allowed to leave the Pennsylvania prison,[39] was an obvious effort by abolitionists to discourage state officers from tamely submitting to the orders of federal courts in the future. An action was begun against Sheriff Allen to make him pay for obeying Judge Kane and letting the marshals go free in the face of Justice Woodward's order that they be held to bail of $5,000. Had this attack succeeded it would have forced Pennsylvania's police into inescapable collision with federal law enforcement officers.

When the case reached the Pennsylvania Supreme Court, Chief Justice Ellis Lewis flatly rejected Judge Kane's theories of the relationship of the states to the central government. The states having control over the execution of their own laws, Lewis declared, a state officer might disregard any interference by a court of another jurisdiction. There was no power anywhere, even in a law of Congress, which could authorize a federal judge, such as Judge Kane, to take from Pennsylvania's custody the persons she had arrested. "Are all the independent States of this great confederacy to be trodden in the dust, at the foot of a single subordinate judge?" Chief Justice Lewis queried. "The Congress of the United States is patriotic and enlightened, but its members are the free representatives of independent States."[40] Besides, he insisted, the states could be relied upon no less than the United States itself to give justice to any accused person. Was it not enough that the Federal Government's Supreme Court had appellate jurisdiction over the states' highest courts?[41] With this the United States must rest content. It might well be, Chief Justice Lewis granted, that a federal writ of habeas corpus should issue in order to protect a federal officer against a state (such as South Carolina in 1833) which had taken every step to nullify federal law and to punish United States officers seeking to do their duty. But the case here was far different; Pennsylvania had simply tried to prose-

[39] The marshals' release was ordered by Judge Kane on Feb. 14, 1854. An attachment sought against Sheriff Allen was applied for in November.

[40] Thomas *v.* Crossin, et. al., *American Law Register*, III, 207, 223.

[41] *U. S. Statutes at Large*, I, 73, Sept. 24, 1789, sec. 25. This is the Judiciary Act of 1789 whose general and basic principles remain in force to the present day.

cute persons who had violated a general law protecting her peace and dignity.[42]

In any event, the state court declared, the Force Act and its habeas corpus procedures, having arisen out of the tariff-nullification crisis of 1833, had been intended by Congress to help only persons endeavoring to enforce revenue laws, not fugitive slave laws. It simply did not apply to the matter at hand.

Having criticized the federal judges, the Pennsylvania Chief Justice did not mind voicing sympathetic understanding of their motives. "We can appreciate the feelings," he said, "and excuse the errors of judgment likely to be excited by the disorderly movements of a class of individuals [*abolitionists*], who, setting up their own judgments as a 'higher law' than the Constitution, are constantly endeavoring to defeat the operation of certain laws of the United States. But these considerations do not absolve us from the discharge of our official obligations."[43]

Thus, the federal court's order to Sheriff Allen was indeed illegal and he should not have let the marshals go. However, the Pennsylvania court decided to excuse Allen because he had yielded only under compulsion,[44] and because the plaintiffs had delayed too long to bring their action. At this point the case of William Thomas came at last to its end.

Of course, it was not the last of such cases. As the nation's antagonisms over slavery grew more intense, the runaway cases more riotous, and the free states more resistant, the practical value of the Force Act to insure operation of the Fugitive Slave Law became increasingly evident. In one after another of a series of cases in the 1850's the Force Act extricated national officers from retaliatory imprisonment by a state. In this way, the Force Act, far from being

42 "Now it is exceedingly clear," said the Pennsylvania court, "that there is a great difference between imprisonment for *an act done in obedience to the authority of the United States*, and being held to bail in an action for trespass *for an assault and battery committed without* such authority." Thomas *v.* Crossin, et al., *American Law Register*, III, 207, 212.

43 *Ibid.*

44 Refusal to obey the federal court's writ of habeas corpus issued under the Force Act was punishable by $1,000 fine and/or six months' imprisonment. *U. S. Statutes at Large*, IV, 632, sec. 7.

used against southern dissidents, became a means of protecting southern interests by assisting in the return of runaways. It combated free state interference with the Fugitive Slave Law, and effectively served the national government when in conflict with Pennsylvania and other northern states.

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