AN IOWA FUGITIVE SLAVE CASE—1850.

REPORTED BY GEORGE FRAZEE.

(*A member of the bar*).

DISTRICT COURT OF THE UNITED STATES.

Southern Division of Iowa. Burlington, Iowa, June Term, 1850. Hon. J. J. DYER,* presiding.

RUEL DAGGS, plaintiff, vs. ELIHU FRAZIER, et als, defendants. Trespass on the Case.

D. RORER, Esq., Counsel for plaintiff. J. C. HALL and J. T. MORTON, Esqs., for defendants.

This was an action of trespass on the case, instituted in September, 1848, by Ruel Daggs, of Clark county, Missouri, plaintiff, against Elihu Frazier, Tho. Clarkson Frazier, John Comer, Paul Way, John Pickering, William Johnson and others of Henry county, Iowa, defendants, for the purpose of recovering compensation for the services of nine slaves who escaped into Iowa from Missouri, and were afterwards assisted to elude the control and custody of plaintiff's agents, by the defendants or some of them.

The declaration contained six counts. The first two allege that the slaves were rescued from the plaintiff, or his agents. The third and fourth, that they were harbored and concealed, so that they afterwards escaped from and were entirely lost to the plaintiff; and the fifth and sixth, that the plaintiff was hindered and prevented from recovering his slaves by the acts of defendants; and the amount of damages claimed was $10,000. Plea, NOT GUILTY.

The suit had been continued from term to term, for cause shown, and at this term, after a motion by defendant's counsel to exclude all the plaintiff's depositions for irregularity, had been sustained by the Court, plaintiff filed his affidavit, and moved the Court for a continuance. The motion was opposed by Mr. Hall, and after argument, was overruled.

Plaintiff then entered a *nolle prosequi* as to several of the defendants and immediately subpœnaed them as witnesses to supply as far as it was possible the want of evidence occasioned by the exclusion of his depositions.

A jury was then impannelled, and sworn, the declaration read, and the witnesses for plaintiff introduced. The following is the substance and very nearly the language of

THE EVIDENCE.

GEORGE DAGGS sworn. *Direct examination by Mr. Rorer.*—Is the son of the plaintiff, Ruel Daggs, who has resided in Clark county, Missouri, for the last twelve or fourteen years, and was and still is, the owner of slaves. About the 2nd of June, 1848, nine of them made their escape. Sam, a black man, aged 40 or 45 years; Walker, 22 or 23, a yellow man; Dorcas, Sam's wife; Mary, Walker's wife; Julia,

*John James Dyer was born in Franklin, Pendleton county, Va. (now West Va.), July 26, 1809, of English ancestry. His mother, Rebecca, was the daughter of Maj. Wagner of the Revolutionary army. He was a graduate of the University of Virginia and became a law student in the law school of Judge Brisco G. Baldwin, with whom he completed his legal studies, and was admitted to the bar at Staunton, Va. He practiced for some time in Pendleton and the adjoining counties. He came to

18 years old; Martha, under 10; William, a small boy; and two younger children, names not remembered. The men worth $900 to $1000 each; the three women, $600 or $700 each; Martha from $250 to $300; William about $200. Unable to say what was the value of the two children. The services of the men valued at about $100 per year; of the women, $45 or $50; Martha's, her victuals and clothes. Dorcas, Julia, and the two children were returned shortly afterwards, but were absent more than a week. Exact time of their absence not remembered. Saw no money paid for recapturing them, and has no personal knowledge of money being paid for that purpose. Was at home in adjoining county at the time of the escape.

Judge Dyer here observed in reply to the inquiry of counsel, that the court would take judicial notice of the Constitution of Missouri, and the existence of Slavery in that State.

Cross examination by Mr. Hall. Was sent for by plaintiff in the early part of June, 1848, and told that the negroes had run away. They were all absent when I arrived, and I immediately went in search of them. Live some fifteen miles distant, and had not visited them for about a month previous. Did not see the negroes escape, and was not there at the time. Is the owner of slaves. Slaves are sometimes sold at the south as well as at home. Were worth the sums mentioned, at home, at private sale.

Direct, resumed. It is thinly settled in the neighborhood of the plaintiff's residence.

Question. (Objected to by Hall.) What was the common report in the neighborhood with regard to the slaves?

Iowa about the year 1835, settling first in Jackson county. He was appointed Judge of the U. S. District Court for the District of Iowa March 3, 1847. He did not, however, take the oath of office until the 22d of November of that year. He remained on the bench until the summer of 1855, when he went back to his old home, presumably on a visit, where he was taken sick and died September 14. He was buried at Woodstock, W. Va., beside his first wife. He was succeeded on the Federal bench by Hon. James M. Love. *The Iowa Historical Record* of January, 1897, contains an appreciative sketch of the life and public services of Judge Dyer, from the pen of Hon. T. S. Parvin, clerk of his court.

Per Curiam. Mere rumor cannot be given in evidence as to the escape.

Rorer, for plaintiff, gave notice that he should contend that the possession in Missouri and finding in Iowa was evidence of an escape.

Examination resumed. Was not at the plaintiff's when the women and children were returned.

ALBERT BUTTON sworn. In June, 1848, resided in Salem, Henry county, Iowa. In the early part of that month saw a negro man and boy there. There was a crowd at the stone house which afterwards went to the Friends' Meeting house. The negroes went along—went there myself. Did not see Elihu Frazier or John Pickering there. Saw Mr. McClure there. Had heard before, that some one from Missouri was there in search of slaves. Was not in the crowd as it went to the meeting house. Don't know its intention in going, except from what I was told by some persons present. Some were talking, and some were praying, the latter mostly by the women for the benefit of the negroes. There seemed to be no dispute as to going to the meeting house. Went up with Mr. Street. Justice Gibbs was there. The claimants were required to prove the existence of Slavery in Missouri, and that the negroes were slaves, by the justice and myself. Said they had no evidence there—were told they might have time to procure it. They were questioned as to their agency, and replied they were not *legally* agents. There was something said to the effect that they were in a bad scrape and would back out. A man named Brown was one of the claimants. Crowd did not say the negroes should be retained *in any event.* The negro left the house and I did not see him afterwards. Threats were made to arrest Brown after he had presented a pistol. Have conversed with Street since that time upon the matter. Have heard how the negroes got away from Salem. Don't know who brought them to Salem, whose horse they rode, or whose wagon they came in. Can't say whether the object of the crowd was to

prevent the taking of the negroes or to assist it. I should call the man black. He was pretty large.

Cross examination. Went to the house as attorney. Nelson Gibbs was the Justice. Claimants said they had no legal authority to act—were in a bad scrape and would back out. Street acted as counsel for the negroes. Was there about thirty minutes. Do not know if they were to take a warrant or not to retain the negroes.

Direct, resumed. Salem is in Henry county.

JONATHAN PICKERING sworn. Reside about one and a half miles from Salem. Has never seen the blacks. Has heard whose wagon went to the Des Moines river after the negroes. Don't know how the negroes got to Salem, or where they staid, the night before. It was Monday. Heard the rumor on that day. Heard John Pickering say there were men from Missouri in the vicinity looking for negroes, and that his horses had been hired by Eli Jessup to go to the Des Moines to take a Methodist minister to an appointment. They went down before a carriage and came back with a wagon. They were returned on Sunday morning. Didn't hear John Pickering say the negroes came in the wagon, nor whose horse was ridden from Salem. Has heard Frazier say nothing about the matter. John Comer said they did not come in the wagon. He spoke of runaways from Missouri. Said they were not in the county, and that he did not assist in their escape. Jesse Cook denied having anything to do with the matter. John Pickering spoke of the hire as an independent fact. I accused him of having something to do with the negroes, but he denied it.

SAMUEL SLAUGHTER sworn. Saw Wm. Daggs, the son of Ruel Daggs, on Saturday, and was requested to assist him and McClure in finding some slaves he was looking for. He said they had been traced to the Des Moines, near Farmington. Stopped with McClure all night at Mr. Way's. Started towards Salem next morning. Soon noticed a fresh wagon track, and followed it for several miles when I came in sight of

it. Rode on after it three or four miles. It was driven very fast. Had a top on it. It stopped in the bushes about half a mile from Salem. I rode up and found three young men in it—rode into Salem with them. The driver was called Anderson or Andrews. About an hour afterwards McClure came up. Next morning we rode round the bushes a little, and finally went to the place where I overtook the wagon. Within a short distance we found a black man, a yellow man, three women and four children. We took possession of them. Yellow man refused to go with us at first. At last got him on the horse. Concluded to go back to Salem for Mr. Brown and Mr. Cook. Left McClure with the negroes. When I got back from Salem, found a number of other men there. Elihu Frazier, Clarkson Frazier, a man whose name I was told was Wm. Johnson, and others. They objected to taking the negroes. Other persons were running down. One of the Fraziers said we must prove they were slaves. Considered their appearance hostile. One of them pulled the negro away from me. Some one of them said he would wade in Missouri blood before the negroes should be taken. Went into the town. Stopped at the stone house and the negro sat down. An old lady came out and prayed for the negro and myself. Clarkson Frazier said he would not allow me to take the negroes. Nothing said then about agency. Got description of the negroes from Daggs and McClure. The crowd seemed to act unitedly, and understood I could not take the negroes unless I went before the magistrate. One of the Fraziers walked with me to the meeting house. The crowd went there and the negro. Required a certificate from the clerk of the court in Missouri with his seal to prove the property. The justice refused to take cognizance of the case. Said the negroes were not properly before him. Saw the wagon before a brick house. Consented to go to town because we were not strong enough to take the negroes.

Cross examined. Reside two and a half miles from Farmington and was going to Charleston when I met Daggs.

Found the negroes half a mile south of Salem, about 200 yards to the right of the road. There were two men, three women and four children. Were in the road when I got back from Salem with Brown and Cook. Had not moved exactly towards Salem. Was detained in the road 15 or 20 minutes. Clarkson and Elihu Frazier were there with others and would not permit me to take the negroes towards Missouri. A man in the crowd told the mulatto to knock me down if I touched him again. Did not take the women and children all the way to the house. One of the negroes assured me that if *he* went back they would. At the stone house a woman brought out something for them to eat. Did not hear McClure refuse to permit them to eat. Did not touch him after he was told to knock me down,—heard the man was named Johnson who told him to do so. The crowd seemed to be unanimous. Offered to prove by McClure that Daggs owned the negroes. When in the house Button asked that the negroes should be discharged. They were taken out. Told Button I would go home. Did not say I had no authority. Never saw the negroes at Daggs'. Heard McClure was run out of town—did not see it. Clarkson Frazier advised me to leave. Thought I could get them if I consented to a trial. Fraziers said *they* would not injure me, but that I could not have the slaves. Did not hear all that was said to McClure. The company was scattered as we went into town. The street was full when I heard the man say he would wade in Missouri blood. I may have told some one that I was beaten and would go home—not *honorably* beaten. May have said I thought a majority of the citizens would sustain me. Could not have said I was honorably beaten—thought I was badly treated. Met a man about $\frac{3}{4}$ of a mile, on the road to Farmington as I left Salem. Did not tell him so. Saw several men in the woods apparently looking for something. Did not follow the negro when he left the house.

Direct resumed. Gave up the matter because I did not wish to embroil myself and was tired of the business.

ALBERT BUTTON recalled by Rorer. Knows Clarkson Frazier. Thinks his name is Thomas C. Frazier. Never saw him write it.

JONATHAN PICKERING recalled. Knows but one Clarkson Frazier. Writes his name Thomas Clarkson Frazier and is one of defendants.

HORACE B. HUNTING sworn. Was in Salem on a Monday in June, 1848. Saw a black man and child there near the stone house. There was a crowd present and understood the negroes were to be tried before a justice. Saw Elihu Frazier there. Saw him assist neither party. Saw John Pickering there at the west end of the meeting house after the trial talking to the negro. Don't know what was said. Saw the negro walk a short distance and mount a horse. Gilcherson handed him the child, and the negro started off with him alone. Took no notice of Pickering at the time. Heard the negro say nothing. Immediately after, saw Paul Way riding in advance of the negro. Can't say Way was guiding him, and don't know where they went. Never heard the defendants say where they went, nor whose team brought them from the Des Moines. Know nothing of the wagon while in Salem. There was a good deal of talking in the house. Don't know whether justice took charge of the case. Elihu and Clarkson Frazier were there, talking with the company. There were two parties there, one wanted to take the negroes—the others talked of having a trial. Supposed the latter made up the crowd. Heard that a trial had been agreed upon before the crowd went to the house. Understood there was opposition to taking the negroes without a trial. Didn't see them leave the house. Don't know why McClure left town. Saw Pickering at the end of the house with the negro. Some of the crowd were in the house, some out. Didn't notice the Fraziers in the house. Way was on his horse when I first saw him, came from the other side of the house, and had started. Negro's horse was southwest of the meeting house. Way's at the north. Way was ahead,

and the negro followed at a short distance. Were on a canter and went towards the north. Hadn't noticed Way before that day. Didn't see him until after the negro had mounted. Can't say that the negro was ordered to leave the meeting-house by any of the crowd. Didn't see the yellow man. Resided in the neighborhood seven years, at that time two miles from Salem. Don't know of any Society to seduce negroes from Missouri, or of any meeting to make arrangements for that purpose. Have heard there was. The meeting house is called the Abolition or Anti-Slavery meeting-house. It is used for public worship. Have seen some of defendants there. Was in the meeting house part of the time, don't know that I have heard the defendants talk about the affair in Salem.

Cross examined. Understood there were slaves about that some one wanted to take to Missouri, which the citizens were opposing. Went down out of curiosity. The black man and child were eating a piece of bread. Can't name any person that spoke to them there. Heard no opposition to going to trial. Heard no one wish to take them off without trial. The Missourians were required to prove property as I was informed. It was the first information I had. Saw John Pickering at the meeting house with the negro—didn't watch him. Several persons spoke to the negro. Suppose it was twenty-five yards from the crowd to Paul Way. He lived northeast of Salem, the road he took was the usual direction to his house. The negro was close to him—when I last noticed them but two or three steps between them. Don't know where they went, and have heard none of the defendants say. Heard no threats made, understood threats were made by some of defendants. Saw no violence, no pistols drawn. Saw the handle of a pistol in Brown's pocket.

Plaintiff's counsel here asked time of the Court to procure another witness. Defendants' counsel objected, and it was refused, whereupon plaintiff announced that he had no further evidence to offer.

Mr. Hall prayed a nonsuit as to a number of the defendants. Rorer opposed the motion on the ground that the jury alone had a right to decide upon the evidence. It was finally agreed by counsel that if a nonsuit were entered as to any of defendants during the trial, plaintiff might use them as witnesses.

Mr. HENDERSON was then sworn on the part of the defendants, and examined by Mr. Hall. Was present in Salem at the time of the occurrences, and saw a crowd at Gibbs' office. It went up to the meeting house and witness followed. Button was Attorney for negroes. Slaughter said he was agent, and offered to prove that the negroes were slaves by McClure. Gibbs said he had no jurisdiction. The negro went out himself. Saw no violence. Went with Slaughter from the meeting house to his stopping place. He said he believed that if he had commenced properly he would have been sustained by the majority of the law-abiding men in Salem, but he was fairly beat and would go home.

Cross examined. I did say there was no opposition.

Direct resumed. Slaughter said in the meeting house that he could not show any written authority.

J. B. ROSE sworn. Resides in Salem and was there at the time. Saw a crowd coming from the stone house, as I was going to dinner. Asked what it meant, and was told there was to be a trial about some slaves. Went to Gibbs' office, and afterwards to the meeting house. Saw the negro man and child. Button inquired if any one was the agent of Daggs. There was some talk about the agency. Gibbs was asked to discharge the negroes and declare them free. He said he had no jurisdiction, and they were free as himself, for all he knew. Crowd began to run out. Saw the negro sitting on a bench when I went out. Saw no violence, and heard no threats.

Cross examined. Saw the negro go out. Saw him go to the horse. Gilcherson unhitched him, put the reins over his head, and lifted up the child. Was not near enough to hear what was said.

Mr. DORLAND sworn. Was in the meeting house at the time—was at the stone house. The crowd passed my school house and went to the stone house. Were from fifty to one hundred persons there, and a good deal of confusion. A great deal of sympathy expressed, principally by the women present. Got upon a pile of boards, called the attention of the crowd, and proposed that they should go before a Justice, and if the negroes were proved to be slaves their claimants should be permitted to take them. The proposition appeared to be agreed to by all. Went to Gibbs' and thence to the Anti-Slavery meeting house. Button and Street were there. Claimants were required to show their authority. Said they couldn't show any such authority as was demanded. Gibbs said the negroes were free so far as he knew. T. C. Clarkson was there. Heard no objection to trial by the claimant. Should say there were two parties there. Moses Brackett said the negroes should not be taken off without a trial. Saw no violence and heard no threats. Saw neither of the agents afterwards. They at first claimed to be agents. One was asked if he had any written authority from Daggs. No authority was given beyond their assertion.

Cross examined. Some authority was required more than their assertion. No one was sworn. They were merely asked to prove their agency. On the condition required, one of them said no one there was agent. Saw negro go out of the house. One of the Fraziers was at the stone house. Saw John Pickering at the meeting house. Have been directed by no one as to what evidence I was to give.

FRANCIS FRAZIER sworn. Lived south of Salem in June, 1848. First saw the negroes at the south-west corner of the grave yard, one-fourth of a mile from Salem, standing in the road. They were there but a few minutes after I got there. Saw no violence. It appeared to be by consent of parties that they went up to the stone house. Stopped because the black man wanted water. Some bread was given him by a woman. The negro sat down and held the child.

Heard Dorland's proposition. No objection was made to it. Was in the meeting house. Some proof of authority was required. Button and Street defended negroes before Gibbs. No proof was given. Button had some book there which looked like a law book. Slaughter said they were not legally authorized agents to take the slaves. Heard McClure say nothing. Negro got up and walked out of the house. Saw him on the horse, about 150 yards off. None but attorneys, justice and agents talked about agency. Supposed they were not agents according to the book. It appeared to me that the negroes were brought before the justice to ascertain whether the claimants had authority to take them. Justice said he had no jurisdiction. No evidence was offered to prove agency. Heard nothing of a warrant. People behaved in an orderly manner. Some of the women talked a good deal.

Cross examined. Can't tell what book they had, nor whether a law book or not. Proof was required that claimants were authorized to take the negroes. Heard nothing of any writing. Don't recollect what kind of proof was required. Something was said about the existence of slavery in Missouri. Saw black man and child on the horse riding off. Saw Paul Way going north in same street. He was on a canter; black man behind him. They were out of sight in one or two minutes. Has not been counselled by any one since here.

LEWIS TAYLOR sworn. Was at the trial in the meeting house. First saw the negroes one-fourth mile from Salem. Slaughter, Henry Brown and Henry Johnson were with them. Several others came up. Understood *all* had consented to go to Salem. Saw no violence used. Persuasion was used to induce the negroes to go towards Missouri. Was at the meeting house. Button, Street, Slaughter and the negroes were there. Heard no evidence before the Justice. Didn't see the negroes go out. Heard nothing of a warrant.

Cross examined. Several persons were with the blacks when I first saw them, and Johnson was one of them.

F. A. McElroy sworn. Resides in Salem and was there at the trial. Was outside the meeting house and went in upon hearing some one remark that "they could go out." Went in and saw the negro go out. Never spoke to McClure or Slaughter until I saw them here. Heard no threats except from Brown.

Cross examined. I told some women to open the way and allow the old gentleman to pass. Females were much excited. Stood out from the crowd when I heard Brown. His exclamation was "I will shoot that d—d son of a b—h." He had a pistol drawn half way out of his pocket.

Dorland recalled by defendants. The conversation in the meeting house was between Gibbs, Street and Button, and the agents. After calling for the proof and the production of the book, one of the three said the negroes might be detained until evidence was produced. Can't say which one it was.

Cross examined. Heard one of them say they had come for a fair trial and they should have it. Slaughter was required to produce other proof than his own assertion. The book looked very much like the Iowa laws. Was bound in leather. Heard it read.

Jonathan Frazier sworn. Was overtaken by Slaughter in the wagon. Two men, Hamilton and —— were with me. No negroes were in the wagon.

Cross examined. It was on Sunday morning. No one besides the two men was with me. No negroes had been in the wagon. Was about two miles from Salem. Talked with Slaughter. No negroes were spoken of; he asked after two gray horses. Drove on into Salem. The horses were John Pickering's. Wagon belonged to one of the Fraziers. Had been to Farmington. Drove down with the same men. Don't know where they lived. Can't say what their business was. First saw them when I was about starting for Farmington, in the neighborhood of Salem. Think it was at my house. Don't know what they came there for. Saw them in Salem

after I returned. They were there some days. Saw them in the streets of Salem. Can't tell what day. Don't know where they boarded. It was not at the hotel.

Some discussion here occurred between counsel as to the propriety of the next question asked by Mr. Rorer, at the conclusion of which it was ruled out by the Court, and the defendants stated that they had concluded their evidence.

Mr. Rorer then opened the argument on the part of the plaintiff, and was followed by Mr. Morton for the defendants. Together, they occupied the whole of the afternoon. No notes of these two speeches were taken at the time, and in consequence, no attempt will be made to report them. The concluding argument on the part of the defendants was then made by Mr. Hall, in very nearly the following language:

SPEECH OF MR. HALL.*

JURORS—This suit and this trial possess an interest which has rarely occurred in the judicial history of our young State. It is truly novel—the first suit of the kind ever brought west of our mighty river.

The Court, too, is novel. It is not a Court that derives its powers from this State, but the United States; and the subject matter sued for—the right demanded by the plaintiff—the wrong complained against the defendants, is based alone upon an act of Congress and the Constitution of the United States.

*Jonathan C. Hall was born in Batavia, N. Y., Feb. 27, 1808. His early years were spent upon his father's farm, largely in the work of clearing away the heavy forest with which it was originally covered. He was educated in the common schools and at Wyoming (N. Y.) academy. After his school days he joined a surveying party engaged in sectionizing wild lands in Genessee and adjoining counties. He began the study of the law in Albany in 1828, and continued it the following year in Cleveland, O. In 1831 he commenced the practice of his profession in Mt. Vernon, O. In 1840 he removed to Mt. Pleasant, Iowa, where he acquired a large law practice. In 1844 he removed to Burlington which became his permanent home. Upon the resignation of Judge J. F. Kinney he was appointed Associate Justice of the Supreme Court of the State, holding the place one year, when he was succeeded by Norman W. Isbell, who was elected by the General Assembly. Judge Hall's opinions appear in Greene's Reports, Vol. IV. He was for a time president of the Burlington & Missouri R. R., and was instrumental in securing its early construction. He was chosen to the Constitutional Convention of 1857, of which he was one of the most useful and influential members. He was the author of the school system authorized by that instrument. Elected to the House of Representatives of the 8th General Assembly, he was instrumental in securing the passage of many good laws, among them that providing for the publication of the Revision of 1860. "Judge Hall was a man of very commanding presence, courteous and kindly in his intercourse with others, a profound lawyer, a just and able judge, and a man whom Iowa will always be proud to remember among her most eminent citizens." He died at Burlington, Iowa, June 11, 1874.

The Federal Constitution has recognized the institution of Slavery, and provided for the return of persons held to labor when they shall escape from the State where they are so held, to another State. The Act of Congress has made it penal in any person to hinder or prevent the owner, his agent or attorney, in arresting such fugitives, or to rescue them from the owner, his agent or attorney, or to conceal and harbor such fugitives.

This act of congress almost assumes the character of an international law. It is a rule of action between two States. Although the State of Missouri does not seek this remedy from the State of Iowa, the form of the remedy makes the *citizens* parties, yet the institutions of both States are involved in the issue. Slaves are property in the State of Missouri. The presumption in that State is that every black man is a slave. In Iowa, we recognize no person as a slave. The presumption of freedom is universal. Negroes are property and slaves in Missouri because the laws of that State positively declare and recognize them as such. In Iowa slavery is prohibited by the Constitution. What Missouri makes property by municipal law, Iowa forbids to be property within her jurisdiction.

This being the case, Missouri, as a State, feels an interest, a deep and abiding interest, to have this species of property protected, and the right to the recapture and return of their slaves when they escape to another State, without interruption or hindrance.

Iowa is bound to be neutral. The citizens of our State may leave the pursuit of the master, the race between the master and the slave, to be decided by themselves. They must not hinder or delay the master in his pursuit. They must not harbor or conceal the slave from the search of the master. They must not rescue the slave from the master.

In deciding this question you should be careful to let no prejudice induce you to step aside from the ordinary rules of evidence. It is one of the requirements of law, that every material fact upon which a plaintiff bases his right, shall be proved before that right is established.

In this case the plaintiff must establish by evidence, and you, Jurors, must find,

1st. That the plaintiff resided in the State of Missouri and owned the negroes described in his declaration.

2nd. That those negroes, being his slaves, escaped, and, without his consent, came to the State of Iowa, and into Henry county.

3rd. That the plaintiff, by himself, his agents or attorneys, pursued said slaves into the State of Iowa.

4th. That the defendants, having notice that said negroes were slaves and fugitives from labor, hindered and prevented the plaintiff, his agents or attorneys, from arresting said slaves; or that they harbored and concealed said slaves from said plaintiff, his agents or attorneys; or that they rescued said slaves from said plaintiff, his agents or attorneys, after they had captured them.

A review of the evidence given in this case, will, I think, satisfy you that these facts have not been proved. Indeed, it has rarely been my for-

tune to argue a case where there was such a barrenness of evidence, and where a verdict was claimed based so much upon prejudice—where every rule of evidence is subverted, and every law of presumption prostrated. You, gentlemen, are called upon to sacrifice the defendants to the excitement of the day—to the feelings of the public—to the Moloch of Faction. It is enough that the defendants are accused. This Temple of Justice has no barrier to the demand of the plaintiff upon your credulity or his reliance upon your prejudice.

Let us examine the questions which the law requires the plaintiff to prove, and the evidence by which he claims he has made that proof.

1st. That the plaintiff must reside in Missouri and be the owner of slaves. This we admit is established.

2nd. That these slaves escaped from his custody, without his consent, and came to Iowa.

This, I say, is not proved. The *only* witness to this point is the plaintiff's son. He swears that he resides in Missouri, about fifteen miles from his father, the plaintiff. That he was at his father's about the 1st of May, 1848, and saw these slaves, as usual, in his father's possession on his farm. That about the third or fourth of June following, he was at his father's again and that these slaves were *not* there—they were missing. That he has no *personal* knowledge of where they were; when they left, or how they came to be absent. That a few days afterwards several of them were returned, but how or in what manner he does not know. Some of them he has never seen since. That his father, the plaintiff, kept a number of slaves, and that they were well treated. This is every syllable of evidence produced to prove that plaintiff's slaves left him without his consent. On the first of May they were at his house; on the first of June they were not at home; and the conclusion claimed from this evidence is, that they had escaped without the consent of the owner! Here Mr. Hall went into several illustrations to show that the premises did not justify the conclusion—that the mere absence of a slave from the plantation was no more evidence of an escape than the absence of a horse or any other species of property. He also read from several works on the law of evidence, to show the nature and character of presumptive evidence. That the fact proved and the fact presumed should most usually accompany each other; it was not sufficient that they were *sometimes* proved to accompany each other, but it must *rarely* be otherwise. If it was most usual in Missouri, when slaves were absent from their master's farm, that they have escaped from his service without his consent, then the plaintiff might claim the benefit of such presumption; but that connection must be shown. It certainly is not one of those natural relations which is so universally known and admitted that it is conceded without evidence. As in case of a horse. You visit a farmer in Iowa and you find him in possession of several horses. A month afterwards you visit him again. You do not see the horses. Does it follow that those horses have strayed or been stolen? Would you at once calculate that those horses were improperly or wrongfully out of the possession of your neighbor, and hazard your reputation for sagacity and truth by

asserting that the mere absence of these horses proved that they were strayed or stolen? Surely not. The man who would do it would be looked upon as a fool or as destitute of reason. And the same rule would apply in Missouri in regard to negroes. Their mere absence from home or their owner's farm, is not a fair presumption, nor any presumption that they have escaped.

But did the plaintiff own these slaves, and did they escape clandestinely and without his consent, and can he bring no other witness who could establish the fact? Is this his best evidence? Was there no other person who had seen them after the first of May? This cannot be. If the plaintiff really lost his slaves, some one knows more than this witness. Why is he withheld? Let the rule that the plaintiff has urged against the defendants apply to himself. He has not produced the best evidence. He has produced almost none at all. They were there—they were not there—*guess* where they are and how they came to go. Credulity must have strong pinions to bear up such an atmosphere. The rules of evidence, the rules of law, are trampled upon—on the ordinary grounds of *street veracity*, no one ever yet descended so low as to hazard his reputation for truth upon facts thus supported. In the ordinary transactions of every-day life, no one would act upon such a tale. You must have something more.

Then the first main fact is not proved. Daggs, the plaintiff, lost no slaves. If they were absent, the presumption is, like that of a horse, that the owner consented to their absence.

I now come to the third question. Did the plaintiff by himself, his agent or attorney, pursue said slaves into the State of Iowa? It is not pretended that the plaintiff, *personally*, ever followed them, and there is not a word of evidence that he ever had an agent or attorney, in relation to these slaves. No man has ever been spoken to by him. No man has ever been written to by him. So far as the evidence shows, the plaintiff remained at home attending to his usual business. He authorized no agent. He constituted no attorney.

Mr. Slaughter acted at the instance of William Daggs. The court ruled from your consideration every word, act, and motion of William Daggs. Your ears are shut as to him. He has not been produced as a witness. His conversation cannot be received and has not been admitted. Then there is no agency; nothing proved—not a syllable, a sign, or a motion, upon which a power can be inferred authorizing any one to pursue the slaves.

Now, if these slaves were not pursued by the plaintiff, his agents or attorneys, there could be no rescue—there could be no hindering and preventing the plaintiff in recapturing them—there could be no harboring and concealing, unless the plaintiff was inquiring, seeking, or desiring their return. To conceal—to harbor! The Act of Congress contemplates that the act done shall produce some effect upon the acts of the party losing the slaves, which may delay, hinder, or prevent his recovering them; but if he does not *seek* them, if he does not inquire, if he does not follow, how can he be hindered in that which he does not attempt? How can he

be delayed in that which he never begun? How can an act prejudice him, when he has never exerted that action which alone could receive the prejudice?

The first act that Daggs ever did was to bring this suit, and he has scarcely followed this up with a scintilla of evidence. He seeks in the signs of the times—in the darkened political atmosphere—in a deep feeling of excitement, at this moment lashed into boisterous commotion, to recover from the defendants for the loss of slaves which he never spent a passing inquiry about when they had gone, if, indeed, he ever lost any.

The fourth question is, Did the defendants, after having notice that said negroes were slaves, do any of the acts forbidden to be done by the Act of Congress? It is true that about the 5th of June, 1848, several negroes were found near Salem in Henry county. They were by themselves in the woods, a mile or more from Salem. No white person was with them. Mr. Slaughter and Mr. McClure found them. But were they the plaintiff's slaves? They were men, women and children. Daggs lost men, women and children. Does it follow that these were his property? No person knew them—no person identifies them—no person had ever seen them in the State of Missouri, either before that time or since. McClure is not a witness. Slaughter had no knowledge or information touching their identity or ownership. Without this identity or knowledge, they must be presumed to be free. In the name of truth—in the name of common sense, how can the defendants be charged with notice of these persons being slaves—fugitives from labor, when even now, after years of preparation, the plaintiff has totally failed to prove that the negroes found were his, were ever in Missouri, that Daggs ever saw them, or they him? But it is said that Daggs lost men, women and children; at least he had owned such, and they were about that time absent from his farm! These were men, women and children, and the presumption is that they were Daggs' absent slaves! If this rule is correct; if this presumption is legitimate, it would apply to every black in Iowa. The whole race of blacks and whites are made up of men, women and children. It is a description that is universal—describes all. Daggs could only lose such, and let him find whom he would, they would come under these descriptions. The defendants, if they saw a black person, were sure to see a man, woman or child, and it certainly is a stretch of argument and a tension of reasoning unheard of, to infer from these facts that these black people were slaves; that they had escaped from Missouri, from the plaintiff, and that the defendants are notified of that fact, *because* negro men, women and children, happen to have been found in their neighborhood! But it is said that Slaughter and McClure were there pursuing them. That they arrested them to return them to Missouri; that they claimed them as the plaintiff's property! But did they *know* they were the plaintiff's slaves? Had Slaughter or McClure any knowledge? Surely none has been proved. Slaughter and McClure were acting without authority and without knowledge. They *suspected*, but did not *know*, or *pretend* to know. To claim from these facts, that the defendants had notice, is a libel upon the use of words, a prostitution of the received and ordinary use

of language. If they had notice, how did they obtain it? Not from the negroes, for they did not admit the fact. Not from Slaughter, for he did not know it. Not from McClure, for he is not here to testify, and he gave no notice; he acted without authority, and if he asserted it, it was without knowledge. This evidence would apply to every case that might arise. Let some other person bring a suit, prove that he resided in Missouri; that he owned slaves. He, too, can find some person who lives fifteen miles distant, who saw them a month before, and who did not see them at this particular time. It will all be true. The slaves will be "men, women and children," some, or all, of them. His case is as strong as the plaintiff's—his identity is complete—he should have his judgment. The mockery of such a demand, if it were made for any other species of property, would be past endurance. No mind could endure it—no court could sanction it.

What did the defendants do that hindered or prevented the arrest of these supposed fugitives from labor? There is not a syllable of evidence to show that any one of these defendants ever moved a finger, said a word, or, in the remotest manner, interfered, up to the time the arrest was made. That these acts must precede the arrest, I think, cannot be doubted. If the defendants interposed no obstacle to the search and capture, it can hardly be asserted that they hindered or prevented a capture.

Did the defendants *rescue* the fugitives *after* they were captured? The evidence shows that they were seized about half a mile from the road. When they were brought to the road, the defendants, Thomas and Elihu Frazier, came up to where they were. Both of them insisted that they should be taken before a Justice of the Peace, and identified, and the power of McClure and Slaughter shown. One of the Fraziers said that he was willing that they should take them if they made the proof; the other said they should not take them even if they did make the requisite proof.

This conversation induced Slaughter and McClure to take the negroes before a Justice of the Peace, and they proceed to Salem. On the road a considerable crowd had collected. No violence was used or threatened, only on one occasion. When Slaughter had hold of the yellow man's arm, a man called Johnson pulled him away, and told him to knock down Slaughter if he took hold of him again, and he should be protected. Before they got to Salem, one old woman and child became tired and were left. This Slaughter consented to, the black man pledging himself that if *he* went back, *she* should go also. No person in the crowd interfered in this matter. Before they got to the town the yellow fellow left them. They took no steps to retain him—made no efforts to prevent his leaving; no person advised him to go, or aided him in going, or interposed to prevent his being retained. Thus they proceeded with the old black man and child, till they came to the town, at the stone house. Here there was a temporary stop. Much confusion and excitement prevailed. The old black fellow and child sat down in the road and eat some bread and drank some water. In a short time it was proposed that they proceed to the Justice's office, and if they proved the blacks to be slaves, and established their au-

thority, they should be permitted to take them. This was assented to, and the negroes and crowd moved towards the Justice's office. When they arrived at the office it was too small, and, by general consent, it was agreed to go to the Abolition Meeting House. Hither accordingly they proceeded. By this time a crowd of one or two hundred people, men, women and children, had collected. Some strong expressions were made by persons in the crowd, but none, I believe, are traced to the defendants. When they arrived, the persons claiming the negroes were required to prove their agency and authority, and, also, to identify the negroes. This they could not do. They had no written authority, nor direct verbal authority. If they pretended to have any, it had to be supported by rumor; it was the very evidence which this court excluded. They ascertained that they were not agents and gave the matter up. The negroes went out of the house. There was no violence—no disturbance—no outbreak; everything was civilly and quietly conducted. When the negro had turned round the corner, he had some conversation with several persons, and, amongst others, with the defendant, John Pickering. The negro very soon went to the fence, unhitched a horse; mounted; his child was handed to him by Gilcherson, and he made off, starting upon a gallop. A short time before the negro started, Paul Way was seen on his horse and started up the road, the negro being eighty or one hundred feet behind him. Nothing was said by Way—nothing was done by him—he did not look back as any one noticed. They rode in this manner about one hundred and fifty yards, the negro having gained on him. This constitutes the evidence of the RESCUE. No man lifted a finger—no man used threats or duress—no man prevented the claimants from holding to the negroes, but it was even told them that if they desired to send to Missouri for evidence, the negroes should be detained by legal process, and time given.

If these acts constituted a *rescue*, then there was one made. But if it requires some overt act, some demonstration of physical power, some menacing threat, some force, actual or implied, some stratagem that operates as a fraud, *then*, the requisites of a RESCUE *are wanting*. So far as anything can be seen, or has been produced in evidence, it was a voluntary and righteous abandonment on the part of Slaughter and McClure. They had no authority to act—they had no power to hold. They abandoned, and they so declared themselves.

If what was done constituted a rescue, when did the act of rescue begin, and when end? Who did the act, and what was then done? The voice of accusation will never trouble herself with detail in her charges, if she can escape through the miserable apology which is desired in this case. The Fraziers insisted upon the power, and that the blacks were slaves. The declaration filed by the plaintiff concedes and avers that they were proceeding to prove the slaves, and alleges a rescue where they were during this effort at investigation. The evidence does not open the lips of the Fraziers after they arrived in town. It does not even show that defendant, Way, ever saw the negroes. They do not prove that Comer was in town that day or had any knowledge that there had been an arrest. They do not

prove that John Pickering said a word, except as the negro passed where he was, when he said something to him, like others, but what it was no one heard. As to William Johnson, we have shown that it was *Henry*, not William—that William was not only not present, but that he favored the Missourians. The balance charged, stand free from all evidence, unless you adopt the advice of the plaintiff's counsel, and make *residence at Salem*, conclusive evidence of the defendant's guilt.

But did the defendants harbor and conceal the negroes? They certainly did not rescue; they did not hinder and prevent their arrest. What is the evidence upon this point? It is proved that on Sunday before these blacks were arrested, a report was in circulation, that negroes had escaped from Missouri, and John Pickering said that he had let Eli Jessup have his horses to drive a light carriage to Farmington, as Jessup informed him, to take a preacher; that the horses were to have been returned on Thursday or Friday previous; that they had not been returned at that time; and in place of having been used to draw a light carriage, they had hauled a large wagon, and that they had returned under circumstances, that if the report should turn out true which he had heard, might bring suspicion upon him, which, he said, would be false. He complained of the manner in which he had been treated in regard to his horses.

John Comer, when the subject was up in conversation, bitterly denied any knowledge or hand in the matter, but said that the negroes were not in Henry county, and "sniggered in his sleeve." Slaughter testifies that about seven miles before he got to Salem, he saw a wagon ahead driven very fast. He followed it. When he overtook it, the team had stopped in the bushes. He saw no negroes, but in company with the team went to Salem. Young Frazier swears that he went with this wagon from his father's, near Salem, to a place near Farmington, and returned with it; that two gentlemen accompanied him; that he had nothing to do with the negroes—none were in the wagon.

This, gentlemen, embraces all the evidence. Did any of the defendants harbor or conceal these negroes after notice that they were fugitives from labor, and, if so, was it *before* or *after* the arrest on Monday? Comer, on Sunday, "sniggered in his sleeve," and denied having anything to do with the matter. Pickering loaned his horse to go to Farmington several days before, and complained that they had not been treated properly, or returned according to contract. Paul Way rode up the street a short time before the negro did. The Fraziers insisted that the negroes should be taken before a Justice of the Peace, and the power of the agents shown, and the negroes identified. William Johnson was not there on that day. What constitutes harboring and concealing? Here the plaintiff relies upon the declarations and confession, for no act is attempted to be proved. He proves that the defendants *denied* all connection with the subject. He claims, from *such* proof, that he has established the very *reverse* of the assertion proved! If he wants to prove that they concealed the negroes, he introduces their conversation saying *that they did not do it*, and triumphantly claims that he has *proved* that they *did!*

If he wishes to prove that a defendant knew about the negroes, he proves that they have *denied* having any knowledge, and claims that such denial is enough. If he desires to establish that they have done any act, he calls upon a witness who has heard them deny doing it; proves such denial, and straightway claims that he has undeniably proved that they did do it. The whole evidence produced and relied upon, has been a burlesque upon the ordinary tests of truth, and the demand for the application of what has been proven has been extravagant beyond all precedent. There is no escape for a man under these rules. If he is silent, he consents to the charge. If he opens his mouth and denies it, this proves that he is guilty of the very thing denied. If he confess it, that is the same. So that if a man is silent, like Johnson or Way; or denies, like Pickering and Comer, it is all the same. They can do or say nothing but what will prove their guilt.

The demands of the plaintiff's counsel in this case, would never have been made, had he not counted upon prejudice—had he not sought in the signs of the times, for a feeling in your bosoms which would predispose you to convict the defendants. The Union is at stake—agitation is covering the land; rebuke the one and sustain the other. You are called upon for a victim. My clients are demanded for a sacrifice. I stand here and demand the cause. I am told to be quiet; no matter what you say—no matter what your clients say; deny or confess, it is all the same. We are authorized to believe as we please, and we will believe as we please.

In the name of Justice, I protest against such an open, barefaced prostitution of her temple. In the name of the Constitution of our young State, I forbid such a low, grovelling, cringing, prostration, to any influence or power. I demand that this case be acted upon and decided upon the same principles that any other case would be treated. My clients ask but fair and impartial justice. This they do demand. This, I now, for the last time, demand at your hands.

CONCLUDING ARGUMENT BY MR. RORER.*

GENTLEMEN OF THE JURY—I come now to perform my last duty to my client in this cause. This is, as the opposite counsel have said, an important trial. It is important to the plaintiff; for it is an inquiry as to whether he shall be compensated for the injury he has sustained by the acts of the defendants, done in violation of all law, and in contempt of the Constitution. It is important to the people of Iowa; for it will determine whether *we* are willing to abide by the compact we made when we entered into and became one of this great family of States. It is important to Missouri; for it will decide whether we are willing to accord to her citi-

*David Rorer was born May 12, 1806, in Pittsylvania county, Va.; he died at Burlington, Iowa, July 7, 1884. He studied law with a Mr. Claibourne of Franklin county, Va., where he was admitted to practice in 1826. He started immediately for the west, settling first at Little Rock, Ark., where he remained until 1835. He then removed to Burlington, Iowa, which he did not reach until March 9, 1836. He resided at first in a little log house below the village, but during the summer he erected the first brick house built in the State, laying the first brick with his own hands. He at once became prominent as a lawyer and for many years enjoyed a large and lucrative prac-

zens that redress which justice and the Constitution demands at our hands; and it is important to the whole nation, so far as it may show what feeling is now entertained by you, and the people of the North, upon the rights of those who hold slaves in their possession, under the laws of many of the States.

We cannot wonder then, that it has attracted considerable attention, and that counsel have occupied so much of your time, and that of the Court, in their investigation of the law and evidence. In what I am about to say, I shall study brevity as much as is compatible with a due regard to the interest of my client and the high consideration, involved.

The gentlemen have labored, among other things, to show that *we* have not sufficiently proven the agency of McClure and Slaughter under the act of Congress. Is this true, gentlemen? Have we not proven it in various ways, supposing that we are required to prove it at all? A reward was offered for the returning of the negroes. Will not this sustain the idea of McClure and Slaughter being agents? Does it not appoint any one and every one who chooses to act under it, an agent for that purpose? It appears to me that it does; and this fact is brought to light by defendants' own witnesses. But this does not stand alone. The defendants, and those who acted with them at Salem, and its vicinity, have estopped themselves from denying this agency. They have acknowledged it, by contracting with us *as agents*. What is the agreement which is shown to have been made some half mile from Salem, where at least two of these defendants were present and most prominent actors in what there transpired? Was it that we should go before a Justice and prove our *agency?* No! It was that we should there prove that the negroes were slaves and fugitives. Did not the defendants agree that Slaughter and McClure should be permitted to take them away upon proof that the negroes were slaves, and not on proof that they were the duly authorized agents of the plaintiff? I feel confident that there can be no doubt upon this part of the evidence. But when the parties had arrived at the Meeting House, and the crowd had greatly increased, and when they had secured the service of the two lawyers, Button and Street, they made *another* demand! Slaughter was required to prove that he was authorized, by Daggs, to recapture the fugitives. He had no evidence to offer, for the Justice refused to take any judicial cognizance of the case. The negroes were permitted to go away, and were not again seen by Slaughter. But we contend that no specific, personal appointment of an agent was required by the law, and expect that so the Court will instruct you. Yet, if it should be otherwise, we look upon the circumstances shown, as sufficient to enable you to presume that they were duly appointed agents, or that defendants are estopped from denying their agency.

The gentleman complains that I have abused the inhabitants of Salem! Have I done so? What are the facts? He says that I termed it an *Abolition Meeting House*, in which they were assembled, and endeavored to produce the impression that *all* the inhabitants of Salem are abolitionists! I did use the expression *Abolition Meeting House*, but did I *invent* it? Is it

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tice. He was one of the first attorneys for the Burlington & Missouri River Railroad, now a part of the Chicago, Burlington & Quincy system. He also enjoyed a wide reputation as a legal authority, He published three important works under the following titles: "Rorer on Judicial Sales;" "Rorer on Interstate Law;" and "Rorer on Railroads." He also wrote many interesting and valuable historical sketches of the early northwest. Local historical writers attribute the first use of the name "Hawkeye," as applied to Iowa people, to Judge Rorer. As long as he lived he was a prominent factor in State affairs and one of the most enterprising men in the city of Burlington. He was especially noted during the civil war for his earnest support of the Union cause. While in the south he owned slaves, but became one of the earliest advocates of the cause of emancipation.

not in testimony that this is the title by which it is known, and did it not run more fluently upon the tongues of all the witnesses than any other? The gentleman has no right to complain if I give it its usual and well known appellation—if I call it just what the witnesses have called it. I have made no charge upon the people of Salem in the aggregate. I have spoken of abolitionists living there, and it is in evidence that abolitionists *are* there. Am I not to speak of this? Men have a right to be abolitionists, and there is no harm in it, if, as all opinions should be, they keep their sentiments within the prescribed limits of the law. There was much sympathy manifested, especially by the females present. This was natural enough. I do not complain of it—I, too, have feelings of sympathy—nor do I complain of the offices of humanity which such feelings may have dictated; but our sympathy should manumit our own, and not other people's slaves. I do not wish to compare an abolitionist to a thief—I conceive them to be very different characters—but suppose your property is missing and you afterwards find it in the hands of an honorable and high-minded neighbor, do you *presume* that he stole it, or came by it wrongfully? You do not and you cannot, unless he refused to account for its possession. But suppose you find it in a place where thieves notoriously do congregate, what is the presumption? *That it was stolen*, and by some one who frequents that place. Apply the same principle here. Here are men who have established a law of their own. Like all fanatics, they assume that there is a moral law, paramount to the Constitution, and even to the oracles of God himself. They affirm that they may aid in the escape of persons held to service under the Constitution of other States, though by so doing they violate the laws of the Union. If you find fugitives from service secreted among such a people, what is the presumption? Can it be anything else than that they aided and assisted in their escape, or assisted to secrete them? Every one would infer this, and nothing else. And when we find them asserting a knowledge, not only of their lurking place, but of their condition, are we not compelled to presume that they had some agency in their escape? It is in proof that one of the defendants knew both these facts and spoke of them to the witness. We cannot overlook these things, glaring, open, and apparent, as they are.

The gentleman indulged in some remarks upon what he terms my abuse of the "*dumb walls*" of the "Abolition Meeting House." I remember no abuse. I think what I said was rather in its defence. I observed that when appropriated to the purposes of religious worship—that purpose which is so well calculated to inspire the heart of man with the highest and holiest of emotions—it was entitled to the respect and reverence of all. But when *desecrated* by the intrusion of abolition sentiments—when converted into the "*Committee Room*" of the "*under-ground railroad*" company, where their schemes of robbery and wrong were deliberately concocted, I *then* compared it to a place which shall be nameless. But walls are not dumb, gentlemen; they speak to us in the boldest and most pleasing language. The defendants' witnesses may be dumb—may stand mute. As it was said of old, "eyes have they but they see not, and they have ears but they hear not" anything which *you* as arbiters of justice, are interested in knowing. But the walls of a church are not dumb—they have their language and their influence. Yon lonely steeple of the House of God points from earth to Heaven, with an eloquence more powerful than that of living tongues. The veriest skeptic of the present day, would acknowledge the influence and appreciate the associations, could he but look upon the humble stone on which Jacob of old pillowed his head at night; where he saw the vision of the ladder and the angels, and reared an altar and vowed a vow to the God of Abraham and Isaac, when journeying into Padan-Aram. *He* would not say such things were dumb, nor do I. Why were these persons assembled in that Abolition Meeting House? For what purpose did they go there? Was it out of a sincere desire to see justice

done to a citizen of Missouri? to redress a wrong? to obey the law? We are told it was out of mere sympathy! What kind of sympathy it was, we shall see.

Iowa is almost the youngest State in the Union. Missouri is the oldest of those west of the Mississippi. She was one of the Union when we knocked at the door for admission. It was the suggestion of our own minds. We knew what the Constitution was—the terms upon which we could be made a party to that compact—that not only Missouri, but many other States tolerated and sanctioned the institution of Slavery, and that every State was bound by the Constitution to deliver up fugitives when claimed. Shall we now repudiate the contract we have made—shall we be the first to violate it? Shall we affirm that there is a moral law above this, and that we must obey it at all hazards? Shall we be permitted to prate about morals and sympathy with canting hypocrites or maddened fanatics, when we have ourselves sanctioned the institution of Slavery, by entering, with full knowledge, into a contract of which it forms a part? No, gentlemen, treason must first do her work and avoid the institution, by placing us beyond the pale of the Constitution. We cannot serve God and Mammon, nor claim all the benefits of the Constitution, while we repudiate that which does not happen to agree with our individual notions of right and justice. A fig for that sympathy whose first fruits amount almost to treason against the Union. It is a pretended matter of conscience, and the holiest of books, and the teachings of inspiration are adduced to support the direct violation of the law. This is not the first time we have found that Satan can cite Scripture for his purpose.

We are next told that we have no evidence of an escape—that we could have proved this fact by William Daggs and were bound to produce him! How do they know that he could have given better evidence of an escape than we have already produced? Are the gentlemen quite certain that he saw the negroes leave his father's? If so, that is quite enough for our purpose. Is this at all probable? I think not. Those who have such intentions do not *usually* advise their masters of it, nor start off in open day. This is one of those acts which *require* darkness rather than light. The very terms we employ in speaking of it, imply, in most cases, that it was done in secret—without the knowledge or consent of the owner, and, consequently, that *he* did not see it done, and that it is not probable that any one, not assisting or conniving at it, did see it. We have shown that Daggs owned and possessed them a month previous, and it has not been shown that he ever sold them, hired them, or sent them away. No doubt has been thrown upon our title by any circumstance whatever. If *we* had sold the negroes, it is a fact for *them* to prove; and it would be the easiest method of defeating our suit forever. That they have not attempted to do so confirms and supports our evidence. It is said that drowning men catch at straws, and we have proof of the truth thereof in this case.

The people of Missouri cannot be presumed to intend to set their negroes free. Their slaves are looked upon as property, and the same presumptions are raised in regard to *them* as to any other property. The horse in my stable is presumed to be my property, and the presumption holds good if he is afterwards found in the fields or upon the common. So a slave is presumed to be mine, wherever found, after proof of such ownership, until it is shown that I have consented to part with it. The ownership and possession are *continuous* in their nature (2d Cow. & Hills' notes, 295.) The law, then, presuming that the negro is still mine, only allows me to act upon that presumption when it asserts that I may retake him in Iowa, and in *any State in the Union.* The idea that this right of retaking is confined to the free States, is fallacious. I may retake him as well in Texas or South Carolina, if he escapes to either of those States, as in a free State. The provisions in the Constitution and act of Congress are general. That is, in other words, I may exert the same control over him

where found, as if I and he were both at home. And this is right and proper. But I may not commit a breach of the peace in taking him; and to avoid all danger of this and to make certain my claim without chance of injury, the law has provided a mode by which I *may* require the sanction of the magistrate and his assistance to enforce my claim, but am not compelled to do so. The escape must be *out* of *one State into another* before we can bring an action upon this statute. We have shown this fully and completely. We owned and possessed them in Missouri. The escape is proved by finding them in Iowa. We are not to suppose that Daggs sent the negroes into Iowa, or brought them here and set them free; for men are presumed to act according to their interest, until the opposite be proven, and there is no fact or circumstance to induce any one to imagine that he ever dreamed of such a thing. 2 Cow. & Hills' notes, 301.

Plaintiff's son has proven that plaintiff had owned the older negroes a long time; that he resided some fifteen miles distant from his father, who sent for him immediately after the negroes were missing; that he went up to his father's and found them gone, and that he had seen them there about a month before; and I have shown that the presumption is that the possession and property continue, until something is shown to the contrary. The gentleman says that according to my idea the assemblage of Abolitionists in Salem is still there. He is mistaken; the evidence shows that it did break up. But without this his position would fail, for meetings of all kinds are in their very nature transitory and not continuous. (2 Cow. & Hills' notes, 295.) This is but another specimen of the gentleman's calling "spirits from the vasty deep." We cannot be required to prove that we never sold the negroes. We need not prove a negative.

It is asked why McClure is not here to testify—why we have not his deposition? The gentleman himself tells you we made the effort but were so unfortunate as to have the deposition ruled out. Is this to be made a circumstance against us?

It is asked, also, if finding negroes in Iowa is evidence that they are fugitives? We see blacks in the streets daily, and do not presume it, and no one imagines that *I* have any such idea. But there were men in Salem in search of these fugitives and at that particular time. These negroes were *not* found in the streets attending to their daily avocations like honest persons. They were *strange negroes*, and were skulking in the bushes and endeavoring to conceal themselves, and did not deny the ownership when claimed. Are not these circumstances, happening so strangely at the same time, and brought to the knowledge of defendants, enough to found a presumption upon, of their knowledge of the character and condition of the negroes, and, with the other evidence adduced, of a participation in the act of concealing them. In Missouri the presumption is that a black man is a slave. Here it is not so. But other circumstances may easily raise the presumption. Look at the circumstances surrounding this case. The negroes are found early in the morning hiding in the bushes. They are claimed by Slaughter as the slaves of Daggs, and, with McClure, he takes possession of them. He goes to Salem and procures two men to assist him in returning them to Missouri. He goes as quickly as possible, and when he returns to the vicinity of the spot where he first discovered them, the citizens of Salem were already there. How did they happen to be there so opportunely? The defendants, Elihu Frazier, Thos. Clarkson Frazier, and a man called Johnson were there, together with others whose names we have no means of knowing. Some of the negroes were willing to return with Slaughter; the yellow man resisted. None of them denied that they were the slaves of Daggs. And what did these defendants do under these circumstances? Did they stand by without doing anything? Were they *merely* looking on, *sympathizing* with the negroes? Nothing like this. They were *excited—angry!* One said the negroes *should not* be taken away

in any event. Another that they *must* be *proven to be slaves before* a magistrate, and Johnson told the mulatto that if Slaughter touched him again *to knock him down!* These men were all in company, aiding, supporting, and encouraging each other. They out-numbered Slaughter and McClure. Still we are told no *violence was used*, and that Slaughter should have gone on until something was done to render it physically impossible to go further; although we are told by Slaughter that he did not think himself strong enough to make the attempt—that he was out-numbered. These are strong circumstances, and we cannot get over them. Witnesses may lie, but circumstances cannot. Can there be stronger than those we have proven? What are they? First we learn that John Comer, one of the defendants, told one of the witnesses that there were run-away negroes in the neighborhood—that certain persons were there in search of such negroes, and "*he sniggered in his sleeve and seemed to know where they were.*" They are found concealed in the bushes near to Salem, and almost at the moment of their discovery, the Fraziers and their associates are found upon the spot, acting in such a manner as to deter the agents of the plaintiff from asserting their undoubted right to convey them back to Missouri, and raising the inference that they knew where they were concealed. One says they shall be taken back under no circumstances; another, that he will wade through Missouri blood before they shall be taken back; and another tells one of the negroes to knock Slaughter down if he touches him again! Finding he can do nothing better, Slaughter agrees to go before a magistrate. They go towards Salem, the crowd increasing until they arrive at the Stone House. Here the women make their appearance—the procession halts—they join the throng. It is said that one woman is equal to ten constables to keep the peace—but not so here. Some bring bread, it is true, and that is very well. It is a work of benevolence and shall return unto them after many days. But some exhort the crowd and others pray aloud for Slaughter and the negroes—for Slaughter a little, and for the negro in particular. The excitement became intense. Threats, imprecations, and prayers, emanate from the crowd until the whole scene becomes a mixture of the terrific and the ludicrous. The village school-master here appears, makes a speech, and pours oil upon the troubled sea of human passions, and quiet is restored. They then go to the justice's office; the crowd still increasing, the office is too small to hold them and they proceed to the *Abolition Meeting House*—the crowd confident in its own strength, and Slaughter and McClure acting under control of the attending circumstances. There were two parties—one wished the negroes to go free, the other wished them to return to Missouri. The crowd acted as one man, and so acted as to deprive the plaintiff of his rights. It was a riotous assemblage—it was a conspiracy to injure the plaintiff, and all who were present were guilty. If they would avoid this imputation, they must show that they *then* did something to evince their dissent. Defendants cannot stand by and see such things enacted, without incurring the penalty of guilt, unless something was done to convince you, gentlemen, that they did not participate. They must in some way show you that they were innocent of the wrong the law and reason ascribe to them, before you can suppose any one of that crowd innocent. Some of these defendants are proven to have been present and actively engaged in what was done. As to them, there can be no doubt in the minds of any sane man. It is from an array of facts and circumstances like these that we may presume their guilt, and this presumption is so strong as to leave not the shadow of a doubt upon our minds.

The gentleman's illustrations all fail him. Those of the Pitcher, Stove, the negro in the street, men in thick or thin clothing, are all of a certain class, and are not fixed and unalterable. They may be rebutted by others of a similar character. If we had glasses sufficiently powerful to discern

the material of a man's dress in the moon, and should find it to be of *fur*, we should probably suppose it was cold weather there. But if we should at the same time see that the land was clothed in a luxurious garb of verdure, the presumption would be removed, or rather, the one would balance the other, and we would be compelled to look for some other fact to give certainty to our opinion. That black men in Iowa are free is a fixed presumption of law, I admit, but not such a one as may not be rebutted. So, all men are presumed to be *honest;* but if we hear the cry of "*stop thief!*" and see a man start into a guilty run, we all suppose that *he* is the thief. The circumstances we have proved, the actions of the negroes, their silence upon the claim of Slaughter, all brought home to the knowledge of defendants, are quite sufficient proof of their condition, escape, and the notice to and knowledge of the defendants, and they being so soon at the finding, shows that they knew where they were concealed.

As to the negroes being the property of Daggs, the illustration of the coin, given by the gentleman, is another failure. He has admitted the ownership of Daggs in the opening. He cannot now deny it. Coin, known by mere description, will not raise any presumption, perhaps. But the identity of these blacks is not shown solely by their being so many men, women, and children, but by their age, color, names, and conduct. Now all men may have coin, but all men have not negroes. If you find a certain number of coins of different descriptions which you have lost, and find them under circumstances similar to these, there could not be stronger proof that they are yours, and the variety in description increases the certainty of the proof.

These defendants were inter-meddlers with the rights of plaintiff and his agents, and the agreement made by Slaughter, was made under moral duress and compulsion, to avoid a breach of the peace and a contention with over-powering numbers. That he was agent, is shown by the acts of defendants in treating with him as such. The intermeddling of defendants is like "*going to Texas to fight for our rights.*" It was nothing but their disposition to intrude upon plaintiff's rights that has caused this difficulty. Their sympathy for the negroes was their excuse! Their high sense of the turpitude of slavery—of its injury to the rights of man, and the great laws of God and Nature are pleaded as their apology! But who has made *them* the judges of that law? When were *they* made the oracles of wisdom and of God? Can their private opinions be set up in extenuation of their guilt, when they invade the province of the law and violate its most positive sanctions, under the pretence that the *law is wrong!* The very authority they appeal to, and to which I admit all human laws should conform, *commands the opposite.* We are required to obey those in authority by the oracles of God himself, and the commandment to servants is, "*servants be obedient to them that are your masters,*" and to all men the commandment is, "*thou shalt not covet thy neighbor's servant.*" Look at the defendants' acts. It is admitted that they had no right to compel Slaughter to go before a magistrate; but it is said that they had a right to *persuade* him to do so! Was it *persuasion* they used? Is the assertion of one of the Fraziers that the negroes should not return *unless* they were taken before a magistrate; of the other that they should be taken away *in no event;* Johnson's advice to the negro to knock Slaughter down if he ventured to touch him again; the exclamation of another "*that he would wade through Missouri blood;*" the presence of numbers sufficient to enforce these *threats,* is all this *persuasion, mere persuasion?*

Let us now look at the general character of the evidence. You know as men, if not as jurors, that we have been forced against our will into this trial, and that some of the witnesses we were compelled to call were originally defendants to this suit. Slaughter tells you that when he overtook the wagon, in the bushes near Salem, there were three young men in

it, and the driver called himself Anderson or Andrews. Young Frazier, defendants' witness, swears that *he* drove the wagon *all the time.* That he took down to Farmington *two young men* and brought them back. He did not know their business—where they lived—where they came from—where they were going—where they boarded in Salem, but knew it was not at the hotel; he saw them first at his own house, but could not tell what they came there for—and last saw them in the streets of Salem a few days after the negroes were there! This seems rather extraordinary! He knows whose horses he drove—they were John Pickering's—and the wagon belonged to another man, but he didn't know to whom! Is not all this exceedingly suspicious? He says the negroes were not in the wagon. Do you believe it? You are the judges of the evidence, and you are to determine not only from what *is* said, but also from what is *not* said, and by the manner and demeanor of the witness, and by his consistency with all the other testimony. Slaughter says the negroes were not in the wagon when he got up to it. But does that prove that they were not in it before? What was the wagon stopped in the bushes for? It had been driven very fast three or four miles across the prairies and it had a cover. Why was it in the bushes, and why did it *stop* in the bushes so near to Salem? Has any reason been assigned, and had there been a good one would not the gentleman most gladly have shown it to you? But defendants stopped the examination short as soon as they got the witness to say the negroes were not in the wagon. There is a mystery here, which your verdict will solve.

We are asked what evidence there is against John Pickering. His horses went to Farmington, driven in another man's wagon by this young Frazier, who told Slaughter his name was Anderson or Andrews, and, as is said, to carry a Methodist minister! There is nothing to show that either of these young men was a Methodist minister. John Pickering was charged by his brother with having assisted in conveying the negroes. He was seen talking with the negro in the crowd at the Abolition Meeting House just before he escaped on the horse. They were *tete a tete*, cheek by jowl, billing and cooing like doves in the spring of the year. The negro left his side and went directly to a horse on the opposite side of the street; Gilcherson unhitched the horse, and, when the negro had mounted, handed up the child. Paul Way starts out from the other side of the house and rides off upon a gallop followed by the negro, also upon a gallop, at a short distance in the rear. Are not these strong circumstances? Do they not prove the guilt of those having an agency in them? The negroes escape on Friday night. On Sunday morning the wagon goes to Salem under most mysterious circumstances. On Monday morning the negroes are found in the vicinity, concealed in the very bushes in which the wagon had stopped. The agents are forced into Salem against their will, when they might have taken the negroes off, and the defendants are all concerned in the matter at some time or other before its termination. Can you believe witnesses who talk so glibly when questioned by defendants and stand almost mute upon my interrogations? One of those whom we were compelled to make a witness of, is very forgetful but the gentleman made him remember a great deal. They were in no fear of him—they knew he was fire proof. But not so with their own witnesses. How cautiously their questions were confined to particular facts—no general knowledge is demanded. The whole truth is not asked for by them, and we are prohibited by the technical rules of law from extending our inquiries further than they did theirs. Their very manner in this particular is evidence of their guilt, and is proper for your consideration. 1st Greenleaf's Ev. p. 42 and 37. To wince before they are hurt, is evidence that they expected to be hurt if they did not wince. Why afraid of facts if they are innocent? In such case nothing could be told to their injury. Truth is always consistent and always lovely. It will bear probing, and the more you probe it

the brighter it becomes, and the more you make its consistency apparent. You, gentlemen, must believe from all the circumstances, that the defendants are guilty. It cannot be otherwise. The mere shadow of truth alarms them. They cannot endure its light.

As to the agency of Slaughter, I still contend that the agreement with him estopps them from denying it. The offering a reward will constitute a sufficient agency in those who act upon it. If I publicly offer to pay any one ten per cent who will sell my horse for a certain price, I can be compelled to pay it if the sale is made.

But upon the Counts for harboring and concealing it is conceded that no agency is necessary. The first two Counts are for a rescue—the next two for harboring and concealing so that we lost the negroes, and the last two for hindering and preventing us from regaining the possession of them. On the third and fourth Counts it is not required of us to prove any agency, or that defendants even knew whose negroes they were. It is enough if they knew that they were slaves. If any act of defendants amounted to harboring or concealing, that moment their guilt became fixed, and they became liable to us for the amount of damage we may have sustained. If we afterwards recovered the negroes, our damages would be for the detention and the expense we incurred. If the negroes were not recovered, then their value must fix the amount. We have acknowledged the reception of four of the nine—two women and two children. The remaining five have never been regained. This is the amount of our injury. Under the evidence we have adduced, you will have no difficulty in making the estimate. It is shown that the men were worth nine hundred or one thousand dollars each; the women six or seven hundred; Martha the girl two hundred and fifty or three hundred, and William two hundred. No value was placed upon the other two children. What their services were worth, a year, was also shown to you. If you find the defendants guilty, you will assess the damages according to the evidence upon this point which has not been controverted or disputed.

I have said that this is an important case, and I repeat it. In whatever light you choose to view it—whether as citizens of Iowa, desirous, as you should be, to convince our sister States that you will deal out justice as impartially to them as to your immediate neighbors—as citizens of the Union, determined to support and sanction in all its parts, the compact to which, upon our admission, we became parties—as neighbors to Missouri and anxious to maintain peaceful and friendly relations with her and her citizens—as law-abiding men, acting under and by authority of the law and the constitution—in whatever light you look upon the case before you, it presents an important and interesting aspect. It would do so at any time—how much more important, then, does it become at the present crisis? The very subject upon which you are called to decide, is now agitating our country from Washington to the most distant borders. It has been a source of contention and distrust among the people of both North and South—of slave-holding and non-slave-holding States. Your verdict will show whether there is just ground for this suspicion, as to us. Whether fanaticism is to be encouraged among us of the North, or the wild and maniac cry of disunion in the South. I feel confident you will deal out justice to all the parties before you according to the law as it will be given you by the Court, and the evidence you have heard. The guilty deserve to be punished and the injured are entitled to redress. Above all, the law should be vindicated—its supremacy confirmed. The idea that any man or society of men, may be permitted to trample upon the plain letter of the law and Constitution, should be severely rebuked, and the offenders convinced that the impunity they have enjoyed in other places, will never be found in Iowa. The Union has a right to demand this of you—Missouri demands it, and all good citizens of our own State unite in the requisition. If there

is guilt here, it should be punished. If against any who are charged, you find no evidence, you will say not guilty as to them. But if you are satisfied that any *one* or more is guilty, you are, by all the high obligations I have mentioned, required to find him or them so in your verdict.

Gentlemen, I have done. I commend the case to your hands with the firmest conviction that you will meet out to us nothing more or less than impartial justice.

Upon the conclusion of Mr. Rorer's argument, his Honor, J. J. Dyer, proceeded to deliver to the Jury the following

CHARGE.

This (said his Honor) is an action of Trespass on the Case, brought by the plaintiff, Ruel Daggs, a citizen of the State of Missouri, against the defendants, citizens of the State of Iowa, under the law of Congress relating to fugitives from labor.

It is a case well calculated, at this time, to create some degree of interest in this community. For, while our whole country is agitated upon the subject of Slavery—while towns, counties and States have been and are arrayed against each other in an almost warlike attitude, and this great Confederacy is thus threatened with destruction, and the fears of citizens in various parts of the Union are exciting and inflaming their minds, and driving them to acts, which it is feared, will have soon, if they have not already, brought us to the very verge of Destruction—I repeat, it is not strange that there should be some interest manifested in the result of this case. I am happy to say that no undue excitement has been shown during the progress of this trial. You, gentlemen, have patiently and calmly heard this case, and thereby shown that you appreciate its importance. Counsel on both sides have ably, zealously, but with a commendable spirit of fairness and liberality, conducted it to its close. With the general excitement on this subject, and the many plans for its settlement upon some satisfactory basis, we have nothing to do. Our business now is with the laws and Constitution as they are, not as we may think they ought to be; and, I doubt not, gentlemen, that you will come to the investigation of this case in your retirement, with minds unbiased, unprejudiced, and with a sincere desire to render your verdict in accordance with the law and evidence submitted to you.

The act of Congress upon which this action is founded declares—

> That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney, in so seizing or arresting such fugitive from labor, or shall rescue said fugitive from such claimant, his agent or attorney, when so arrested, pursuant to the authority herein given or declared; or shall harbor or conceal said person after notice that he or she was a fugitive from labor as aforesaid, shall, for either of said offences, forfeit and pay the sum of five hundred dollars, which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving moreover to the person claiming such labor or service his right of action for or on account of said injuries or either of them. (Act of February 12, 1793.)

The plaintiff has not thought proper, to institute his action for the penalty, but relies upon the concluding clause of the act. The declaration contains six counts: 1st. That on the first of May, 1848, the plaintiff, a citizen of Missouri, where slavery is tolerated and established, owned and had in custody and under his control, nine persons lawfully held to labor, and described in the declaration; and that said slaves escaped from the service and labor without his knowledge or consent into the town of Salem, in the county of Henry and State of Iowa; and that by his agents he afterwards recaptured said slaves in the county of Henry; and that defendants after having notice that said negroes or persons were fugitives from labor,

and that the said agents had a right to reclaim and arrest said fugitives, rescued, aided and assisted said fugitives in making their escape to some place beyond the reach of the plaintiff and his agents:

2d. That the defendants rescued the said slaves from the custody of plaintiff's agents:

3d. That the defendants concealed said slaves from said agents:

4th. That the defendants harbored and concealed said slaves:

5th. That defendants obstructed and hindered an arrest:

6th. That defendants hindered and prevented the agents from reclaiming and seizing said slaves.

George Daggs, the plaintiff's witness, states that he is the son of plaintiff, and that his father has resided in Clark county, Missouri, for twelve or thirteen years; that he, the witness, resided in Missouri about fifteen miles from plaintiff; that soon after the 2d of June, 1848, he was sent for by his father to hunt after nine slaves belonging to plaintiff, and upon arriving at plaintiff's house, found that the nine slaves were not at the house of his father, the plaintiff, viz: a black man named Samuel Pulcher, 40 or 45 years old, worth at that time from $900 to $1000; Walker, a yellow man 22 or 23 years old, worth from $900 to $1000; three negro women, Dorcas, Mary, and Julia, worth $600 each; a boy and girl worth $250 or $300 each, and two young children, whose value he could not give. That soon after he was sent for to plaintiff's, the two women, Dorcas and Julia, and the children, Martha and William, were recovered and brought back to plaintiff's house. He knows nothing of the manner of the escape, or whether they did escape to this State of his own knowledge.

Albert Button resided, in June, 1848, at Salem, Iowa, and about that time saw, in the streets of Salem, a crowd of 50 or 100 persons, and a negro man and boy in the midst, who, he heard a man whose name was McClure say, were slaves. The crowd, with the negroes, went into the Anti-Slavery meeting house, as he understood, by agreement of McClure and Slaughter, of Salem, who were claiming said negroes as fugitives from labor, and the citizens who were in the crowd, to try before a Justice of the Peace, whether said negroes were fugitives as claimed. That Slaughter and McClure, who said they were authorized to seize the slaves, could or did not exhibit their authority for acting as agent for plaintiffs, and that the Justice would not take jurisdiction or cognizance of the case; and that the negro man and boy were permitted to depart. That he saw no manifestation on the part of any one in the crowd to use physical force to prevent the capture of the negroes by the men from Missouri. That one of the Fraziers, a defendant, was present in the crowd.

Jonathan Pickering resides near Salem, was not present at the time mentioned. Was informed by his brother, John Pickering, one of the defendants, that a few days previous to the day on which the negroes were brought to Salem, he had hired his horses to Eli Jessup to put them in some carriage to take a Methodist preacher to Farmington, on the Des Moines, and that he complained that the horses were not brought back at the time agreed upon by Jessup and himself. When they were brought back, they were attached to a wagon; but to whom it belonged, witness did not know. That he, witness, charged John Pickering with sending his team to carry off those negroes, which defendant denied. That Comer also denied knowing where the negroes were, only that he knew they were not in Henry county.

Samuel Slaughter was employed by McClure, or some one, not the plaintiff, to assist in finding the negroes; and after looking for a day or two, as they were riding on the road from Farmington to Salem, saw a wagon driving rapidly towards Salem, and following, overtook it about one-fourth of a mile from Salem. There were three young men in it and not any negroes as he expected to find. That he went into the woods a

short distance and came upon nine slaves—the description answering to those mentioned in the declaration, he and McClure took them and tried to get them to go with them; a part consented—he placed one of the men on a horse when several persons came down the Salem road, two of whom he afterwards ascertained to be Elihu and Thomas Clarkson Frazier, the defendants. One of them said to him, you can't take these negroes with you unless you prove them to be slaves. The other said you cannot take them in any event, whether you prove them or not. Soon after, other men came down the road from Salem to the number of about a dozen and joined them, and all insisted that the negroes should be taken to town to be brought before a Justice of the Peace. That he, McClure, tried to prevail upon the negroes to go with them to Missouri, but were prevented from compelling them to go, by the hostile appearance of the crowd. That in accordance with the wish of the crowd, they started to Salem, taking the negroes; and fearing one of the negro men was about to escape, he seized him by the arm, and some one took the negro from him and told the negro to knock him down if he attempted to touch him again. They at length got into Salem, and after stopping once or twice, reached the Friends meeting house. A Magistrate and two attorneys, Button and Street, were prepared to inquire into the right of witness and McClure to seize said negroes as fugitives from labor. Only two of the negroes went into the house, a man and boy. The witness then offered to prove by McClure that the negroes belonged to plaintiff, but was not permitted to do so. The Magistrate was requested by Button to discharge the negroes, which he refused to do, saying that the case was not properly before him. He was then requested to say that they were free; Magistrate said they were as free as he was for aught he knew. The negroes then left the house, and mounting a horse rode off in company with or following Paul Way, and he did not see them afterwards. Considerable excitement prevailed.

Hurting was in Salem on Monday, when the negroes were brought in. Saw two men, one black and the other yellow, in the crowd. Elihu Frazier was in the crowd. After which, the negro man walked off to the fence, unhitched a horse, got on him, and after a man named Gilcherson handed up the negro boy, rode off north, following Paul Way, who was also on horseback, both riding in a canter. There were two parties in the crowd, one wanting to take the negroes to Missouri, the other wanting them to be tried. Saw the two defendants, Fraziers, at the stone house before the trial; don't recollect to have seen them in the meeting house. Magistrate said he had no jurisdiction. Slaughter said he was fairly beat, and if he had commenced the suit properly, believed that there were enough law-abiding people in Salem to assist in getting the negroes.

Dorland was in his school house, and hearing a noise, dismissed his school; went out and found considerable excitement and confusion; got upon a pile of boards and called the attention of the company to him, and proposed that there should be a trial, and if the negroes were found to be fugitives from labor, they should be given up; all consented to this; went into the meeting house; the black man and child went in also; Slaughter was requested to show his authority as agent; stated that neither he nor any one else was acting as agent in the sense, as the term was understood then; one party wanted to take the negroes off, the other wished them free. Saw Thomas C. Frazier at the stone house; heard no threats.

Several other witnesses corroborate the testimony of the two last, and the balance does not vary from the facts which have any bearing. This is the substance of the testimony in the case. But it will be for you, gentlemen, to say whether, from all the evidence, the plaintiff has made out his case.

There is not the shadow of a doubt, that the statute gives a right of action when its provisions have been violated. This has been settled beyond

all controversy by the decisions of our Circuit and Supreme Courts; and, indeed, it has not been denied by defendants' counsel. Your inquiry will be, simply, whether the defendants are guilty of having committed any or all of the acts alleged in the declaration. The first count charges them with having rescued, aided and assisted plaintiff's slaves to escape. To have done this, it must be proved that the defendants had notice that these negroes were fugitives from labor, and that the claimant was either the master, his agent or attorney, and so knowing, that they willingly rescued by force or such other means, as led to the escape of the fugitives. If there is any evidence to show that the defendants possessed the knowledge, no matter how obtained, that the negroes owed service to the plaintiff, either by the confession of the negroes, or by a written or verbal notice, and that they knew at the same time, that Slaughter and McClure were the agents of plaintiff, they are guilty under this count. A mere obstruction or hindrance after seizure, which does not afford an opportunity of escape, is not an offence within the meaning of the statute. If an escape should, however, happen in consequence of the obstruction or hindrance, and this obstruction or hindrance is made for an illegal purpose, the offence would be complete. The master, or his authorized agent, may seize his slaves, and no one can legally oppose or hinder him, not even a Magistrate, without a warrant, oath or probable cause, to suppose that the slaves do not owe service to such master, or that he is using more force and violence than is necessary for their peaceable removal. The Magistrate has no authority to issue his warrant to seize and bring before him fugitives from labor; he can only act when they are thus brought before him; and the question for him to try, is, whether the persons so brought before him, owe service or labor, according to the laws of the State from which they fled, to the person claiming him, and if so, to grant his certificate for his removal to such State; nor is it necessary that the master or agent should have a warrant to authorize him to seize the slave. He may take him, wherever found. This right of the master results from his ownership, and no one can interfere with this right, if he is aware that it exists. That is, if he is cognizant of the fact that the person seized is a fugitive from labor, and the person claiming him is the master or his legally authorized agent. A knowledge of these *facts* must be brought home to him, but ignorance of the *law* or an honest belief that the person seized is not a fugitive from labor, will not excuse an offender.

The second count alleges a rescue. The remarks made upon the first will apply to this.

The third count for concealing, and the fourth, for harboring and concealing, will be considered together. These terms, Judge McLean has decided, are synonymous; they have the same meaning in the statute on which this action is founded. To harbor and conceal is to do some act by which the fugitives from labor are prevented from being discovered by the master, either by hiding, secreting, or transporting beyond the reach or knowledge of the owner. It has been very properly remarked by the same eminent Justice of the Supreme Court of the United States, that talking to or performing the common offices of humanity, such as feeding the fugitives when hungry, or conversing with him without an intention to violate the law, is not harboring or concealing within the statute. If, however, the party accused has notice that the persons who are charged as fugitives from labor, are such, any act, save one of humanity, which will cause the loss of services, of such fugitives, will render such party liable. If the fugitives are carried or taken to any place beyond the reach or knowledge of the owner, whether he takes him from the possession of such owner or his agent or not, he does that, which the law prohibits him from doing. But, it must be borne in mind, 1st, That the party offending, must have knowledge, notice or information, that the person concealed is a fugitive from

labor, and this knowledge may be imparted by any one, whom it is presumed may know the fact. It has been said in 1 Gall, that notice is knowledge, that any information which may put him on inquiry is sufficient. 2d, It must be shown by the evidence that the party concealing or harboring, does so with the intention to defeat the means of the claimant to secure the fugitives. You must be the judges whether there has been any evidence on these two points.

The fifth count is for hindering an arrest. If the evidence is, that an arrest was made by Slaughter and McClure before any of the defendants interfered, they cannot be found guilty under this count.

The sixth count is for hindering and preventing agents from reclaiming and seizing. You are to weigh the evidence and say whether any or all of the defendants hindered or prevented the legal agents of plaintiff from reclaiming and seizing persons whom the defendants knew to be the slaves of plaintiff.

To recapitulate; you must be satisfied from the evidence that the plaintiff was the owner of the slaves in question, that they escaped from his service in the State of Missouri, to the State of Iowa, and that the defendants rescued, aided and assisted to escape from, or hindered the arrest of the fugitives by the owner, his constituted agent or attorney, and that defendants knew at the time that claimant was the owner or agent. If the plaintiff, Ruel Daggs, in person made the claim, and it was personally known to defendants that he was the person he pretended to be, or if it had been proved that he was such person, then if the evidence shows that the defendants committed any of the acts charged, then they are guilty, or, if an agent is claimant, his authority to act as such must be shown at the time of the rescue; either in writing, or by proper legal proof, it must be proved that defendants knew by some other way, that they were agents. The acknowledgment after, by plaintiff, that Slaughter and McClure were his agents is not sufficient to charge defendants. It was not, could not be a violation of the law on the part of the defendants, unless this knowledge at the particular time mentioned, is brought home to them, and that with this knowledge they were governed in what they did, by a desire to prevent the caption or retention of such fugitives by the owner or his agent.

Or to enable plaintiff to succeed on the third and fourth counts, you must be satisfied from the evidence that defendants, with a knowledge that the negroes were fugitives from labor, concealed and harbored them. It is not necessary, that it should be proved that defendants knew, that the persons claiming to be agents, were such. If at any time before the institution of this suit, defendants concealed, or kept from the knowledge of the owner, these fugitives, with the intention of preventing a seizure or capture, then they are guilty. It matters not, whether the owner or his agents were in search of these slaves or not. It is sufficient that such concealing and harboring under the circumstances mentioned, was the cause of the loss of said slaves.

It is not necessary that I should speak of the feelings and prejudices which exist upon the subject of slavery. Our feelings are rarely a safe guide to govern us in the discharge of our duty to our country and our fellow citizens. If we are guided by the laws, which are a shield to all persons alike, we cannot err, and no good citizen will desire to see the rights of the citizen of any State trampled upon with impunity. Under the law of Congress in regard to fugitives from labor, the plaintiff is justly entitled to a verdict at your hands, if the defendants have been proved to be guilty. But nothing but such legal proof as will satisfy your minds, that the defendants have willingly and knowingly violated this law, will justify a verdict of guilty. The case is submitted to you. If you find the defendants or any of them guilty, you will find the value of the services at the time of their escape, and that value is the amount which the negroes would have sold for at that time.

The defendants then asked the following further instructions:

The act of Congress is the sole foundation of the right of the plaintiff, so far as this suit is concerned, and the jury cannot find for the plaintiff unless they find from the evidence that the defendants, or some of them, violated the provisions of said act;

1st. Before the jury can find for the plaintiff on any of the counts they must find from *the testimony*, first, that the slaves of the plaintiff escaped from Missouri without his consent; second, that they came to Iowa; third, and that the *same identical slaves*, or *some of them*, were found in Henry county, Iowa, and fourth, that the defendants, or some of them, committed a violation of the act of Congress, by which an injury has accrued to the plaintiff.

2d. That before the jury can find the defendants guilty under the 3d and 4th counts, they must decide that the defendants harbored and concealed slaves of the plaintiff, who had escaped from Missouri, and that they, defendants, had knowledge that they were slaves. The offence of "harboring or concealing" is not committed by treating the fugitive on the ordinary principles of humanity. The defendants might rightfully converse with him, and relieve his hunger and thirst, without violation of the law, and under these counts might do any act, except one which not only showed the intention of eluding the vigilance of the master, but was calculated to attain that object.

3d. An open and fair act with an intention to procure a fair and legal hearing for the fugitives is no violation of the act of Congress, and does not authorize a verdict against the defendants.

4th. If the persons who made, or attempted to make the arrest of the alleged fugitives were not legal agents of the plaintiff, Daggs, and previously authorized by him, they must find the defendants not guilty as to the 1st, 2d, 5th and 6th counts of the declaration.

5th. Even if the defendants ratified and adopted the acts of Slaughter and McClure after the arrest or attempted arrest, it does not legalize the agency or arrest so as to affect the defendants or their acts. To charge them there must be a previously existing agency.

6th. The plaintiff must prove that he owned slaves and resided in Missouri. Second, that his slaves escaped without his consent, and came to the State of Iowa.

7th. That the plaintiff must prove facts and circumstances sufficient to show that the escape was involuntary on his part, and the escape cannot be presumed upon the mere hypothesis that the slaves were property.

8th. The plaintiff must also prove that he pursued the slaves into Iowa. This may be done by the plaintiff in person, or it may be done by the authorized agent or agents of the plaintiff. If the plaintiff relies upon the proof that the pursuit was made by an agent or attorney, then he must prove affirmatively that he personally, either in writing or verbally, authorized those persons to act as his agents. That the agency cannot be presumed from the mere declarations of the persons claiming to be agents; nor by their acts, but the writing (if it be in writing) must be produced or its absence accounted for, or if verbal, then the fact that the appointment was thus made by the plaintiff must be proved. Under third and fourth counts it is not necessary that plaintiff or agent pursued into the State of Iowa.

All the above instructions, with the exception of the seventh, were given by the Court.

The plaintiff then asked the following further instructions:

1st. That the presumption of freedom *here* may be rebutted by circumstances; such as their secreting themselves, and not denying their bondage, when claimed, and these circumstances are proper evidence, if brought to the knowledge of defendants.

2d. That there need not be positive proof to enable plaintiff to recover, but circumstantial proof, is sufficient, if satisfactory to the minds of the jury.

The first instruction, asked by plaintiff, was denied and the second given.

His Honor having concluded his remarks upon the law and evidence, the Jury retired in charge of an officer, and, after an absence of between one and two hours, returned into Court with a verdict, finding the defendants, Elihu Frazier, Thomas Clarkson Frazier, John Comer, Paul Way, John Pickering, and William Johnson, *guilty* upon the *first, second, third* and *fourth* counts of the declaration, and assessed the damages at TWENTY-NINE HUNDRED DOLLARS. As to the rest of the defendants, the Jury said, *not guilty.*

Whereupon defendants' counsel moved the Court to grant a new trial on the following grounds:

1st. Because the Jury was improperly impannelled in violation of the statute of Iowa, in such case made and provided, and this fact was unknown to defendants and their counsel, until after the rendition of the verdict; and,

2d. Because the verdict was against the evidence as to some of the defendants, and upon no evidence as to others.

The motion was argued at considerable length upon these grounds, with comments upon the evidence, as applicable, under the statute, to the tenor of the declaration, by Messrs. Hall and *Morton for defendants, and opposed by Mr. Rorer; after which the plaintiff entered a *nolle prosequi* as to William Johnson; whereupon the Court decided that although the verdict was bad upon the *first, second* and *third counts,*

*John T. Morton came to Mt. Pleasant, Iowa, about 1842 or 1843. He was a bright young lawyer and took an active interest in politics. He was one of the representatives from Henry county in the first General Assembly, in 1846, and was elected to the Senate from that county in 1850. He continued the practice of law until about 1856, when he went to Quincy, Ill., and became the editor of *The Quincy Whig*, a well-known newspaper, which he conducted until near the close of the civil war. He was shot and quite severely wounded by some rebel sympathizer during the war, for something he had published in his paper. After the war he went to Kansas, and was for a number of years one of the district judges in that state. He died there some years ago. We are indebted for these facts to Judge W. I. Babb, of Mt. Pleasant.

it was good upon the *fourth;* the motion was therefore overruled, a new trial denied, and judgment entered upon the verdict.

Defendants then asked time to file their bill of exceptions, for the purpose of taking the case to the Supreme Court, by Writ of Error, which, no objection being made, was granted.

THE INDIANS.—Some difficulty is apprehended in removing the Indians camped on Skunk river. They are principally Iowas and Pottawattamies, about 600 or 800 in number, and have expressed their determination to remain where they are until fall. Their land lies west of the Missouri river, where there is no game and the soil is poor. Maj. Woods, with some 200 soldiers, dragoons and infantry, is camped near them awaiting the expiration of the time he gave them to remove, when if they do not go he has no discretion but to force them. Many of the settlers about there, fearing a collision between the troops and the Indians, have abandoned their houses and crops, and removed into the settlements. The Indians have put in some forty or fifty acres of corn which we are told looks well and they ask to stay until they can gather it, but the edict has gone forth that they must go. "Alas, the poor Indian."—(*Fort Des Moines Gazette.*) *The Western Democrat, Andrew, Iowa, July 26, 1850.*

RUMORS unfavorable to the notes of the State Bank of Ohio are in circulation. In fact none of the Whig trash for which the farmers have to exchange their products . . . is safe for twenty-four hours—no man should keep it over night while he has a debt to pay, or a profitable investment can be made.—*Iowa Democratic Enquirer, Jan. 28, 1852.*