# REPORT

OF THE

PROCEEDINGS AT THE EXAMINATION

OF

# CHARLES G. DAVIS, ESQ.,

ON A

CHARGE OF AIDING AND ABETTING IN THE RESCUE OF A FUGITIVE SLAVE.

HELD IN BOSTON, IN FEBRUARY, 1851.

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# NOTE.

THE following Report is published at the request of numerous persons who are of opinion that all which is known of the operation of the Fugitive Slave Bill, should be spread before the public. To the legal profession it will be of interest, as developing new points in the construction and application of a Statute, destined to be of great political importance now, and in future history. They will be able to judge of the constructions upon the Statute, and of the law of evidence, as laid down and applied by the Commissioner, and contended for by the representative of the Government. Not the profession alone, but the public, can judge of the temper, and manner, as to parties and witnesses, in which the prosecution was pressed, and the judicial duties performed.

It will be well for every reader to bear in mind that this is the tribunal to which the late Act of Congress gives final jurisdiction in deciding whether a man found a free inhabitant of a free state, shall be exiled, and sent into endless slavery.

The Commissioner tries an issue, on the result of which, all the hopes of a fellow man for the life that is, and that which is to come, are suspended; and his judgment is "conclusive on all other tribunals."*

It will be well for us, as citizens, to remember, that the attempt is making to establish this act, passed by the vote of less than half of the Representatives of the people, as the unalterable law of the country; to treat as treason and disaffection to government, all attempts to rouse the public to efforts for its repeal; and, by unprecedented coalitions, that might almost be called conspiracies, of public men, to destroy the character and means of influence of all who lend their aid in these efforts. Even a public discussion of the subject, is cause for suspicion and inquiry.

We would ask every reader, on rising from the examination of this trial, taken in connexion with the President's Proclamation and Message, the late debate in the Senate, and the recent letters and speeches of leading men of both parties, to say, for himself, whether these are not times, not only of danger to the liberty of colored men, but of serious apprehension for our independence and dignity as men, and our rights as citizens.

* See the Opinion of Attorney General Crittenden.

# REPORT.

On the 13th of February, A. D. 1851, one John Caphart, of Norfolk, Va., came to Boston, in pursuit of one Shadrach, alleged to be a fugitive slave and the property of John Debree, a purser in the navy, and attended by Seth J. Thomas, Esq., as counsel, made his complaint, as agent and attorney of the said owner, before George T. Curtis, Esq., U. S. Commissioner. On the evening of the 14th, the following warrant was placed in the hands of special marshal Sawin, and served, Shadrach offering no resistance, about half-past 11 on Saturday forenoon, the 15th, at the Cornhill Coffee House, where Shadrach had been employed for some months as a waiter:—

UNITED STATES OF AMERICA.

*Massachusetts District, ss.*

To the Marshal of our District of Massachusetts, or either of his deputies.

[ Seal ] Greeting:

These are, in the name of the President of the United States of America, to command you, the said marshal or deputies, and each of you, forthwith to apprehend one Shadrach, now commorant in Boston, in said district, a colored person, who is alleged to be a fugitive from service or labor, and who has escaped from service or labor in the state of Virginia, (if he may be found in your precinct), and have him forthwith before me, one of the commissioners of the circuit court of the United States for the Massachusetts district, at the court house in Boston aforesaid, then and there to answer to the complaint of John Caphart, attorney of John De Bree, of Norfolk, in the state of Virginia, alleging under oath, that the said Shadrach owes service or labor to the said De Bree, in the said state of Virginia, and while held to service there under the laws of the said state of Virginia, escaped into the state of Massachusetts aforesaid, and praying for the restoration of the said Shadrach to the said De Bree, and then and there before me to be dealt with according to law.

Hereof fail not, and make due return of this with your doings thereon, before me.

Witness my hand and seal at Boston, in the said district, on this fourteenth day of February, in the year of our Lord, one thousand eight hundred and fifty-one.

(Signed) GEO. T CURTIS,

Commissioner of the Circuit Court of the United States,

for Massachusetts District.

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The following return was endorsed upon the warrant:—

Boston, February 15th, 1851.

In obedience to the warrant to me directed, I have this day arrested the within named Shadrach, and now have him before the commissioner within named.

P. RILEY, U. S. Deputy Marshal.

A hearing was had in the U. S. court room, and several papers, being affidavits and certificates of a record, were exhibited by the complainant's counsel, as the evidence under the 10th section of the Fugitive Slave Law so called, that Shadrach was a slave in Virginia, that he was owned by said De Bree, and that he escaped on the 3d of May, 1850. At the request of counsel these papers were read, and admitted as evidence in the case, subject to such objections as might be made to their admissibility as legal evidence thereafter.

There were present as counsel for Shadrach, S. E. Sewall, Ellis G. Loring, Charles G. Davis, and Charles List, and as they had not had an opportunity to examine the documents produced by the complainant, and were therefore not satisfied of their sufficiency, they asked for a postponement, to February 18th, and the commissioner adjourned the further hearing of the matter until 10 o'clock, on Tuesday, February 18th, and passed the following order :—

United States of America, District of Massachusetts, February 15th, 1851.— And now the hearing of this case being adjourned to Tuesday the eighteenth day of February instant, at ten o'clock in the forenoon, the said deputy marshal, who has made return of this warrant, is hereby ordered to retain the said Shadrach in his custody, and have him before me at the time last mentioned, at the court house in Boston, for the further hearing of the complaint on which this warrant is issued. GEO. T. CURTIS, Commissioner.

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On the following Tuesday, P. Riley, Esq., Deputy U. S. Marshal, appeared before the Commissioner, George T. Curtis, Esq., and offered the following return which was annexed to the above order.

Boston, Tuesday, February 18th, 1851.

UNITED STATES OF AMERICA.

*Massachusetts District, ss.*

I hereby certify, in pursuance of law and the foregoing order, the said "Shadrach" named in the foregoing warrant and order, was being detained in my custody in the Court Room of the United States, in the Court House, in said Boston, when the door of said room, which was being used as a prison, was forced open by a mob, and the said "Shadrach" forcibly rescued from my custody. I also annex hereto, and make part of my return an original [printed] deposition, of the circumstances attending the arrest and rescue, and have not been able to retake said Shadrach, and cannot now have him before said Commissioner for reasons above stated. P. RILEY, U. S. Deputy Marshal.

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COMMONWEALTH OF MASSACHUSETTS.

*Suffolk County.*

I, Patrick Riley, of Boston, in the said county, counsellor at law, having been duly sworn, depose and say, that I am, and have been, for fourteen years past, the principal deputy of the United States Marshal for the District of Massachusetts.

That on Saturday morning, February 15th, 1851, about twenty minutes before 8 o'clock, A.M., I was called upon at my residence, by Frederick Warren, one of the U. S. deputy marshals, who informed me that there was a negro man, an alleged fugitive, to be arrested at 8 o'clock, who was supposed to be at Taft's Cornhill Coffee House, near the Court House, and desired to know where the negro should be put in case he should be arrested before I reached the office; that I told him to place him in the United States Court Room,—and that I would come to the office immediately,—that I came down almost immediately to the office, where I arrived shortly after 8 o'clock, and there found Mr. Warren, who informed me that the negro was unknown to Mr. Sawin, deputy marshal, to whom the warrant was handed on the night previous, as I have been informed, though no notice of it had been given to any occupant of the marshal's office,—and that the negro was unknown to any one of the marshal's deputies or assistants,—that Mr. Warren

informed me that Mr. Sawin had gone to find the man, who by previous arrangement was to point out the negro, and who had not shown himself as agreed; that I remained in the court giving directions, and making preparations to secure the negro when arrested, and awaiting the return of Mr. Sawin; that I saw him after ten o'clock, and he informed me that he had seen the parties in interest, and that it had been arranged not to attempt the arrest until 11 o'clock,—that I told him that it should not be delayed one moment, and directed him to notify the man who was to point him out to come instantly; that he left for that purpose, and at ten minutes before 11 returned, and said that the parties were about Taft's Coffee House, and that the men engaged were also in readiness in that neighborhood; that I went immediately with Mr. Warren, Mr. John H. Riley, and other deputies to the said coffee-house, and there found all our men, nine in number, stationed in and about the place,—that there were several negroes in and about the house, and I inquired for the man who was to point out the alleged fugitive, and was informed that he had not arrived; that Mr. Warren and myself went immediately into the dining hall at the coffee-house, and to avoid suspicion, ordered some coffee, and were waited upon by a negro, who subsequently proved to be the alleged fugitive: that, not hearing any thing from our assistants, we took our coffee and rose to go out and learn why we had not heard from them; that the negro went before us to the bar-room, with the money to pay for the coffee, and in the passage between the bar-room and hall, Mr. Sawin and Mr. Byrne came up, and each took the negro by an arm, and walked him out of the back passage way through a building between the coffee-house and the square beside the court house to the court-room as by me directed.

That I immediately, while he was entering the court house, went to the office of the city marshal, in the city hall, in the same square with the court house, and there saw Mr. Francis Tukey, the city marshal, told him what had been done, and stated, that as there would probably be a great crowd, his presence with the police would be needed to preserve order, and keep the peace in and about the court house, which is owned by the city, and in which all the courts of the commonwealth for Suffolk county are held. That Mr. Tukey stated that it should be attended to,—that I told him that I should notify the mayor instantly, and proceeded up stairs to the mayor's office, where I found Hon. John P. Bigelow, mayor of the city, and made the same communication and request to him, which I had made to Mr. Tukey. To which the mayor said,—"Mr. Riley, I am sorry for it." That I then left the office, at which time it was just half past 11 o'clock.

That I went immediately to the court-house, and found the negro in the United States court room, with the officers, and found all the doors closed, and was admitted by the usual inside entrance,—that George T. Curtis, Esq., the United States commissioner, was called, and came, and the claimant's counsel were sent for,—that all the doors were kept closed excepting the usual entrance, which was kept guarded by officers,—that the commissioner informed the fugitive, who was named "Shadrach" in the warrant, of the character of the business, and asked him if he wanted counsel,—to which he said that he did, and that his friends had gone for counsel,—that while waiting for the counsel to come, the room began to be filled with negroes and whites,—that the counsel for the prisoner appeared, and claimed a delay, to give them opportunity to consult with their client, pending which I desired Mr. Warren, the deputy marshal, to go to the navy yard at Charlestown, about two miles distant, and ask Commodore Downes whether, should a delay or adjournment take place, the navy yard might be used as a place of detention, the United States not being permitted by the law of the state to use the jails, and having none of their own. That the examination proceeded, and after the reading of certain documents presented by the claimant's attorney, and some discussion, the commissioner decided to grant the delay until Tuesday following, the 18th inst. That the counsel for the prisoner asked of the commissioner if they might not remain and hold consultation with their client, and examine with him the papers presented, to which the commissioner assented,—that the court room was ordered to be cleared, and was cleared of all save some fifteen officers, being all the reliable men whom we had been able to collect, the counsel, and some newspaper reporters,—that Mr. Warren, at this time, which was about half past 12, returned from the navy yard, and informed me that he had seen Commodore Downes, who said he could not grant my request,—that I despatched what officers I could spare to ask such of their friends to remain as would assist, and to

procure all the additional force possible, intending to use the court house as a place of detention. That Mr. Curtis, also left. That crowds of negroes and others began to gather about the court room, and in the passage ways leading to the court house,—that I went to one of the messengers who had charge of the building, and desired him to have all the court house doors closed as soon as possible, which were not necessary for use.

That, at or before one o'clock, Mr. Ebenezer Noyes, the messenger of the U. S. court, was despatched to the city marshal, whom he informed that the U. S. marshal wanted every man he could send to keep the peace in and about the court house, to which the city marshal replied, that he had no men in, but would send them over as they came in. That at about two o'clock, all the counsel had left, except Mr. Charles G. Davis, and a reporter, who I learned was Elizur Wright, one of the editors of the Commonwealth newspaper; that as the door was opened for them to leave, which opened outwardly, the negroes without, who had filled the passage way on the outside, took hold of the edges of the door as it opened, and then a struggle ensued between the holders of the door within, and those without. That Mr. Warren the deputy, immediately ran to the city marshal's office, but not finding him in, went to the mayor's office, and was informed, that the mayor had gone to dinner. That he then stated to those in his office that there was a mob in and about the court house, and called upon them to send men to help disperse it. That he then returned to the city marshal's office, found him in his private room, informed him of the trouble in the court house, and asked him to send all the men he could furnish, and whether he (Mr. Warren) could aid him in getting his men, to which he said that Mr. Warren could not assist him in the matter.

That, meanwhile, the struggle at the door continued for some minutes, and the crowd of negroes finally succeeded in forcing the door wide open, rushed in in great numbers, overpowered all the officers, surrounded the negro, and he was forced by them through the door, down the stairs, and out of the side door of the court house, and thence through the streets to the section where most of the negroes of the city reside,—that officers were despatched in pursuit, but have not succeeded in finding his present abode.

That from the time of the first notice to the mayor and city marshal, immediately after the arrest, as heretofore stated, to the giving of this deposition, neither the mayor nor the city marshal has appeared, nor has a single officer under their direction appeared, or aided in attempting to disperse the mob, or in keeping the peace; and that, in my opinion, it was the predetermined purpose of both not to do their duty in keeping the peace in and about their court house; for the city marshal, when requested by Henry S. Hallett, Esq., to disperse a similar mob, which had collected about the office of his father, a U. S. commissioner, during the excitement in the "Crafts" case, said that he had orders not to meddle in the matter, as I am informed by the said Hallett, and that the city marshal gave a similar answer to Watson Freeman, Esq., who asked him at about the same time why he did not disperse the mob, as I am informed by the said Freeman.

That Charles Devens, Jr., Esq., the U. S. marshal for this district, was at the time of the arrest, returning from Washington, where he had gone on imperative official business,—that it is proper to state here that neither the marshal nor his deputy is authorized by law to employ a permanent force sufficient to resist a mob; and that he has no authority to call to his aid the troops of the state or of the United States.

P. RILEY,
U. S. Deputy Marshal, Massachusetts District.

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Commonwealth of Massachusetts, Suffolk County, February 17, 1851.—Then personally appeared the above named Patrick Riley, and duly swore that the foregoing deposition by him subscribed is true, as to facts stated to be in his personal knowledge,—and that he believes that the statements therein given as made to him by others are true.

HORATIO WOODMAN, Justice of the Peace.

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After the reading of the above return, Samuel E. Sewall, Esq., protested against placing the whole of the last named affidavit on file, as a part of the return,

inasmuch as it purported to narrate facts which took place previous to the last hearing, and the order thereon.

The Commissioner inquired of Mr. Sewall, for whom he appeared. Answer, "For the alleged fugitive, called Shadrach."

The Commissioner,—"You cannot appear for a person who has avoided process."

Mr. Sewall. "The return in question shows, that he was forcibly removed. He is claimed as property. There is no evidence before the Commissioner that he has voluntarily avoided. So we are ready to proceed if the Commissioner chooses."

The Commissioner. "You cannot address the Court, Sir. It is well settled, that a person who avoids process, cannot appear by attorney. The Marshal may make such a return as he sees fit. I cannot interfere. But I will say that the return seems to me proper, and it may be filed."

Mr. Curtis declared the proceedings suspended, and ordered the Marshal to proclaim the Court adjourned indefinitely.

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On Monday the 17th of February, 1851, Charles G. Davis, Esq., of Boston, an attorney, and counsellor at law, was arrested upon a warrant issued by B. F. Hallett, Esq., a U. S. Commissioner, upon complaints made to the District Attorney, a copy of which is subjoined. Mr. Davis gave bail for his appearance.

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Thursday morning, February 20, 1851. U. S. Circuit Court Room. Before B. F. Hallett, U. S. Commissioner.

*United States, vs. Charles G. Davis.*

George Lunt, Esq., District Attorney, appeared for the United States.

Richard H. Dana, Jr., and Charles G. Davis, Esquires., for the defence.

Mr. Lunt moved that the original complaint be amended by the addition of another count. No objection was made, and the following complaint, as amended, was then read:—

UNITED STATES OF AMERICA.

*Massachusetts District, ss.*

To B. F. Hallett, Esq., Commissioner of the Circuit Court of the United States, for the District of Massachusetts.

George Lunt, Attorney of the United States, for the District of Massachusetts, in behalf of said United States, on oath, complains, and informs your Honor, that on the fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty-one, at Boston, in said District, one Charles G. Davis, of said Boston, Esq., with force and arms, did aid, abet, and assist one Shadrach, otherwise called Frederic, otherwise called Frederic Wilkins, the same being then and there a person owing service or labor, and a fugitive from service or labor, to escape from one John Caphart, who was then and there, the agent of one John De Bree, claimant of said person, owing service or labor, and a fugitive from service or labor as aforesaid; against the peace and dignity of the said United States, and contrary to the form of the Statute in such case made and provided. Wherefore, the said complainant complains that the said Charles G. Davis may be apprehended, and held to answer to this complaint, and further dealt with, relative to the same, according to law. And furthermore the said complainant prays that Frederic D. Byrnes, Simpson Clark, Charles Sawin, Patrick Riley, John H. Riley, John Caphart, may be duly summoned to appear and give evidence relative to the subject matter of the complaint.

(Signed) GEORGE LUNT, U. S. Attorney.

Boston, February 17th, 1851.

UNITED STATES OF AMERICA.

*Massachusetts District, ss.*

Then the above named George Lunt, personally appeared, and made oath to the truth of the above complaint, by him subscribed.

Before me, (Signed) B. F. HALLETT,
Commissioner of the U. S. Circuit Court,
for Massachusetts District.

*Amended Count.* Also for that on the fifteenth day of February, in the year of our Lord one thousand eight hundred and fifty-one, at Boston, in said District, one Charles G. Davis, with force and arms, did aid, abet, and assist one Shadrach, otherwise called Frederic, otherwise called Frederic Wilkins, the same being then and there a person owing service or labor to escape from Charles Devens, junior, Marshal of the United States, for said District of Massachusetts, who was then and there, a person legally authorized to arrest said fugitive, and said fugitive being then and there arrested pursuant to the authority given and declared in a certain statute of the United States, approved on the eighteenth day of September, in the year of our Lord one thousand eight hundred and fifty.

Mr. Davis thereupon repeated his plea of not guilty.

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[Note. Upon the previous examination of Mr. Wright, Mr. Lunt for the United States, had opened his case by stating that the complaint was based upon the 7th section of the act of September 18, 1850, (See Appendix), making it punishable by fine and imprisonment, to aid, abet, or assist, in the escape of a fugitive slave; and he should therefore call witnesses to show that the Shadrach named in the complaint against Wright, was a fugitive, as therein alleged. (See complaint). Mr. Lunt proceeded to call several witnesses, among whom Seth J. Thomas, and John Caphart, were named. Mr. Caphart did not appear.

Commissioner Hallett called the attention of the District Attorney to the Statute, and said he was clearly of the opinion, and should rule, that, if it should appear that Shadrach was an *alleged fugitive*, an attempt to rescue him would be an offence under the act.

Mr. Sewall, counsel for Mr. Wright, protested against the ruling.

Colonel Seth J. Thomas was called to the stand. Mr. Thomas was called upon to read the Norfolk documents, before exhibited to Commissioner Curtis, tending to show that Shadrach was a fugitive.

Mr. Sewall objected, that the documents could not be used as evidence in this case. They could only be used, if at all, upon a complaint, under the act, for the arrest and delivery of an alleged fugitive. They had not yet been received as evidence in such a case; they were only admitted subject to future objections, and the proceedings had been indefinitely postponed. There was no provision of the statute, and no principle of law which would make them evidence in criminal proceedings against a stranger, a free man, charged with making a rescue.

The Commissioner stated that the papers should go in as papers having a tendency to show that Shadrach was an *alleged fugitive*].

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THE GOVERNMENT THEN OPENED ITS TESTIMONY.

*Patrick Riley.* Am a Deputy U. S. Marshal—was before Mr. G. T. Curtis on Saturday, Feb. 15th; had an alleged fugitive called Shadrach, a black man, under arrest by warrant from Mr. Curtis—came to this room about 11½ o'clock, A. M.; remained till about 2; about 2 o'clock I was standing near Shadrach at end of reporter's table inside of bar—he was consulting with his counsel; I was by the table when I heard a cry that they were rushing in—the cry came from the

officers. Mr. Elizur Wright and Mr. Davis were the only strangers here, except Mr. Grimes, an alleged colored preacher. I immediately rushed to the door—some officers were between the green door and the outer door; I put my shoulder to green door—just then it cracked, the perpendicular piece was broken. I pushed as hard as I could with one of my feet against the judges' desk; I was there some three minutes; some one or two officers were outside pulling green door toward them. The crowd rushed in, surrounded the prisoner and left. I should think thirty or forty came into the room—Shadrach left with the crowd—there was noise and tumult outside and inside—"tear him away," I heard, and such expressions; cheers as he went out; before he went out I should think from two or three hundred. I saw no alteration in conduct of Shadrach, before the adjournment of court; saw him take his coat off and loosen his neckcloth—was satisfied he had no weapon, and was anxious none should be given to him. Mr. Davis was here as one of the counsel. I asked Shadrach if he was one of his counsel, and he said, yes, he had four or five counsel. I asked Mr. Sewall who were counsel, and some one said we four; S. Sewall, E. G. Loring, C. G. Davis and Charles List, were the counsel. Mr. King remained, stating something about his being counsel, and also Mr. Wells, his partner. (I told Mr. Wells to leave and Mr. King said he was his partner, and I let him remain.) Mr. Davis was here at the opening of Court, and Shadrach told me he was his counsel; he remained at the table in consultation, from adjournment to about the time of the rescue; do not know when he went out; do not remember his leaving the court-room, and I was here all the time, with this exception; I passed out the door a moment to give directions—I spoke to the messenger to close court house doors which he did not wish to use. When I went out, counsel and officers and reporters were here; that was before Mr. Wright came in. Four courts, C. C. Pleas, Supreme, Municipal and Police had been in session that morning. About 2, directed Mr. Davis and Mr. Wright to go out. I remained by prisoner with one or two officers at door, and between me and the door; did not see Davis after he passed the door; I saw him pass the inner door; Mr. Wright remained in; I remained by the prisoner. When I rushed to the door, I do not remember seeing Mr. Davis; I heard Mr. Davis say nothing offensive in the court room. [The original warrant for the arrest of Shadrach is here shown.] This is the warrant, order and return, etc., addressed to the Marshal or either of his Deputies; I arrested the man mentioned in this warrant, and the same man escaped.

*To the Commissioner.* I did not come into court room with Shadrach, but I knew him as the man arrested. The second return, as to the escape, refers to the same party, Shadrach.

*Cross examination by Mr. Davis.* I saw you examining papers produced before the Commissioner; saw you at table when Mr. Sewall called your name as counsel; you were standing; Mr. Sewall was talking to prisoner, and called you—this was immediately after order was given to clear the room.

*To the Commissioner.* Commissioner Curtis ordered prisoner be kept till Tuesday morning safely; I carried it out in reference to prisoner.

*Cross examination resumed.* I walked to end of passage to speak to Mr. Merrill; did not communicate to you a crowd was at the door. It is usual on exciting occasions to have officers outside when the door is open; sometimes have an officer outside. In other courts it is very common to have officers outside; there are fewer trials with us, and the room is hired by United States; we have no right to obstruct the entry. [Mr. Dexter was in room between adjournment and rescue.] Don't know but I stated yesterday there were officers outside; perhaps that Stratton was outside helping against the negroes. My printed return was made up of what I supposed to be the truth. I meant in that to say I heard a cry, and supposed there was no interpretation, except that the negroes broke the door open—saw the officers—communicated with them afterward, and published the affidavit as a general and true account of all that was material. Immediately after the rescue I ordered officers to go to see where the man was; I remained. I confess I was under great excitement; I had no conversation with Byrnes, Sawin or Clark, before the affidavit was prepared and sworn to. I was enquired of where the prisoner would be kept—I did not tell, but said if consultation was wanted we could have it in lobby. You told me, and Mr. List told me you were waiting for Mr. Dana. I told List that Mr. Dana asked me for a copy of the warrant before two o'clock—this was some few minutes before the rescue. Mr. List had just

left with my copy of warrant, and had not returned at the time of the rescue,—did not know the use to be made of it. My impression is, that Mr. Sewall, yourself and Mr. Wright, were moving out together, but that Mr. Sewall got out before you did. There were three persons to leave, and I think you were all gradually moving to the door—I had no doubt you could get out safely and without disturbance—can't say you conversed with Mr. Wright or the preacher—there was some general conversation—saw you and Mr. Wright have no private conversation. I told Mr. Wright he might remain if prisoner assented. Perhaps the prisoner would like his counsel—Shadrach assented. I let Mr. Wright go up and speak to prisoner; I kept my eye on Mr. Wright when he spoke to the prisoner—he went up and took hold of his hand—Mr. Loring left the room sometime before. When Mr. Wright came in, I was surprised. You said Grimes better not come in—counsel asked me if a friend might remain with prisoner during his arrest—Messrs. List, Sewall and Davis were present—can't swear who asked me.

*To the Commissioner.* Some colored friend I supposed—can't swear it was Davis asked it.

*Mr. Dana.* Do you know the person you arrested, was the person named in the warrant?

*Answer.* The person rescued was the person arrested under the warrant, but cannot say he was the person named in the warrant.

*The Commissioner.* Do you contradict your return? The return is conclusive.

*Mr. Lunt.* Mr. Riley, do you mean to contradict your return! I warn you, Sir!

*Mr. Dana.* He has contradicted it. Mr. Riley, you did n't know that the person you arrested was the man named in the original warrant and complaint, as the slave of Debree?

*Mr. Lunt.* I warn you, Mr. Riley, not to give that testimony! I warn you, Sir!

*The Commissioner.* The return of the officer is conclusive.

*Mr. Dana.* Does the Commissioner mean to rule that a man may be hung in a criminal case, on the return of an officer in another, and that a civil case? This case goes further. Here the very man who made the return is on the stand. Cannot we show by him that a part of this return is matter of form, and that he does not know whether it is true or not?

*The Commissioner.* I think, Sir, the return of the officer is conclusive in all these proceedings.

*Mr. Dana.* But the fact is already in—and the return is nullified. The objection is too late.

*The Commissioner.* If he has answered, it may go in, *de bene esse.*

*Mr. Lunt.* Does the Commissioner mean to rule in that testimony?

*The Commissioner.* I receive it *de bene esse;* to give such weight to it as I shall think proper.

*Mr. Dana.* Mr. Riley, do you know whether the man you arrested was the man named in the original warrant?

*Mr. Riley.* Hardly a man is arrested known to the officer. The officer is responsible for mistakes. I don't know that the man arrested was the man named in the warrant.

Did not apprehend a rescue or an attempt when Davis left. He left at my request at the time he left. He did not leave the room from all I saw, until his final departure—don't recollect seeing him outside the bar, nor conversing privately with any person beside counsel. He is known to me as a counsellor practising law in Circuit Court.

*To District Attorney.* There might have been fifteen persons in court room when I left. My attention was not directed to Davis particularly. He *might* have been absent without my knowledge.

*To Mr. Dana.* I kept my eye on the door after the room was cleared—ordered that no one should be admitted.

*Charles Sawin, Dep. Marsh.* Soon after Mr. Davis came in and sat down, he rose, coming towards me, and asked who Mr. Clark was, whether he was a southern man? I said, "No, that he was a citizen of Boston, and had been for some years." I asked Mr. Davis what there was in the wind, and he replied—"Not anything that I know of." He then added, "This is a damned dirty piece of business." This was before the proceedings before the Commissioner had closed. Afterwards when the proceedings had ended, Mr. Byrnes was standing within the

rail and I was outside, Mr. Davis said, "Well, you ought all to have your throats cut." The attorneys were present. In all there were about twenty persons present. It was after the order had been given to clear the room. I made no reply to remark. I thought it was uncalled for. I missed Mr. Wright and Mr. Davis about the same time. I did not see him go out. I was near the prisoner. I saw a tallish man whisper in the prisoner's ear during the hearing. The prisoner then took off his coat, and rolled up his shirt sleeves, and adjust his neckerchief and look kind of fierce. It was a white man that whispered to the prisoner. Mr. Davis might have been gone a minute before the rush was made to break in.

*Cross examined by Mr. Davis.* I don't know that your remark was, "this is damned dirty business for you to be in." My impression is that you did not qualify it. I did not consider it mean business. I thought it was legal business. I don't know that what you had said was the conclusion of a conversation that you had been having with Mr. Byrnes, and I don't recollect that the remark was, "Well, then, you ought to have your throats cut." Mr. Byrnes was near, and so were others of the counsel with you. There was a Mr. Morris, or Morrison, with them.

*Mr. Davis.* What Mr. Morris?

*Sawin.* That one! (pointing to Mr. Morris, who was in the bar.) The little darkey lawyer!

*The Commissioner.* Mr. Morris is a member of the bar, and entitled to be spoken of with respect, as much as the white lawyers who were engaged in the case.

*Sawin.* I meant no disrespect. I only used the expression for the purpose of designating the man.

*Mr. Dana.* The remark seems to amuse the district attorney.

*Mr. Lunt.* I cannot always control my muscles.

*Sawin.* (To Mr. Davis.) Have known you four or five years—never told you I was Deputy Marshal. Have given you business—considered the remark not unfriendly—did n't think much of it. The man was arrested in his apron and shirt sleeves—coat was afterwards brought in—don't know that he put his coat on again before the rescue. Heard Mr. Riley say to him, "Now, pretty soon, we'll have dinner." This was about the time you went out—thought you were counsel all the time.

*Fred. D. Byrnes.* Am a Deputy Marshal. Saw Davis in room on Saturday sometime while proceedings were going on. The first thing I heard Mr. Davis say, was "Damn mean business." The prisoner was in the bar. Mr. Sawin was on one side of the prisoner, and Mr. Clark on the other. Mr. Davis was within two feet of the prisoner, and I was near Mr. Davis. This was before the adjournment. Afterwards, near the rail on the left of the room, Mr. Davis came along and put his hand on my shoulder, and said—"This is a damned pretty mess," or, "you are a damned pretty set," and "every one of you ought to have your throats cut." After that, and when nearly all the people had left, Mr. Wright and Davis came along, and I said to Mr. Davis, "I always took you for a gentleman until to-day, but I am very sorry to say I can't say it now." He said, "Why?" I repeated his remark about cutting our throats, and he replied—"Well, I say so now." Mr. Davis then went out. I saw nothing out of the way when he went out. After Mr. Wright had passed out, I saw Mr. Davis near the wall on the right of the door, and close to the steps. I heard a voice that I then took to be Mr. Davis's, say—"Take him out, boys—take him out." I did not see his lips move, but I thought it was him who spoke the words, and I think so now. I am acquainted with Mr. Davis, and knew it to be Mr. Davis's voice, and no other one's voice. His shoulder was resting, or leaning against the wall. I had passed through the baize door with Mr. Wright, so that I could see a person at the corner of the wall at the outer door.

*Cross examined.* Mr. Hutchins had the charge of the door. I did not notice his position. Did see Mr. Clark's position. I saw nothing different in your going out from others going out. Clark and Hutchins were in front of me. I do not think the baize door closed on you before Mr. Wright came. The shout was after the pulling of the door commenced. Before that there had been several attempts to pull the door open. I had seen the ends of fingers on the edge of the door before that repeatedly. There was no rush when you passed out; but there may have been some hands on the door. I had gently led Mr. Wright as far out

as the threshold when the rush commenced. I saw no obstructions in your way when you went out. I can't say whether Mr. Hutchins had to let go of the knob or not, when you got out. I thought at the time, that you meant to call the people in, and I so told our people then.

Mr. Davis cross examined the witness very minutely as to the repeated opening and shutting of the baize and outer door during the minute prior to the rush, and also as to his position from moment to moment, and the positions of Clark and Hutchins, at and near the door. He testified that he was somewhat hard of hearing, more so some days than on others.

*To Mr. Dana.* I think Saturday was one of my hearing days. I don't hear so well to-day. My deafness came on when Elder Knapp was here. I was called out on duty at the time of the disturbance in Bowdoin square, in 1843, or thereabouts.

*To Mr. Lunt.* I saw a cleaver in the hands of a black man outside the door. He was standing rather back.

*To Mr. Dana.* I know the voice I took for Mr. Davis's was not a black man's voice. I know a black voice usually from a white man's. It was a white man's voice, and I thought at the time it was Mr. Davis's. I did not think it was Mr. Davis's voice because of its being a white man's voice. It was my opinion that it was not the voice of a colored man. There were many other voices heard calling out at the time. My first reason for supposing it was Mr. Davis's voice was that it was not a black man's voice. Within the past three years I have casually conversed several times with Mr. Davis. Know him as I know a thousand other people in Boston.

*To Mr. Lunt* That the voice I heard was not a black man's was only one of my reasons for supposing the voice was that of Mr. Davis.

Friday, Feb. 21st. *Calvin Hutchins* was called, and testified, that he was stationed at the door, and had hold of it, when Mr. Davis came to the door to go out. Mr. Byrnes spoke to him, and I opened the door for him; that is, I let it open, there being others pressing upon the door. I let the door open enough to let him out. I saw the stairway all filled. The stairs leading up were all filled also. When he stepped round, he got his back against the side of the door, and clapped his left hand up against the door. There was a cry to go in. I should suppose by the fingers on the door that five or six got hold of it to pull it round. I had already opened it as far as for others, and there was sufficient room for him to go out. I could not tell where he went to. He stood there when the door got started, and I was slapped round outside into the passage-way.

*Cross examined.* (To Mr. Davis.) To go out the best way to clear the crowd, you ought to have turned to your right; but you faced round to the door, putting your left hand upon it, and opening it more than was necessary. Some one had hold of the knob of the door at the time, and there were fingers on the edges. I was holding on to the door to give you space enough to get out, and was contending with the negroes by keeping the door from being opened more than sufficient to let you out. You slid out to the right.

*To the Commissioner.* Mr. Davis's back was against the door jam, or door post on the right, when his hand was on the door. [Witness goes to the door, and explains the position of himself and Mr. Davis, at the moment Mr. Davis had his hand upon the partly opened door.] The door opens outwardly from right hand side. Didn't see Davis afterwards.

Col. Seth J. Thomas was next called, and put, by the counsel for the defence, on his *voir dire*, as to any interest he might have in the penalties provided in the act. He answered that he was the counsel for Mr. De Bree, the owner of the alleged fugitive, and that he had received written instructions from his client in relation to the case of Shadrach; but he did not hold such a power of attorney as is contemplated in the fugitive act. His relations to the case were those of an attorney and counsellor of law, and as such he had advised with Mr. Caphart, the agent, who held such a power of attorney from Mr. De Bree as is intended in the act. Fees in no manner depended upon the result of the proceedings in the case.

Mr. Dana inquired what was to be proved by this witness.

*Mr. Lunt.* That the person under arrest was claimed as a fugitive.

*Mr. Thomas.* Was here on Saturday last, saw a person called Shadrach, who was alleged to be a fugitive slave.

This evidence was strongly objected to as hearsay, but held admissible by the Commissioner.

*Cross examined.* My means of information is confined to others. Don't know that I ever saw the negro before.

The Commissioner said that he had ruled that the Government were not obliged to show that Shadrach was a slave, and that no further evidence was necessary to show that he was arrested and escaped.

*Mr. Davis.* The question now arises under the present warrant and complaint, which alleges not only that one Shadrach was a fugitive slave ; but that the same Shadrach who was a slave to one De Bree, was rescued. The Commissioner has ruled that the Government are not obliged to prove that the man under arrest was a fugitive, or was a slave. Does the Commissioner also rule that the Government need not show that the man arrested was the man claimed, and that the man rescued was Shadrach?

*The Commissioner.* The Government may prove by Col. Thomas that the man arrested was the man claimed.

Here the question was discussed, whether the prosecution were bound to prove that the colored man arrested was the person intended in the warrant, and named Shadrach. The Commissioner again held that the returns on the warrant were *prima facie* evidence that the man arrested was the said Shadrach.

Mr. Dana thought Mr. Riley had destroyed the presumption arising from the return by having testified that he did not personally know whether the man was Shadrach or not ; all he could say was that he knew he was the man he had arrested as Shadrach.

Col. Thomas was allowed to testify, that the man arrested and brought into the court room was claimed by Caphart as Shadrach. When he came into the room Caphart said, "this is my boy." Col. Thomas produced a paper and testified to it as the power of attorney. Objected to on the ground that the signature was not proved. The Commissioner held that it was admissible as one of the papers before Mr. Curtis.

*Simpson Clark*, recalled.

*Mr. Lunt.* I propose to show that Shadrach admitted he was a slave, and owned by De Bree, and that his name was Shadrach.

*Mr. Dana.* It is true the Commissioner has admitted Col. Thomas to testify to the declaration of De Bree's agent, as evidence that De Bree claimed the man ; but this evidence is still more remote. This is a criminal prosecution. Is a man to be bound by statements of others? This matter was not adjudicated. How can the man's admission that his name is Shadrach affect us? He is not placed upon the stand. He is not under oath. His admission is that his name is Shadrach, not that he is a slave. Moreover, the act provides that the party claimed shall not be received as a witness.

*The Commissioner.* An alleged fugitive is only excluded from being a witness in the case of a complaint against himself as a fugitive. This does not exclude his admissions in the case of a criminal trial of another party. His admission is the best possible evidence of identity under the act. See Law in Appendix, Sec. 6. ["In all proceedings under this act"]

*Mr. Clark.* Am a constable. Am employed specially. After the man was brought in, he asked who it was that claimed him. He first asked me, and I referred him to Mr. Sawin. Mr. Sawin named one person to him, and he said he did not know him. Mr. Sawin then named another person to him, and he said he did not know him. He then said he was named Shadrach, and commenced to tell me the circumstances of his coming away, but I advised him not to speak to me about it, as I might be made a witness against him. I told him not to tell any one but his counsel ; and Mr. List, his counsel, told him the same, and he stopped

talking to the officers and others. I was at the further side of the door when Mr. Davis went out. [Describes the scene.]

*Mr. Lunt.* Did you hear Mr. Davis testify the other day, if so, what did he say?

*Mr. Clark.* He said when he got down to the landing he first thought there was to be a rescue, and he saw a man pass two canes up.

*To Mr. Davis.* I had some conversation with you in the room near the prisoner, after Mr. Wright came in, while the minister was here. The prisoner said something about his trust in God.

*Mr. Davis.* Do you remember his saying anything further concerning his position, showing any religious feeling?

*Mr. Lunt.* Religious feelings have nothing to do with this case.

*Mr. Davis.* I am aware of that, I waive the inquiry.

*Mr. Clark.* I don't know that I saw anything peculiar in your conduct. Many persons spoke to Shadrach, besides the person who whispered to him. While my back was turned towards Shadrach, I heard some one say to him—"We will stand by you till death."

*George T. Curtis, Esq.*, U. S. Commissioner, who held the examination in the case of Shadrach, testified that there was no actual disturbance during the hearing. About the time of the adjournment, it might have been a minute or so afterwards, a tall young colored man, standing behind the rail, approached Shadrach, and, addressing him, said—"We will stand by you." Mr. Riley, the deputy marshal, observed the man, and heard the remark, and checked him, and sent an officer to remove him to another part of the room. Mr. Davis was present, but I did not know he was one of Shadrach's counsel. He neither said or did anything, so far as I saw, from which I could infer he was present in that capacity. Mr. E. G. Loring, and Mr. Sewall were the only recognized counsel; that is, they were the only persons who addressed the court, and I should not have allowed him more than two counsel.

*To Mr. Dana.* It is common to have more counsel than address the court. I do not know that Mr. Davis may not have been one of these. I should not have limited him, except as to such counsel as should address the court. [Witness identifies the papers produced before him, and the order he passed for the adjournment, &c.]

*Austin S. Cushing.* I was present on Saturday, while the proceedings were going on. After the order was given for clearing the court room, I saw a man standing behind the rail, who was disinclined to leave. He left rather slowly, and, as he was leaving, he reached his hand over to the prisoner, and, I believe, calling him "Fred," said—"We will stand by you till the death." It was a colored man.

*Jessee P. Prescott*, in the employ of the Fitchburg Railroad Company, testified that he was present in the passage way at the time of the rescue, and described the scene. A stout negro man came up the passage way from the supreme court room. He was peculiarly dressed, and two negroes said to him—"You are just the man we want." Another said—"That's the boy for them," pointing to him. There being some difficulty in getting the door open, some sung out—"Go it. Life or death, we are prepared for 'em." Another said—"Damned bloodhounds." Others said—"Knife 'em." One man, whom he took to be a minister, dissuaded the other party from acts of violence. Saw the rush into the court room, and saw the fugitive borne out in the arms of four or five persons. I am sure I saw Mr. Davis go into the court room by the east door, some five or ten minutes before the door was forced open. One man had a sword.

*Cross examined.* I had seen Mr. Davis before. I had seen him at the Thompson meeting at the Tremont Temple. I think I had seen him trying a case in court also. Saw you at the Chaplin meeting. The person I took to be you was in a hurry—had no hat on, and spoke to a man as he was coming in. Said, "How do you do," merely. It was not more than ten minutes before the adjournment.

Mr. Lunt here rested the case for the prosecution.

Mr. Dana moved the discharge of the defendant, on the ground of failure of proof, to raise the question of the construction of the statute, and asked the commissioner if he adhered to his ruling in Mr. Wright's case.

The commissioner denied the motion, and said that he considered it sufficient for the Government to prove that a person claimed as a slave had been rescued.

## TESTIMONY FOR THE DEFENCE.

Mr. Davis now called a number of witnesses for the defence, and Mr. Dana gave notice that the first set to be examined were expected to testify to the character of the government witness, Frederick D. Byrnes, for truth and veracity.

William Ross was called to the stand as to the character of Byrnes, but Mr. Byrnes being absent, was withdrawn.

Mr. Riley recalled by defence. He was quite confident that Mr. Davis did not leave the court room, and come in again, just preceding the rescue. He seemed to be busy in talking with the associate counsel.

The prisoner put on his coat while within the bar, before Mr. Davis left the room.

*To Mr. Lunt.* On Saturday morning Mr. Davis asked me if I had any more Craft's cases. I told him not that I knew of. This was in the entry of the Court House. While in the Court Room after the adjournment, he asked me if he understood me to say in the morning that no warrant was out. I had no warrant when Mr. Davis spoke to me in the morning. The warrant was in the hands of another deputy marshal, and I had not then seen it. I told Mr. Davis that whether I had known, or not, of the warrant, I should have given him the same answer. The reply rather surprised Mr. Davis. I think no one could have entered the easterly door without my knowledge.

*Cross Examined. To Mr. Davis.* It was between 9 and 10 A. M., that I saw you. I was standing at the outer door, you passed, and I first asked you if you had seen Mr. George P. Curtis.

*Mr. Davis.* It was that which reminded me of fugitive slave warrants?

*Mr. Riley.* You answered the question, and then asked about warrants. I was waiting for Mr. Sawin, and Mr. Curtis at the time.

*Henry Homer*, assistant clerk of the Municipal Court. At the time of the mob, I was standing on the steps, about three above the level of the U. S. court-room. I had a view of the whole scene. The wooden door was open, and Mr. Hutchins had hold of it. The crowd was not very large then, nor pressing very hard. Three good officers outside could have protected the door, and cleared the passage. Then there were cries of "go in, and take him out," and the pressure increased against the door, and all at once it gave way, and in the crowd went. All done in ten seconds, I should think. Never saw anything done so quick before. Saw two men take hold of Shadrach and fetch him out, about twenty other men following. The stairs were clear when they brought Shadrach out, and they kind of threw him down the stairs. The crowd was all behind him. There was no crowd obstructing the stairs all the way down. The collection was outside. In passing him out into the street, they tore his coat off, and took his hat off. His coat laid in the mud, and his hat laid there. A woman seized him by the hair and said—"God-bless you. Have they got you?" Shadrach was very much frightened, —did not seem to know whether he had got among his friends or enemies. I saw this from the window at the head of the stairs.

I did not see Mr. Wright. I think Mr. Davis was on the platform, or on the third stair going down. I did not hear his voice. I think I should have noticed it, if he had spoken. I heard no white voice. The voices were all of colored people. I am well acquainted with your voice (to Mr. Davis),—I have heard the music of it often enough, both in court and out of it. I will not swear that Mr. Davis did not speak; but I will swear that I don't remember to have heard any voices but those of colored people. I had been out to get a volume to see the statute, forbidding the officers of this state from aiding in any manner in making arrests under the old law for taking fugitives.

*To the Commissioner.*—I remained on the stairs step above the landing until Shadrach was brought out. I then went up stairs to get out of the way. I saw no man with two canes; saw no man with a club; saw no man with a sword. I am a justice of the peace, but I did not know what duty it imposed on me at that time. The affair was sudden, and I was somewhat excited.

*Afternoon.*—Gustavus Andrews, jailor. I have known Frederick D. Byrnes ever since he came to Boston. His general reputution for truth and veracity is bad.

*Cross Examined.* I heard his character discussed by officers, and other persons.

I cannot call to mind at this moment any person, not an officer, whom I have heard say he was not a man to be believed.

*Hiram Wellington, Esq.* Attorney at Law. Had known Frederick D. Byrnes about seven years—his general reputation for truth and veracity is decidedly bad.

*Cross Examined.*—I never had any difficulty with him, that I know of. He once brought a small suit against me for constable's fees, and recovered, I believe. It was in the justices court. I don't know that he ever brought any complaint against me. If he did it was a secret one. I never knew of his complaining against me to the grand jury.

*William Ross*, tailor.—I should like to know what I am summoned here for. I don't wish to testify. Have known Mr. Byrnes some three years. His general character for truth and veracity, I should say, is decidedly bad.

*Cross Examined.* Who have you heard speak of it? I don't wish to say. There have been twenty people in my place within a week to inquire how such a liar could get into office. I was once called to court in Cambridge to testify about his character, and he called upon me to ask what I had against him. He is a well-known man, He became known on account of having been brought up for adultery. I could name people whom I have heard speak of him. I have heard Martha Adams speak of him; she lived with him when he kept the Cape Ann Cottage, which was mysteriously burned down, and the insurance recovered. I might name others, but I don't think I am bound to mention them. Mr. Byrnes knows who they are.

*Derastus Clapp*, Constable.—Have known Mr. Byrnes five or six years; have not heard his character for truth called in question these two years; have not heard it discussed within that period. He has kept in this city during this time.

*The Commissioner.*—I think you cannot ask about reputation two years ago.

*Mr. Lunt* said it was clearly inadmissible.

*Mr. Dana* read a case in Wendall's Reports in which it was decided that the previous reputation could be shown. It is often the best evidence.

*The Commissioner* thought he should take time to decide the point.

*Mr. Lunt* said there might be a difference of practice in different states.

*Ira Gibbs.*—Have lived in Boston between 30 and 40 years—was city marshal. Have known Mr. Byrnes several years. I can't say but that I have heard his character spoken against in relation to truth and veracity. I don't think I have heard it frequently spoken about, but when spoken of, it has been against him.

*Charles Smith*—Constable and Coroner—Have known Mr. Byrnes about ten years; his character for truth, &c., bad.

*Cross Examined.*—The most I have heard about him has been from officers. Mr. Dexter keeps in the office with me. He has had difficulty with Mr. Byrnes. So has Mr. Leighton, who keeps in our office. I think I have heard his truth discussed, in reference to cases in which he was a witness. One of the cases was at East Cambridge. It depended wholly on his testimony, I understood, and the other side prevailed. These discussions about his character were revived on account of his being appointed deputy U. S. marshal. I don't know that those who spoke of him wanted the office. Don't know any body who wants his office.

Officers *Rice*, *Dexter*, *Neale*, and *Luther Hutchins*, examined as to the character of Mr. Byrnes for truth, testified to the same effect as the preceding witness.

*Thomas S. Harlow, Esq.*, Counseller at Law. I have known Frederick D. Byrnes seven or eight years. His reputation for truth and veracity is bad.

*Cross Examined.*—Have heard him spoken of in the regular course of business, about the courts among officers. I had some business connection with Mr. Wellington, when he was sued by Mr. Byrnes.

At this stage, the court adjourned till Saturday, Feb. 22.

*Saturday, February 22d.*—Commissioner Hallett took his seat at 10 o'clock. Defence resumed. On the question reserved yesterday, the Commissioner decided in relation to the knowledge of Constable Clapp of the reputation of Mr. Byrnes, he having stated that he had not heard his truth and veracity spoken of for two years, that he must first be inquired of generally as to Mr. Byrnes's reputation. Mr. Clapp answered as he did yesterday, and then Mr. Dana was allowed to ask him if he knew anything of his reputation for truth prior to that period. He replied that for about five years previous to the past two he had heard his reputation for truth and veracity spoken of. It was bad.

*Cross Examined.*—When he was so spoken of, reference was had to some busi-

ness matters; to a civil case at New Bedford, and a criminal case in Boston. It was his character for truth and veracity that was spoken of, and had no relation to his honesty in not paying what he owed.

*John G. King, Esq.*, Counsellor at Law.—I was in this court room on Saturday forenoon. Mr. Davis was in when I came in. I ascertained that he was acting as counsel for the prisoner. After the adjournment I left Mr. Davis in consultation with the other counsel. Before leaving I drew up a power of attorney, which the man Shadrach signed. It was made to Robert Morris, and was intended to give him authority to act in reference to an application for a habeas corpus. When Mr. Riley was clearing the room, Shadrach pointed out Mr. Davis as one of his counsel, and as such Mr. Riley allowed him to stay.

*Marcus Morton, Jr., Esq.*, Counsellor at Law.—I was sent for on Saturday morning by Shadrach. I had known him from six to nine months. There were but few persons in the court room when I came in. It was proposed to raise money for his value, if it should be decided to send him back. I went to the office of Colonel Thomas, the claimant's counsel, in relation to procuring the man's liberation in that way. Nothing resulted from the conversation with Colonel Thomas. I don't know that Mr. Davis knew of it. I know that Mr. Davis was twice recognized by Shadrach as his counsel. When I came in to the court room, Shadrach appeared excited, and was talking a good deal. I told him he had better keep his mo th shut, and not to speak to any person except his counsel. He asked who he should have, and I designated among others, Mr. Davis for counsel.

*Cross Examined.*—I communicated my intention to E. G. Loring. I was to have an answer from Colonel Thomas on Monday morning. I don't recollect mentioning this to any of the counsel. I did mention it to several people. The case had been postponed till Tuesday, before I called upon Colonel Thomas.

*Charles List, Esq.*, Counsellor at Law. I was in this room on Saturday. Mr. Davis was here in the capacity of counsel for Shadrach. I heard Shadrach ask him to serve as counsel. Mr. Davis joined Mr. Sewall and myself at the table in examining the papers sent on by the owner for establishing his claims to Shadrach. Mr. Davis examined them very thoroughly, and expressed a decided opinion that the papers were not sufficient under the statute. I asked Mr. Davis who the men guarding the prisoner were. He said one was Sawin, whom he knew well, and he would inquire of him the other's name. He did so, and told me his name was Clark. Did not state to Davis my object in asking. Was told here there were to be proceedings for habeas corpus. I asked Riley for copy of the warrant. He said he had one for Mr. Dana, which he was to have before 2 o'clock. I told him if he would let me have it, I would give it to Mr. Dana before 2. Sewall and Mr. Davis were then present. I went to Mr. Dana's office. I left eight or ten minutes before two, leaving Mr. Davis. I think Mr. Davis did not leave the court room any time while I was there. I was there from the commencement of the hearing, except for a short time that I stepped into the law library, to see if a particular gentleman was there. I think I went into the library before the Commissioner left. I spoke with Mr. Davis frequently in the court room, and I think I should have known it, if he had gone out. No attempt had been made to force the door when I left. I had no difficulty in getting through the people in descending the stairs, or going through the passage, getting out of the court house.

*Mr. Dana* here proposed to prove that Mr. Davis at various places and times had advised the colored people against acts of violence. [The Commissioner was inclined to allow the inquiry].

*Mr. Lunt* objected to the inquiry, the charge against Mr. Davis being that he committed a specific act.

*Mr. Dana* waived the point for the present.

*Mr. List* resumed. It was agreed in the court room that the counsel should hold a meeting at Mr. Sewall's office at three o'clock, and another meeting was to be holden at half past nine the next morning. The meeting was not held that afternoon on account of the rescue. The meeting was held Sunday morning, and Mr. Davis was present. Mr. Davis called attention again to the insufficiency of the papers. Question then arose whether proceedings would go on, and what Commissioner might do.

*Cross Examined.*—I am not sure that Mr. Davis was one of those who agreed to hold the meeting in the afternoon. There were six who were considered as counsel. These were named E. G. Loring, Mr. Sewall, Mr. Davis, Mr. Morris,

Mr. King, and myself. I cannot say that Mr. Davis was not out of my sight five minutes. When I went out, the officer opened the door sufficient to let me out, using no particular care with the door. There were in the entry about half as many people as it would contain; chiefly negroes; did not recognise any one, black or white, that I knew. I first went to Mr. Dana's office. I was in Court street going towards Washington street, when the rescue took place. I could not believe it when I first heard of the rescue, and went back to inquire. I had thought it possible a rescue would be attempted, for the colored people were very much against the law. I have spoken against the law, and probably shall again. [Manifestations of applause on the part of the spectators. Order commanded by the Commissioner].

*Mr. Lunt* here put the question,—Do you approve of the rescue? Mr. Dana objected, and the Commissioner sustained the objection. Mr. List preferred to answer, and said that he was opposed to any violation of law, and had advised against violations of the law.

*George W. Adams, Esq.*, Counsellor at Law.—I was coming into the East door of the court house near 2 o'clock, on Saturday, met Davis going through the passage, near the marshal's office,—saw him pass between the pillars in front of the office. I talked with him two or three minutes. I heard noises and shouts above, while I was talking with Mr. Davis. Men were running in and out, when I left him, I ran out to Court street, and saw the crowd moving off.

*Alonzo F. Neale*, Constable Neale—I was in the court room on Saturday—was called in by Mr. Noyes, the messenger of the U. S. Courts—I saw Mr. Davis in the court room. I saw him go out of the court room. Somebody asked me to let Mr. Davis out. I said I was not the door keeper. The person then spoke to Mr. Hutchins, who opened the door, and Mr. Davis passed out. I suppose now it was Mr. Wright who asked me to open the door for Mr. Davis. I think Mr. Davis, Mr. Wright, and a third person, a stranger, went out about together; and my attention was called off for a moment, by noticing the colored man get up, put his coat on, and walk about. Then came the yell, and the forcing of the door. Doubting whether as a constable, I had any right to interfere, I concluded not to do anything until some emergency occurred. I saw Mr. Hutchins driven away from the door. It is my opinion that Mr. Byrnes was behind the door. If so, he could not see outside the doorway. At the time of the first rush, there was one or two near Mr. Hutchins, and Mr. Byrnes might have been one of them. I should think the prisoner got up and put on his coat just about the time Mr. Wright and Mr. Davis passed out. When the yell came the prisoner ran towards the door on the East side, and then back on the other side of the rail to the front door. I was somewhat excited, but I helped in holding on to the door. John H. Riley was on the other side, and Patrick Riley was walking back and forth. I felt rather vexed that they did not come to the door attacked, to assist in closing it, and I withdrew from the door. John Riley was calling for assistance. There had been pounding at the doors before the prisoner put his coat on, and shew signs of excitement; and there had been a good deal of loud talking outside. I was in the court room about an hour. I should not think Mr. Davis went out after I came in, until he went out at the time I have spoken of.

*George W. Minns, Esq.*, Counsellor at Law.—I was in this court room between one and two on Saturday,—saw Mr. Davis was here. Including the officers and counsel, there appeared to be about a dozen persons in the court room, when I was admitted. Heard Mr. Riley say the prisoner would be allowed to see his friends from time to time, and every thing reasonable done to make his situation comfortable. Saw Mr. Davis—his manner was calm. He remained so till an incident occurred. Some person behind where I was sitting said something, concluding with the remark, "Kill the negroes!" I thought the remark came from Mr. Byrnes, but I don't know. Mr. Davis, at the time, was walking from the table to me, and heard it. He was irritated by the remark, and said—"Then, on that principle, you ought to have your throats cut." Mr. Byrnes and another officer were behind me. I was sitting within the bar, next to the railing, which was between me and Byrnes and the other officer. I know Mr. Byrnes' voice, and am able to recognize it, and I thought at the time that it was he who made the remark, but I cannot swear. It was not very loud, and I did not turn round to look at Mr. Byrnes. I didn't think from the tone, that the remark was made by one who intended to kill the negro, but I thought it was made for the purpose

of irritating or insulting Mr. Davis. My attention was chiefly occupied in looking at the prisoner.

*Frederick Warren*, deputy marshal. I left the court room about five minutes before two o'clock—went down stairs—came back by the passage up to the supreme court—went to the closet, and there heard the shout; came out of the closet; found the crowd more dense than five minutes before, and the door being pulled and vibrating; proceeded to the city marshal's office, to notify the marshal, who said he could do nothing. I told him the crowd was forcing the door. I think I saw a white person near the corner of the recess, when I entered the closet. When I got back from the city hall, the rescue had been made.

[The object of Mr. Warren's testimony was to show that it was he, and not Mr. Davis, who was seen in the passage, and to go into the court room a few minutes before the rescue].

*Elizur Wright*, one of the editors of the Commonwealth,—I was in the court room on Saturday,—I came about half past one,—I had previously been at the Adams House, attending a meeting of the proprietors of the Commonwealth. I met some reporters coming out of the court room, when I got to the door. The officers refused to admit me. I said I was connected with the press, and was soon admitted. I saw Mr. Davis, but was not acquainted with him. Did not know his name. Understood they had been examining papers. Had no conversation with Davis, except what I now state. I got into a little difficulty with Mr. Riley, by supposing him to be the counsel for the claimant. Mr. Davis then told me that Mr. Riley was the deputy marshal. I said to some of the people, that there were not many persons outside, and I may have said so to Mr. Davis. When Mr. Davis went out, I was just about where Mr. List is now sitting, in front of the clerk's desk.

At this stage, the court adjourned till Monday.

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*Monday, February* 24.—Mr. Commissioner Hallett resumed the examination at 10 o'clock.

*Elizur Wright* recalled. I was in the court room fifteen or twenty minutes. It was perfectly impossible that Mr. Davis could have gone out and come in again without my knowing it.

*Cross Examined*. Mr. Sewall stated to me the *quo modo* of the arrest. About half the time I was in there I was occupied in explanations with Mr. Riley, after the altercation which arose from my mistaking him for the counsel for the claimant. The explanations resulted in his giving me permission to speak to Shadrach. I then shook Shadrach by the hand, and spoke a few words to him. While Mr. Sewall was telling me that he thought a good defence could be made for Shadrach, that there would be a probability of his getting off upon the proof, there were two or three persons standing about, and some one of them said there might be an interference on the part of the colored people. Mr. Sewall said that would be perfectly ridiculous, and I said so too. It was in that connection, I think, that I said there were but few persons outside. I had come from a meeting of the persons interested in the Commonwealth.

*Mr. Lunt*—Are you one of the editors of the Commonwealth? [Witness did not answer, but smiled].

*Mr. Dana*—I object to the question, and ask the purpose of the district attorney in proposing to put in anything in relation to the connection of the witness with that newspaper.

*The Commissioner* remarked that the inquiry was irrelevant, unless the district attorney expected to show from it a bias on the part of the witness.

*Mr. Wright* now, without any further questioning, stated that he was one of the editors of the "Commonwealth." The conversation was about the possibility of the colored people taking it quietly. Mr. Sewall said, I hope there will be no violence.

*Richard H. Dana, Jr.* was called to the stand by Mr. Davis.

[Mr. Dana said that when he entered upon the case, he did not suppose he should be a witness, or he would have declined acting as counsel.]

*The Commissioner.* There is no impropriety in it in a preliminary inquiry; and in your case, never.]

On Saturday morning, Mr. Davis called at my office and told me that a man had just been arrested as a fugitive slave, and was before the Court, and proposed that we should offer our services as counsel. I asked if he had counsel. Mr. Davis said it was a sudden arrest, and a case for volunteers. We went over to the Court Room. The Court was in session. There was a division of labor. It was agreed that I should take charge of the Habeas Corpus and of a writ *de homine replegiando*, and Mr. Davis was to remain and assist at the hearing. I went to the Marshal's office, and there drew up a petition for a habeas corpus, and filled out a writ *de homine replegiando*. Deputy Marshal Warren was present. I left word with the counsel to send me down some one to swear to the petition in the prisoner's behalf. Mr. Morris came with Mr. Loring and swore to the petition. I then went to Chief Justice Shaw, and asked for the writ. He refused it, for reasons which he gave. I returned to the Court Room, reported my proceedings to the counsel, and prepared to obviate the objections of Judge Shaw. Mr. Davis knew of all these proceedings Just then Mr. Curtis adjourned the Court to Tuesday. Finding that there was to be no hurrying, I agreed with the counsel, (including Mr. Davis,) to meet them in consulation at 3½ P. M., at Mr. Sewall's office. Bespoke a copy of the warrant from Mr. Riley, and returned to my office. A little after half past one, I received a message that, by the Marshal's permission, the counsel were to remain awhile in the Court Room for consultation, and wished me to join them there. I sent word that I would come immediately. I was accidentally detained, by a client, until nearly 2 o'clock, and, in the interval, the rescue had taken place.

*To Mr. Lunt.* I heard some conversation from people of all opinions, in the way of conjecture or inquiry as to whether the blacks would resort to force, but nothing in the way of advising or planning such a course.

*Mr. Lunt.* Can you say that none of those who acted as counsel here, spoke of it?

*Mr. Dana.* I can say, most positively, that I never heard one of the gentlemen who acted as counsel here, say any thing in the way of advising or planning a resort to violence, or that indicated any knowledge or belief on their part that it would take place.

*Mr. Lunt.* Did you attend the meetings at Faneuil Hall in October, relating to the Fugitive Slave Bill?

*Mr. Dana.* One I did, the other I did not. I do not recollect the dates. When I attended, I read a letter from President Quincy, at the request of one of his family. That will fix the date.

*Mr. Lunt.* Did you speak at that meeting?

*Mr. Dana.* I object to these questions as matter of right. I am not obliged to answer them. But, personally, I have no objection to answering them.

*Mr. Lunt.* I think it would be a satisfaction to the community to know from yourself how the matter stands as to these meetings.

*Mr. Dana.* On that ground, I have no objections to answering. I did not speak at this meeting, for reasons of my own. For the same reasons I did not attend the second meeting. I wrote a set of resolutions, which I believe were adopted. These I am ready to stand or fall by.

*The Commissioner.* I read them. They were unexceptionable.

*Mr. Dana.* Unexceptionable in a legal view; but your Honor could not agree to the opinions expressed. After the meeting had adjourned, as I was informed, (and as it was stated in the papers,) a resolution was put, and declared by the crowd to be passed, but it was irregular and not noticed by the officers. That resolution was objectionable, in my opinion. But in none of the meetings or consultations I have attended, have any of the gentlemen recommended or suggested use of force against the law. The private meetings have related to the use of legal defences and modes of raising and presenting constitutional questions, and have been composed of lawyers, almost, if not quite, exclusively. The opinions of the defendant, so far as I know, are the same as mine. He believes the act unconstitutional and unjust, and will give it no voluntary aid, but will not recommend or join in forcible violations of it. I am willing to say this, since we have got upon the subject, although it is not testimony.

*Charles H. Brainard.* I have heard Mr. Byrnes' reputation for truth and veracity spoken of, but not until these trials had commenced.

*Charles C. Conley.* Had heard Mr. Byrnes' truth, &c., spoken against for some time back.

*Charles Mead* examined on same point, but did not testify definitely.

*Mr. Dana to Mr. Lunt.* It was in the lobby that I saw Chief Justice Shaw in relation to the habeas corpus. I came into the court room and reported the result to the counsel. It was after the proceedings before the Commissioner were over.

*To Mr. Davis.* My impression is that I saw some of the crowd enter the door on the west side of the building after I heard the yell in the Court-House.

Mr. Dana here proposed to put in the testimony given by Mr. Davis on the examination of Mr. Wright, on the ground that the government had asked Mr. Clark whether he heard Mr. Davis's testimony in Mr. Wright's case, and he had stated a portion of it.

Mr. Lunt objected.

Mr. Dana said the government had put it in either as conversation or as confession. In either case the defendant was entitled to the whole of it, under the general principles of evidence.

*The Commissioner.* You may put in all that part of Mr. Davis's testimony which concerns the statement of transactions which Mr. Clark testified that Mr. Davis said, but no more.

Mr. Dana then read a small portion of Mr. Davis's testimony, and said he should rest his defence for the present.

*J. S. Prescott*, re-called by the government.—I recollect seeing Mr. Warren in the passage-way after the man was carried down stairs; but he was not the person I saw before the rescue, and who went in by the door next to the Marshal's desk. That man spoke to one of the colored men. I also saw a man come out of that door, go into the closet, and return into the court room by the same door.

*Cross-ex.* I saw Mr. Warren start on the run down stairs. Saw Mr. Neale too. I said to him—"What, have they rescued the man?" and he said they had. He appeared agitated. At the time I spoke to Mr. Neale I knew they had taken the negro out. I spoke to Mr. Neale because I took him for an officer. I was at the Court House to see a Mr. Pearson in the Supreme Court.

After the rescue I had some conversation in Court Square on Saturday afternoon with Mr. Simon Hanscom, a reporter. I did not tell him I was in the Court Room; but told him I was present when the crowd rushed in. I knew that several people saw me there. I had been told I had been seen there. I felt it to be my duty to tell Mr. Riley what I knew about the proceedings, as I regarded it as outrageous. I may have said in one sense, I was glad the man had got away, so far as he was concerned. I gave notice first to Mr. Riley of what I knew. I expected to be called as a witness. Knew that it was known I was here. Think I should not have spoken to Mr. Riley if I had not known that I had spoken of having been here. I do not exactly approve of the law, for I think there might be a trial by jury; but so long as it was the law, I did not want to see it put down in the manner it was. Some one pointed me out to Mr. Hanscom, as a person who saw the whole of it. I was laughing about it. Mr. Hanscom called me aside. I could not help laughing. My conversation with Mr. Hanscom was a very short one. I think I said something about mob law. Mr. Hanscom tried to get me to talk more; but knowing him to be a reporter, and the paper he was reporter for, I did not say much to him.

*To the Commissioner.* The person I took to be Mr. Davis, in the passage, had spectacles, I think, and had his hat in his hand. I did not think there was a rescue intended until they drew the man out. I supposed the negroes, in trying to get the door open, only wanted to get in and see the trial. A few minutes before, in the street, I had been told that there was a slave case on trial in the U. S. Court.

*Mr. Sawin*, re-called. When Mr. Davis said we all ought to have our throats cut, he spoke to me. Mr. Byrnes had said nothing about killing the negro. I heard no such remark from any body. I saw Mr. Minns in the room.

*The Commissioner.* Why didn't you report the remark of Mr. Davis to the Commissioner?

*Mr. Sawin.* I did not think enough of the remark to report it to the Commissioner. I was friendly to Mr. Davis, and had known him a long time.

*Cross-ex.* It was a private remark.

James H. Blake, late city marshal, Geo. Woodman, Nathan Hyde, John S. Phillips, and F. L. Cushman, Custom House officers, were then called to testify concerning the character of Mr. Byrnes. They had known him casually, and had never heard any thing said about his character.

Robert McGill, Brigham N. Bacon, Levi Whitney, Geo. W. Barker, and M. C. Woodman, of the Merchant's Hotel and Exchange Coffee House, testified that they had known him as frequenting their houses several years, and never heard his character called in question.

R. M. Kibbe, keeper of a billiard-room and eating-house, Joseph Cochran, keeper of a restaurant, G. L. Gilbert, late of California, previously a dealer in spirituous liquors, J. G. Smith, wholesale wine and liquor dealer, Henry Gilbert, dealer in ale and liquors, and Daniel Leland, Jr., vinegar manufacturer, had known Mr. Byrnes as a customer several years, and have not heard his character for truth questioned.

Sylvanus Mitchell, Richard Nutter, —— Gilbert, and James H. Mitchell had known him in Bridgewater 15 or 20 years ago, but had never been intimate with them. Not known much of him of late years, and had not heard his character for truth questioned.

George W. Phillips, attorney at law, had known Byrnes several years as an officer, and had never heard his character called in question until within a week.

John L. Roberts, a mason, had known Byrnes by name for a year, but had never heard him spoken of.

Richard Hosea, constable, testified that his character was good as far as he knew.

John Roberts, book-binder, had known him several years, not as an acquaintance or neighbor, and had never heard his character doubted until last week.

Samuel G. Andrews, a printer, living in Somerville the last year, had met him 4 or 5 years, occasionally, and had never heard his character questioned.

Robert T. Alden, sail-maker, had known him 10 years, never heard his character for truth doubted.

Cross examined. Had met him at balls and assemblies, had known him as a constable, plumber, and keeper of Cape Cottage.

It appeared from cross examination of the other witnesses, that Mr. Byrnes had also been known as a farmer, iron founder, tack maker, sailor, keeper of a restaurant, keeper of a bowling alley, real estate broker, grocer, and deputy marshal. None of the witnesses had been his neighbors since he left Bridgewater.

Elisha P. Glover, officer in the employ of the marshal. Had never heard Byrnes' character called in question until a year ago, don't recollect hearing it spoken of since then. Did hear one of the witnesses speak of it a few days after. Was a witness for Byrnes at that trial.

*Simon P. Hanscom* was now called for the defence, and stated that he was one of the reporters for the Commonwealth. He was called for the purpose of proving that Mr. Prescott, one of the government witnesses, had stated that he saw what was done in the court room at the time of the rescue. A short time after the rescue, he saw Mr. Prescott in the street, and, in his capacity of reporter, applied to Mr. Prescott for information, he having stated that he saw the rescue and knew all about it. He supposed at the time Mr. Prescott gave him the account, that he was relating what he had seen only. This was his conclusion at the time, and, the question having been raised, he was not now able to separate the hearsay statements made by Mr. Prescott, from the facts which he stated upon his personal knowledge. Those statements differed from the observations of Mr. Wright, who was in the court room, particularly in reference to the knocking down of officers, &c., which Mr. Wright said did not take place. Prescott said there were officers knocked down at the door, that one colored man knocked an officer under the rail of the bar, and another took the sword and brandished it in the room. Mr. Davis, who was inquired of on that point, said that there were no blows struck. Don't know what part of the transaction Davis spoke of. Therefore the information he received from Mr. Prescott, was not used in making up the account of the rescue which was given in the Commonwealth "extra" published on Sunday morning.

*Cross examination.* Mr. Prescott said it was well done, and he appeared very

much pleased, as many others did. I was also very much pleased at the escape; and am always gratified at a person's gaining his liberty. He had no recollection of expressing any approbation of the manner of the rescue. I am not in favor of violating the laws. I should have been very glad if Shadrach had not been arrested.

*Mr. Lunt.* Is Mr. Davis often at the office of the Commonwealth?

*Mr. Hanscom.* I have seen him there once or twice before the rescue, and once since.

The evidence was here announced to be closed on both sides, and the court was adjourned to Tuesday, 10 o'clock.

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MR. DANA THEN ADDRESSED THE COURT, AS FOLLOWS:

*May it please your Honor:*

Certainly, Mr. Commissioner, we are assembled here, this morning, under extraordinary circumstances. I am not aware that since the foundations of our institutions were laid, since we became an independent people, since the Commonwealth of Massachusetts had an independent existence,—I am not aware that a case similar to this has once arisen. I do not know that ever before in our history, a judicial tribunal has sat, even for a preliminary hearing, upon a gentleman of education, a counsellor of the law, sworn doubly, as a Justice of the Peace, and as a Counsellor in all the Courts, to sustain the Constitution of the United States and the laws made in pursuance thereof,—a gentleman of property, family, friends, reputation, who has more at stake in the preservation of these institutions than nine in ten of those who charge him with this crime;—who stands charged with an offence (in the construction now attempted to be put upon the statute) of a treasonable character, a treasonable misdemeanor, an attempt to rescue a person from the law by force, an attempt to set up violence against the law of the land.

Therefore it is that this trial attracts this unusual interest. It is not that, so far as this defendant is concerned, the question whether he be bound over here, or whether the District Attorney takes his case directly to the Grand Jury, can make the slightest difference in the world; but because the decision of this tribunal, though only preliminary, will have great effect upon the community, and will be carried throughout the United States. It is because of the political weight attached to it, that such anxiety is felt for the result. For the simple rescue of a prisoner out of the hands of an officer, is a thing that occurs in our streets not very unfrequently, and often in other cities. It might have occurred up stairs, and not have attracted a moment's attention.

Who, Mr. Commissioner, is the defendant, at the bar? I have said that he is a Justice of the Peace, sworn to sustain the laws, a counsellor of this court and of all the courts of the United States in this State, sworn doubly to sustain the laws. He is a gentleman of property and education, whose professional reputation and emolument depend upon sustaining law against force; a man whose ancestors, of the ancient Pilgrim stock of Plymouth, are among those who laid the foundations of the institutions that we enjoy. He has at this moment so much interest in the way of personal pride, historical recollections, property, in family, reputation, honor and emolument in these courts—so much at stake as to render it impossible to believe, except on the strongest confirmation, that he should be guilty of the offence charged against him at this moment.

The charge against the defendant involves the meanness of instigating others to an act he dares not commit of himself, of putting forward obscure and oppressed men, to dare the dangers and bear the penalties from

which he screens himself; mean-time holding up his hand and swearing to obey the laws of his country which he is urging others forward to violate.

Since, then, my friend has done me the honor to ask me to appear for him before this tribunal, from among others so much better qualified, I feel that I am placed in circumstances calling for some allowance, some liberty for feeling and expression. We think ourselves happy that in this State trial, this political State trial, we appear before one who has been known through his whole life as not only the advocate of the largest liberty, but the asserter and maintainer of the largest liberty of speech and action, at the bar, in the press, and in the forum, carrying those ideas to an extent to which, I confess, with my comparative conservatism, I have not always seen my way clear to follow. Therefore, I shall look for as large a liberty as the case will allow me, in addressing myself to this court; in bringing forward all considerations, in suggesting all possible motives, in commenting upon all the circumstances that lie about this cause. At the same time I shall expect from the person who sits clothed with the authority of an Executive whose will is as powerful as that of any sovereign in Christendom, except the Czar of the Russias—I shall expect from him no unnecessary interruptions, no extraordinary appeals, no traveling out of the usual course of a simple judicial proceeding.

Why is it that the defendant stands here at this bar a prisoner? How is this extraordinary spectacle to be accounted for? I beg leave to submit that the whole history is simply this. There has been a law passed in the year 1850, by the Congress of the United States, which subjects certain persons, if they be fugitive slaves, or whether they be or not, subjects them to be arrested and brought into Court, to have the question of their liberty and that of their seed forever, tried by a so called judicial tribunal. Those persons are mostly poor. They belong to an oppressed class. They are the poor plebeians, while we are the patricians of our community. They are of all the people in the world those who most need the protection of courts of justice. I think the court will agree with me that if there is a single duty within the range of the duties of a counsellor of this court which it is honorable for him to perform, and in the performance of which he ought to have the encouragement of the court, it is when he comes forward voluntarily to offer his services for a man arrested as a fugitive slave. Therefore it is that I think it somewhat unfortunate the District Attorney should have thought it necessary to arrest counsel. If there be a person against whom no intimidation should be used, it is the counsel for a poor, unprotected fugitive from captivity.—The question is, whether a man and his posterity forever, the fruit of his body, shall be slave or free. It is to be decided on legal principles. If there is a case in the world that calls for legal knowledge and ability—that calls for counsellors to come in and and labor without money or price, it is a case like this. I think it a monstrous thing, unless it be a case beyond doubt, that counsel should have been selected to be proceeded against in this manner.

I take the facts to be these:—Mr. Davis, being a counsellor of this Court, and possessed of no small sympathy for persons in peril of their freedom, when it was known that a person claimed as a fugitive slave was arrested, and in a few hours, perhaps, to be sent into eternal servitude, Mr. Davis steps over to my office and suggests to me that we offer our services as counsel. He leaves his business, which is large, while five courts are in session in this building. He sits here that whole Saturday forenoon by the prisoner, to whom he is recommended by Mr.

Morton. He is twice spoken of to Mr. Riley by the prisoner, as one of his counsel. He sits from eleven to two o'clock, absorbed in this case, his feelings necessarily excited, (and I should be ashamed of him if they were not excited,) but his intellectual powers devoted to the points of law in this case, and your Honor knows that the points are various and new. By the courtesy of the Marshal, the counsel were permitted to remain here, because the Marshal had not yet determined where to keep his prisoner. They remained until the time for the prisoner's meal. When the business is over, they leave. Some one must go out first, and somebody must go out last. It is nothing more nor less than the old rule of "The Devil take the hindermost." Mr. List leaves the Court-room — Mr. Warren goes out. All the officers are to go to dinner, and the door is to be opened and closed each time. Dinner is to be brought in. Twenty times that door is to be opened.

In the mean time about that door is collected a small number of persons of the same color with the person then at the bar, very likely, perhaps, to make a rescue, some advising against it, and some for it, with considerable excitement. Mr. Davis slides out of that passage-way and goes to his office. Mr. Wright is prevented from going by the crowd. Not a blow is struck. Not the hair of a man's head is injured. The prisoner walks off with his friends, straight out of this Court-House, and no more than twenty or thirty persons have done the deed. Three men outside of the door could have prevented the rescue. Mr. Riley did not suspect it. Mr. Warren did not suspect it. Mr. Homer did not suspect it. Mr. Wright did not suspect it. Nobody suspected it. The sudden action of a small body of men, unexpected, and only successful because unexpected, accomplished it. He is out of the reach of the officers in a moment, and there's the end of the whole business. No premeditation! No plan! Counsel knowing nothing about it! Nobody suspecting it, and the whole thing over in one minute!

But, may it please the Commissioner, the law is violated—the outrage is done. This is a case of great political importance, and the deputy Marshal thinks it his duty, (I think in rather an extraordinary manner,) instantly, before any charge is made against him, before any official inquiry is started, to issue a long affidavit, sent post haste to every newspaper, and hurried on to Washington,—Congress in session,—a delicate question there,—Northern and Southern men arrayed against each other. Then comes an alarm. Then the Executive shrieks out a proclamation.

A standing army is to be ordered to Boston. All good citizens are to be commanded to sustain the laws. The country thinks that mob law is rioting in Boston—that we all go armed to the teeth. The Chief Magistrate of fifteen millions of people must launch against us the thunders from his mighty hand.

In the meantime, we poor, innocent citizens are just as quiet, just as peaceable, just as confident in our own laws, just as capable of taking care of ourselves on Saturday evening as on Friday morning. Only some frightened innocents, like the goose, the duck and the turkey in the fable, say the sky is falling, and they must go and tell the king!

But we can all see now that there was too much alarm. We begin already to feel the reaction. A state of things has been created over this country entirely unwarranted by the circumstances. And I trust that the Commissioner will be able to say to the country, say to His Excellency the President of the United States, say to the world, that nothing of this sort has occurred; that there has been no preconcerted action; that the Marshal cleared his room, and every body went out peaceably; that no-

body expected the rescue; that there was no crowd in the court-room; but the blacks, feeling themselves oppressed and periled by this law, standing at that door, behind which their friend and companion is held a prisoner, rush in, almost without resistance, carry off their prisoner, and not a blow is struck, not a weapon drawn, not a man injured. That is the end of it. There is no need of standing armies in Boston! And, above all, we trust that the Commissioner will be able to say to the world, to the President, and to Congress, that this effort was the unpremeditated, irresistible impulse of a small body of men, acting under the sense and sight of oppression and impending horrid calamities, against the advice of some of their own number; and that no gentleman of education, no counsellor of this court sworn to obey the law, has instigated these poor men to its overthrow. Massachusetts is not in a state of civil war, and her most valued citizens are not engaged in overturning the foundations of civil government.

Why should the criminal proceedings of this day have taken place at all? What is the evidence? The learned District Attorney thought proper to suggest to the Court that there was further evidence which might be presented in another stage of this proceeding. That, I am sure, fell with as little weight upon the mind of the Commissioner as it would if we, on the other hand, had said, as is the fact, that we have a large amount of evidence that might yet be presented in behalf of Mr. Davis. This is not a game of brag! It is not upon evidence that is not here, but upon evidence that is here, that this case is to be decided. Here has been mortified pride, here has been fear, here has been the dread spectre of Executive power, stalking across the scene, appalling the hearts, and disabling the judgments of men. Excited men suspect everybody. Every person who ever attended a public meeting is suspected. A political party is to be put under the ban. There is nothing so rash as fear. There is nothing so indiscriminating as fear. There is nothing so cruel as fear, unless it be mortified pride—and here they both concurred.

Instructions come from a distant Executive power that knows nothing of the facts. And the fear of that power and patronage is the reason, may it please the Commissioner, why suddenly, on Saturday or Sunday, before the subject can be examined and the truth ascertained, a warrant is got out against a person of the character and position of Mr. Davis. But when we look at things in their natural light, when there is a calm investigation of the facts, I think the Government will see and regret its rashness and delusion.

I understand, may it please the Commissioner, that there is to be a great deal done on this case of an unusual character. We have been threatened with the reading of newspapers; and public meetings, and political principles are to be charged as treasonable. Yes! political considerations are brought to bear. We cannot tell what limit is to be put to this. Therefore, not knowing what is before me, having no ordinary rules of procedure to guide me, the Commissioner will allow me to try to anticipate the attacks as well as I can. For having had it intimated that the argument will not follow legal evidence, but extracts from newspapers—

*Mr. Lunt.* That is very strong. I have offered you everything of that kind that I have to say.

*The Commissioner.* The gentleman proposes to read as part of his argument, an article from the newspapers.

*Mr. Dana.* He proposes to read it as evidence, to affect the mind of

the court on the facts. I cannot object to it now. When it is offered, I have no doubt it will be properly met by the Commissioner.

I say, not knowing what is to come upon me, I must take a pretty wide margin. In that view of the case, it will not be improper if I state what I understand to be the true position of Mr. Davis, with reference to the principles involved in this case.

May it please your Honor, we are not subjects of a monarchy, which has put laws upon us that we have no hand in making. I do not hesitate to say, here, that if the act of 1850 had been imposed upon us, a subject people, by a monarchy, we should have rebelled as one man. I do not hesitate to say that if this law had been imposed upon us as a province, by a mother country, without our participation in the act, we should have rebelled as one man.

But we are a republic. We make our own laws. We choose our own lawgivers. We obey the laws we make, and we make the laws we obey. This law was constitutionally passed, though not constitutional, we think, in its provisions. It is the law until repealed or judicially abrogated.

Who passed this law? It was passed by the vote of the representative of our own city, whom we sent there by our own votes. It was advocated by our own Senator. It was passed by the aid of northern votes. Where is the remedy? It strikes me that the statement of the case shows where the remedy is. It is in the hands of the people. It is not in standing behind and urging on poor men to put themselves in the cannon's mouth. It is political courage that is wanted. Courage shown in speech, through the pen, and through the ballot-box.

But be it known that all I have said is on the idea that this is a repealable law. If we are to be told that this is a part of the organic law, sunk down deep into national compact, and never to be repealed,—then neither you nor I can answer for the consequences. But now we can say that it is nothing but an act, that may be repealed tomorrow. Take from us that great argument, and what can the defendant and myself do? What can the defendant say to discourage colored men from the use of force? You take from him his great means of influence. I never have been one of those, and I think the defendant has never been one of those, who would throw out all their strength in denunciations against Southern men born to their institution of slavery, and pass over those Northern men who volunteer to bring this state of things upon us.

But as a citizen, within constitutional limits, addressing his fellow-citizens at Faneuil Hall, (where I think we have still a right to go,) discouraging his fellow-citizens from violence, writing in the newspapers and arguing in the courts of law to the same purpose, saying to the poor trembling negro, I will give you a habeas corpus! I will give you a writ of personal replevin! I will aid in your defence! There is no need of violence! That is the position of the defendant. If he held any other position, if the defendant had made up his mind that here was a case for revolution, that here was a case for civil war and bloodshed—if I know anything of the spirit of the defendant, he would have exhibited himself in a far different manner. He would have resigned his position as a counsellor of this court, with all its profits and honors; he would put himself at the head instead of urging on from behind a class of ignorant, excited men, against the execution of the laws.

For he knows perfectly well—an educated man as he is, who has studied his logic and metaphysics, and who is not unfamiliar with the principles of the social system—that an intentional, forcible resistance to law is,

in its nature, revolution. And I take it, no citizen has the right forcibly to violate the law, unless he is prepared for revolution. I know that these nice metaphysic rays, as Burke says, piercing into the dense medium of common life, are refracted and distorted from their course. But an educated man, with a disciplined mind, knows that he has no right to encourage others to forcible resistance, unless he is ready to take the risks of bringing upon the community all the consequences of civil war. We talk about a higher law on the subject of resistance to the law. And there is a higher law. But what is it? It is the right to passive submission to penalties, or, it is the active ultimate right of revolution. It is the right our fathers took to themselves, as an ultimate remedy for unsupportable evils. It means, war and bloodshed. It is a case altogether out of law. I do not know a man educated to the law that takes any other ground.

I suppose your Honor did not misapprehend my last remark and that no one did. When I said resistance to the law, I did not mean to include resistance for the purpose of raising a constitutional issue. If an unconstitutional tax is levied, you refuse to pay it and raise the constitutional question. This right seems to be lost sight of. Persons seem to think we are to obey statutes and not the constitution. I understand that the duty to the constitution is above the duty to the statutes. And therefore I say, by resistance to the law, I mean combined, systematic, forcible resistance to the law for the purpose of overcomining all law, or a particular law in all cases; defying the government to arms, and not for the purpose of raising a constitutional issue. For this is within the power, nay, it is sometimes the duty of a citizen. I do not know a position in which a person does a greater good to his fellow citizens than when he does, as John Hampden did on the question of ship money, raise, by refusal to obey, the constitutional issue. And in doing this, he ought to have the approbation of the Courts and their ministers, and of every person true to the constitution and the laws.

At the same time that it is important to maintain all these principles, which are the principles of the defendant, I also think this is a season when we must be very careful that certain opposite doctrines are not carried too far. I think it is a time, this day, when it becomes a judicial tribunal to see to it, that this extraordinary combination of Executive power and patronage, this alarm and this anxiety at head quarters, does not lead to a violation of private rights and personal liberty. I think there is a pressure brought to bear against the free expression of popular opinion, against the exercise of private judgment—a pressure felt even in the courts of law, intimidating counsel, overawing witnesses, and making the defence of liberty a peril. There is the pressure of fear of political disfranchisement, of social ostracism, which weighs upon this community like a night-mare. We feel it everywhere. We know that we make sacrifices when we act in this cause. We feel that we suffer under it. And if this course is persevered in, I believe that if a man stands at that bar charged with being a fugitive slave, he will find it difficult to obtain counsel in this city of Boston, except from a small body of men peculiarly situated.

I think that two years ago no man could have stood before this bar, with perpetual servitude impending over him, but almost the entire bar would have come forward for his defence. No man would have dared to decline. But because of this pressure of political and mercantile interests, it is said that Henry Long found it difficult to obtain counsel in New York. His friends sent to Boston to obtain an eminent man here, willing

to brave public feeling by acting as a counsellor in a case of slavery. I do believe that this danger is to be regarded. For there is, at times, as much servility in democracies as in monarchies. I was struck with the remark made by the Earl of Carlisle, in his late letter, that there is in the United States an absolute submission to the supposed popular opinion of the hour, greater than he ever knew in any other country in the world. This is something in which no American can take pride.

The history of democratic governments shows that they may be as arbitrary as any absolute monarchy. Athens and Paris have, under democratic forms, been the standing illustrations of tyranny and arbitrary rule the world over. Those are free governments, in which there is a government of just laws, whether wrought out through a mixed government, as in England, or wrought out as here by the people themselves, and cast into representative forms. And now we see before us the anomaly, the mortifying contradiction, that it is in Great Britain, and not in the republic of the United States, with our venerated Declaration of Independence, that the great principles of Liberty and Fraternity are practically carried out. I do not mean to reflect upon any person or persons south or north of a certain geographical line. Our ancestors have eaten sour grapes, and their childrens' teeth are set on edge. We are all under the same condemnation. We are all responsible for these laws—for slavery, in some form or other. Our constitutional compact makes us responsible, and we cannot escape from our share of the evil and the wrong.

But I must leave these generalities, and pass to the particular points of this case. This is the first case of its kind that has occurred. The decision in this case by the Commissioner, though not matter of precedent, yet goes to the profession, the press, and into the private records of the country. Therefore we may be excused if we pay some considerable attention to the points of law involved.

In the first place, it should be borne in mind that a fugitive slave is not a criminal.

A few years ago, it was thought in Massachusetts that the pursuing of slaves was criminal. I thank God, it is not yet decided that the escaping from slavery is criminal. It is a mere question of property under this act. This law has recognized certain property in slaves, claimed in a certain manner, in the free States. It is a mere question of property. The Southern man has certain property in his slave. That property we do not here recognise. But if the property escapes, and he pursues it, it is to be recognised in this court. Consequently, when a Southern man comes here and seizes a person as his property, he takes him at his own risk, a risk which every man takes in seizing any thing as his property. If he seizes the wrong property, any person who owns it, may resist him, or resist his officer armed with a warrant. This has been ruled in various cases.

Your Honor recollects in the 8th Pickering, the case of the Commonwealth vs. Kennard. There the writ was placed in the hands of the officer, to go and attach some property of the defendant. He attached certain property which he thought belonged to the defendant. He showed his warrant, but the true owners put him, neck and heels, out of the house. They were indicted, but the Court sustained them in their act.

In a civil action, if the wrong person, the wrong horse, or the wrong slave, is taken, then the owner of the property may defend it, or the man seized may defend himself if he chooses. There is a different statute on the subject of interfering with the process of the courts, interfering with judicial processes, under which this respondent is not held to answer.

Whenever this respondent is held to answer for resisting judicial processes, then these other questions may be raised. He is now only charged with rescuing property from the owner, or the officer holding for the owner.

The Constitution says that any person *charged* with crime, and escaping, shall be delivered up. But in the case of the Fugitive Slave, it carefully alters the phraseology. It does not say that any person *charged* with being a Fugitive Slave shall be surrendered, but any person who *is* a Fugitive Slave. In the one case, the *charge* is the only material fact, and is proved by record. In the other case, which is a question of property, the fact of property is the foundation of the proceeding. So, in this act of 1850, the 6th Section does not provide that any person who *claims* a Fugitive Slave, shall have the right to arrest him, but any person who *is the owner* of a Fugitive Slave, may arrest him. So in the 7th Section, the penalty is not inflicted for rescuing a person who is *claimed* as a Fugitive Slave, but for rescuing a person who *is* a Fugitive Slave. These provisions are in analogy with the law of property, and of the arrest of persons and property, in all other cases. As bad as this statute is, it is not quite so bad as its friends in this case would make it.

The next consideration is, that it is not necessary that the claim should be made by virtue of legal process. The owner or his agent may arrest the fugitive *with or without process.* The offence is equally committed, and the penalty is the same, whether the rescue is made from the owner without process, or from the officer having process. This fact, with the fact that there is a general statute relating to the offence of obstructing judicial processes, shows that this statute assumes the facts of property and escape to be true, and applies only to cases in which they shall prove to be true.

If this is not so, what is the result? If a man claims another, without process, by putting his hand on his shoulder, though the man may be as free as you or I, if he resists, or his friends aid him in resisting, the offence is committed. A man claimed as a Fugitive Slave, has been rescued or aided in his escape. You cannot refuse to deliver up a colored boy or girl born in your house, of free parents, to any man who knocks at your door and claims the child, with or without a warrant, without incurring the penalties of this act. This monstrous construction can never be admitted. I beseech the Commissioner to reconsider his intimated opinion on this point, and to hold the Government to preliminiary proof, in the outset, that the person rescued was a slave by the law of Virginia, was the slave of the man who claimed him, and was a fugitive from that state of Slavery.

What evidence has there been of any of these facts? There has been no evidence offered that the prisoner was a slave by the law of Virginia! —There has been no evidence offered that he was the slave of Mr. Debree! There has been no evidence offered that he was a fugitive from a state of slavery! Mr. Riley's return upon the warrant, stating that he had arrested "the within named Shadrach," was admitted as evidence. I solemnly protested against the reception of the return as evidence in a criminal proceeding between other parties; but is was received, and for a while held to be conclusive. But, in answer to my question, Mr. Riley replied that he did not know the man he arrested to be the man named in the warrant. And how could he know it? This nullified the return, and the government had no evidence. The District Attorney saw this, and rising in his seat, in a threatening tone, said to Mr. Riley, "I warn you, sir, not to give that testimony!" The testimony was true, and it was admitted by the court. Why was Mr. Riley warned? He was

warned for private reasons. It was an official warning, by the agent of the Executive to one of its servants.

*Mr. Lunt*—I deny that it was a private warning. It was public, and for proper reasons.

*Mr. Dana*—It was for private, or secret reasons, not given, not apparent,—some political or governmental terror, known only to the parties. There is no escape from this. The bar saw it. The audience saw it. It is graven with a pen of iron, and laid up in the rock forever!

All evidence of identity having failed, the government is driven to its last shift. Col. Thomas is called in, and he testifies that the agent of Mr. Debree said to him, in the Court-room, when the prisoner was brought in, "That is my boy!" This is hearsay evidence upon hearsay evidence.. It is monstrous! Yet on this slender thread of illegal testimony, hung all the evidence of the facts of identity, slavery and escape. If it is enough to prove that the man rescued was the man in custody, and upon whom the Court was sitting in fact, no one denies it. But if it be necessary to show that the man in custody was the man named in the warrant, or that he was a slave, and a fugitive slave, there has been no competent evidence of any of those facts, and no evidence at all but of one of them.

This man was not rescued from the Court. The Court had adjourned. The Marshal had chosen to make the Court-room a slave jail. The offence would have been the same in the eye of the law, if he had been rescued from the hands of the agent having no warrant, in the streets, or in a railroad car.

I have nothing more to submit to the Court on the subject of the law applicable to this case. I will now call your Honor's attention to the facts in proof.

To avoid repetition and confusion, I will call your Honor's attention to single points.

1. Mr. Davis was counsel in the case, and acted as such. Mr. Morton, who knew Shadrach, and to whom Shadrach looked for advice, recommended Mr. Davis to him as counsel. Mr. Riley testifies that Shadrach twice pointed out Mr. Davis to him as one of his counsel, when officially inquired of by Mr. Riley. Mr. King and Mr. List, counsellors of this court, testify that Mr. Davis sat with, consulted with and conversed with the counsel who addressed the court, made a prolonged and careful examination of the papers, and was the first who raised the doubt of their sufficiency. Mr. Sawin, an officer, says he acted as counsel. It is proved that he went into the court room for the purpose of acting as counsel, and did not leave the room or the bar at all (the government will admit, not for more than a minute or two) until the last moment. What other evidence can there be of counsel's authority? It is seldom if ever in writing, but is proved by acts and recognitions. After such evidence of the acts and recognitions of a hasty and troubled forenoon, including the testimony of two of his own officers, I was amazed at the pertinacity of the prosecuting officer in calling Mr. Curtis to prove that Mr. Davis was not counsel. But Mr. Curtis admitted that he knew nothing of the relations between Shadrach and Mr. Davis, that there are often counsel who do not address the court, and that Mr. Davis might have been of such counsel, for aught he knew. And most of the work of counsel was done after Mr. Curtis left.

I think your Honor will find no difficulty in believing that Mr. Davis acted as counsel for Shadrach, and was in attendance for that purpose.

2. To connect Mr. Davis with the rescue, the Government has found

it necessary to contend that he left the court room and returned, shortly before the rescue took place. The only witness to this is Prescott; and how does he stand? Prescott was in the entry before the rescue took place, he heard it debated, he saw it through, he gave no notice to any one, but evidently, from the testimony of Hanscom, he sympathized with the rescuers, and expressed his sympathy in a very unguarded manner for a man who was present, in the midst. All that day and the next, with the vanity of a youth who has been the fortunate spectator of the great event of the day, a fire, a hanging, or a murder, he vaunts his connection and sympathy with the rescue. On the third day come the arrests. He finds the Government has learned that he was present. Six months in jail and a thousand dollars fine, is no trifle to a mechanic's apprentice. He becomes alarmed, and offers himself as State's evidence, and becomes a swift, a terrified, and a blinded witness for the Government. He says he was standing in the entry by the recess that leads to the east door and the water-closet. While there, he saw a gentleman come along the entry and go past him into the recess, and he thinks through the east door into the court room. If this was Mr. Davis, he must have gone through that door, for he was in the room and left it again a minute after. This gentleman he is sure was Mr. Davis, although he did not then know him by name and had only seen him once. Nor was there anything then to call his attention to a casual passer by.

Now, may it please your Honor, how long and when was Prescott at that post? According to his own testimony, about two minutes before the rescue began, and as soon as he saw the attempt was serious, he left that place for the stairs. Mr. Davis, then, must have entered the east door one or two minutes before he went out of the west door. Now, Mr. Warren, the Deputy Marshal, testifies that he passed through the entry into this closet, just about two minutes before the rescue, and remembers seeing a young white man standing at the corner. To avoid the effect of this evidence, Prescott is recalled and says he remembers also to have seen a man come out at the east door and go into the closet, at this moment. But here the witness made a mistake. He thought that Mr. Warren went through the east door, but Mr. Warren says that he came along the entry, and had not been in or out of that door. What then is the predicament in which Prescott has involved himself? Three different men must have gone into that recess in the short space of two minutes; two of them at least, must have been in the closet at the same minute; and the east door must have been opened three times upon a knock from without.

Against this evident mistake or wilful perversion, what is the evidence? Mr. Riley and Mr. Warren both say that the east door was fastened on the inside, with strict orders not to have it opened at all; and so strict were they, that they themselves went and came by the west door. No one can be found who opened that door or saw it opened, or saw Mr. Davis go in or out at it, and it is next the Marshal's desk, and in plain sight of every one. No one could come in at it, without knocking and having it opened from within. During the half hour before the rescue, there was no one in the room but the prisoner, the officers and the counsel. The doors were both in plain sight, the east door locked, and at the west door two officers, between whom every person must pass. Both these officers testify that Mr. Davis did not go out or in to their knowledge. Byrnes, Neale and Sawin, the other officers, did not see him go, and think he did not leave the room. Mr. Riley is confident he did not leave the room. Mr. Wright found Mr. Davis in the room, half an

hour before the rescue, and is sure he did not leave. Not a man in the court room saw him go or come, or believes that he did so. If Prescott's conjecture is true, Mr. Davis must have gone out past the officers at the west door, returned to the east door, knocked and been admitted by another officer,—beside the inconsistencies about the men in the closet.

We might well ask, what if this were Mr. Davis? What does it prove? He spoke to no one, except a "good day" to one man, and took no notice of the crowd at the door. But I will not argue this supposition, for it is not true. It was not Mr. Davis. He did not leave the room until he went out for the last time.

Something has been attempted to be made out of Mr. Davis's conversation with the officers in the room. A man engaged in a plot for a rescue, would not be likely to expose himself to suspicion by violent remarks to officers. But take the evidence as it stands. At the request of Mr. List, he asked Sawin, whom he knew, if the man next Shadrach was a Southern man. This was proper. The counsel did not wish a man to sit next the prisoner, who might converse with him for the purpose of getting admissions from him. They feared he might be an agent of the claimant. He said privately to Mr. Sawin, whom he had known intimately for years, that this was a dirty business he was engaged in. He did not know Mr. Sawin to be an officer of the Court. He knew him as a city constable; and supposed he had let himself out by the day as a catcher of fugitive slaves. I know something of the feelings of Southern gentlemen as to this class of men. They are necessary evils. They use them as we use spies, informers and deserters in war; they use them, but they despise them. I remember being in one of the chief cities of Virginia, and passing a large, handsome house, when my friend said to me, "There lives perhaps the richest man in our town, but he visits nowhere, nobody notices him. He is looked upon with aversion. He is a dealer in slaves! He keeps a slave-market, and pursues fugitives!" They look upon this occupation with as much contempt, aye, with more contempt than we seem to now; for there is a higher spirit in their aristocracy, than in the ruling classes of our Northern cities at this moment. This was the feeling of Mr. Davis, when he spoke to Sawin. This is the feeling of every man of honor. He wished a man whom he knew, to be engaged in a more respectable business. I have said the same. I saw a man I knew in Court the other day, letting himself by the dollar a day, in slave catching. I begged him, if he could find any honest mode of getting a living, to abandon it.

*The Commissioner.* Did you know him to be engaged in his legal duties?

*Mr. Lunt.* A very improper remark!

*Mr. Dana.* I venture to suggest not. The remark was with reference to the future, and not to the present.

*The Commissioner.* I see no distinction between attempting to deter men from executing the law and assisting in violating it.

*Mr. Dana.* I am sorry I cannot see the impropriety of it. Perhaps I have not made myself clearly understood. Mr. Davis expressed his opinion that the man had better be in better business.

*The Commissioner.* It was equivalent to saying to the officer that the execution of the law was a mean business.

*Mr. Dana.* That I propose to argue.

*The Commissioner.* On that point, the defendant himself intimated in his cross-examination, that the expression was not used as an observation

in general. On being asked whether the remark was not said with regard to his business, he replied, yes.

*Mr. Dana.* I did not so understand it. He intended to say this—Mr. Sawin, you and I are old acquaintances. You are not obliged to do this business. It is mean business. Why do you volunteer in it? This is what I myself have said, and what every high-minded man must feel.

*Mr. Lunt* here intimated that Mr. Dana might find himself changing places at the bar, and be a defendant instead of counsel, if he advocated and expressed such sentiments.

*Mr. Dana* simply bowed to the Attorney, and proceeded.

No citizen is bound to an active execution of this law, unless called upon as one of the *posse comitatûs.* Did your Honor feel bound to join in the pursuit last Saturday, when the mob passed you at the corner of Court street? Do you feel bound, of a pleasant evening, to walk about in the neighborhood and see what fugitives you can find and dispose of? Would any compensation tempt you to do it?

On the subject of the conversation with Byrnes, that was considered, of course, very truculent, on the government's evidence. But when explained by Mr. Minns, what is it? The defendant knows that the cause in which he is engaged, by a strange revulsion of public feeling, is unpopular. It is unprofitable, and whatever is unprofitable is unpopular. It is not genteel, and persons doubtful of their gentility ridicule it. Now Mr. Davis being engaged in this unpopular cause, Byrnes makes a remark which Mr. Minns thought was intended to irritate Mr. Davis.

He did not hear the first part, but it ended with "killing the negroes." Mr. Davis felt that it was intended as a taunt to him. He answered him, "Then, on that principle, you ought to have your throats cut." I have no doubt it was a logical conclusion from Mr. Byrnes' premises, and nothing more.

Up to this point, what is the evidence against Mr. Davis? Am I not right in saying, nothing whatever—nothing more than any man would be subject to, who acted as counsel?

The only remaining point is his passing out of the door, and his conduct in the entry. On this point there is but one witness against him, and that is Mr. Byrnes, who, unfortunately, holds the office of Deputy Marshal. I shall not go into an examination of the evidence as to the reputation of this man. Twelve good men, known to us all, persons likely to know Byrnes's character, have testified it is and has for years been bad, decidedly bad; and it was not denied by his witness, that the verdict at East Cambridge was rendered on the assumption of his not being worthy of belief. His own witnesses were chiefly casual acquaintances, or the boon companions of his bowling-alley and billiard-room, the retailers of liquors, men who, like him, live by violating the laws by night, which he lives by enforcing in the day-time.

It is clearly proved that there was no suspicion of a rescue, either in the court room or in the entry, until the instant it took place. Prescott did not suspect it. Mr. Homer, the highly respectable assistant clerk of the Municipal Court, who saw the whole occurrence from the stair-way, did not think it would be any thing serious. Mr. Warren, the Deputy Marshal, passed through the group at the door twice, but two or three minutes before the rescue, and suspected nothing. Five Courts were in session, and persons were passing up the stairs and through the passage-way to the last moment, and suspected nothing. The officers inside suspected nothing. Their defence against negligence is the defence of Mr.

Davis. Mr. Davis knew that Mr. Morton expected to purchase the freedom of Shadrach. He had confidence that the documentary evidence was fatally defective. He was engaged to attend the consultations on the defence, and on the Habeas Corpus, that afternoon. He saw that Mr. Curtis was not disposed to hurry matters, or to deny the prisoner full opportunities for defence. And I will do Mr. Curtis the justice to say that I have no doubt it was his object to exhibit this law to us in its most favorable light; to justify its makers as far as possible. Mr. Davis neither knew, nor suspected, nor thought of a rescue at that door. Every witness says he went out of the door in the usual manner, except Hutchins, and when Hutchins thought he should have gone out in full front, instead of side-wise, your Honor well asked how otherwise could he have gone out, with a crowd against the door, and in the passage? I see that your Honor thinks nothing of that; although in the more jealous eye of the District Attorney, it is matter of suspicion. To minds so disposed, there is nothing but is proof of guilt. If Mr. Davis had marched out in full front, it would have been in order to open the door wider, for the conspirators to rush in. Just so in the case of poor Shadrach's coat. Yesterday the District Attorney was certain that Mr. Davis, or some one apprised him of the intended rescue, because he pulled his coat off. Now, when it is proved, by the government's own witnesses, that Shadrach afterwards put his coat on again, I suppose his putting it on will be just as good proof of the same thing.

Mr. Byrnes, thinks he recognized Mr. Davis' voice in the entry, calling out, "Take him out, boys!" But the same cry was uttered several times, and Mr. Homer and Mr. Hutchins, who saw Mr. Davis at the moment, and were outside, say it did not come from him, but from the negroes, and Prescott attributes it to the negroes. Four men were nearer to Mr. Davis than Byrnes was, and all of them exculpate Mr. Davis. And Byrnes is confessedly hard of hearing, and not particularly familiar with Mr. Davis' voice. Moreover his character for truth and veracity is impeached.

Mr. Davis was on or near the platform when Mr. Homer saw him. Mr. Adams met him on the lower floor, by the Marshal's office, while the noise was going on up stairs; talked with him two or three minutes, and walked round the building, and saw the crowd go up the street. This proves that Mr. Davis did not linger near the rescuers; nor did he absolutely run away, or fly, as a man would who desired to avoid discovery. On the contrary, he did just as any other person would have done. He staid long enough to let himself be seen by several persons, but not long enough to be of any aid to the rescuers. Nothing can be clearer of cause for imputation, than the conduct of Mr. Davis in the entry and on the stairway.

Such, please your Honor, is all the evidence against the defendant. It is reduced to an exclamation on the stair-case, sworn to, not very confidently, by a deaf man, who was too far off to hear wel at any rate of hearing, denied by three officers, with good hearing, two of whom were outside, while a dozen voices were calling out the same thing at the same moment; the moment, too, one of alarm and excitement on the part of the officers. If such evidence is sufficient, who can be safe? Who would dare to act as counsel in any case of public excitement, with a suspicious and angry government watching every motion, served by officers of broken down reputations?

Please your Honor, I have done with the testimony. On what principles of proof is the judgment to be made up?

The Constitution requires that no person shall be arrested without a

warrant supported by oath. The Act of 1789 requires these proceedings to be conformed to proceedings in the State Courts. In Massachusetts it has always been required that the complainant shall be first examined on his oath. In this case there has been no examination under oath. Mr. George Lunt, has sworn, "so help me God," that Charles Gideon Davis, a Counsellor of this Court, has aided in rescuing the prisoner. Yet, so help him God! he knew nothing about the facts. He has made oath to the form of the Statute, and no more.

*Mr. Lunt* here intervened and said it was the custom for the District Attorney to swear to complaints on hearsay evidence.

*Mr. Dana*—But this is not stated as hearsay. It is sworn to as a fact. Charles G. Davis "*did* rescue," and the above named George Lunt made oath to the *truth of the facts.* As a question of conscience, I leave it with that officer to settle with himself. As a matter of law, as a matter of vital importance to every citizen, as a great question of constitutional law, I earnestly protest against the issuing of warrants on the mere formal oaths of official persons, representing a party in the proceedings, and utterly ignorant of the facts they swear to. If it be a custom, it is more honored in the breach than in the observance. But I deny that it is the custom. Complaints are sworn to by persons knowing the facts always in the State Courts, and in my experience in the Federal Courts. If the prosecuting officer is obliged to swear to them, for want of other witnesses, he only swears to his information and belief.

In closing my prolonged remarks, let me recapitulate our case. Mr. Davis is not the man to urge others to acts he dares not commit himself. He believes this dreadful statute unconstitutional, a violation of our moral sense, a great breach upon the safeguards of freedom every where. Yet he will oppose it legally, by speech, by the pen, and in Court. He will not yield to it any voluntary obedience, but he will not use force, or counsel citizens to use force to set aside the laws. He rejoices that Shadrach is free. Every right minded man rejoices that he is free. Sober second thought teaches him and all of us that violent counsels are weak counsels. Better had it been for the cause of freedom, if, when the Marshal called out to shoot the prisoner, some armed minister of the law had shot dead the unarmed, unoffending man! Better had it been for him, and the cause of those like him, if John H. Riley, instead of flying to the window, had plunged that sword to the hilt in the heart of the captive! Better if this temple of justice, which has already been turned into a slave jail, and a slave market, had also been made the shambles and the grave!

While we uphold the public peace and the dignity of all laws, let us regard with tenderness and consideration that poor class of oppressed men, our negro population, on whom the statute falls with the terrors and blackness of night. When one of their number, by his industry and abilities has raised himself to the dignity of a place in this bar, it was with mortification I heard him insulted, yesterday, on the stand, by an officer of this court, who pointed him out, in giving his evidence, as "the little darkey lawyer" While I rejoiced at the rebuke administered to that officer from the bench, it was with deep regret that I saw the representative of the government lead off the laugh of the audience against him.

*Mr. Lunt*—This is false.

*Mr. Dana*—Do you deny you did so? It was seen and noticed by us all. I spoke to you at the time.

*Mr. Lunt*—I only smiled. I cannot always control my muscles.

*Mr. Dana*—I am sorry you could not control them on this occasion.

It led off and encouraged others, who take their cue from persons in high stations.

The doings of these last few days are now part of history. If there has been a hasty and a needless arrest of a respectable gentleman; if counsel have been intimidated, or witnesses threatened; if liberty of speech and action have been periled; if the dignity and duty of office have been yielded to the unreasonable demands of political agents, and the commands of a misinformed Executive,—the Inquest of public opinion is to sit upon the whole transaction, and it will be held up to the world. *Proximus ardet Ucalegon!* There are revolutions in the wheel of fortune. There are tides in the affairs of men.

Let us hope that your Honor will be able to set this occurrence in its true light:—A sudden, unexpected, unpremedidated action of a group of excited men, and successful because unexpected. But a sworn counsellor of this Court, even in the excitement of the rescue of a slave to his freedom, by those of his own flesh and bone, did not forget the duty he owed personally to the Court and the law.

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ARGUMENT OF GEORGE LUNT, ESQ., DISTRICT ATTORNEY.

Mr. Lunt said that the counsel for the defence had commenced by saying, that he did not know how he was to be answered. He should not reply to the first two hours of the gentleman's speech. The gentleman has alluded to constitutional doctrines, and opinions, which a small class of the community entertain. I shall not spend my time for popular effect. Some of his remarks come with an ill grace from him, and those with whom he associates. The gentleman should take care how he is associated. I have nothing to say against the colored people—ignorant—degraded, no doubt, but peaceable, as a general thing; they would be glad to get away from people who meddle with them, and would prefer to be let alone. But I say it is dangerous and mischievous to recommend such doctrines as the gentleman avows. *Proximus ardet Ucalegon!* The relation of counsel in which he appears here may be changed. The sentiments he has uttered here place *him* in peril. He will find it *so, to his cost*, unless he changes the tone of his remarks, on this and future occasions.

I will proceed at once to the evidence. The question here is, has a law of the United States been violated? I throw to the winds every question except whether this defendant is guilty; high or low, it matters not; the higher in station, the more amenable. I do not suppose for a moment that the Commissioner has any prejudice. We cannot, and we never will regard, the office, which the counsel seems to consider sacred. The sacredness of an office depends upon the sacredness of character. I am accused of having arrested an individual with unseemly haste, a person of character, of a family whose name is known in history; a member of the bar, bound to preserve the law, counsel at the time, and entitled to perfect freedom. I can state with confidence that the defendant was not arrested until after a full personal investigation of facts, and then on a keen sense of duty. Now what were the grounds in general, on which the warrant was issued? Mr. Davis meets Mr. Riley in the morning, upon which, after an inquiry whether he has seen Mr. Curtis, he asked if he has a slave case? a question he might well ask, considering the company with which he is associated. He asks him again in this Court room.

*Mr. Dana*—There is no evidence of that,—the evidence is, that after

the adjournment he asked an explanation from Mr. Riley of the interview in the morning.

*The Commissioner* referring to his notes—says, he believes Mr. Dana is right.

*Mr. Lunt.* Now with whom is he associated? I hold in my hand an account of a meeting held in Faneuil Hall, on the 14th of October last.

*Mr. Dana.*—For what purpose is this narrative to be read here? It is an account from a hostile paper, of a political meeting, not made under oath; and it does not appear who wrote it, nor whether the person who wrote it was present at the meeting.

*The Commissioner.*—I shall not object to the gentleman's reading whatever he thinks proper. You have introduced in your argument a great many irrelevant matters, Mr. Dana, and Mr. Lunt may do the same.

*Mr. Lunt.*—This is the account,—Reads from the Boston Post of October 15, 1850.

THE FUGITIVE SLAVE LAW MEETING.

"The call for a meeting of the opponents of the fugitive slave law, at Faneuil Hall, last night, collected a large audience, comprising a considerable number of colored people. There were about three hundred colored females in the galleries. The meeting was called to order by Francis Jackson, and organized as follows:—Charles Francis Adams, President; Samuel E. Sewall, Gershom B. Weston, Francis Jackson, and Timothy Gilbert, Vice Presidents; J. W. Stone, and J. W. Thornton, Secretaries.

Upon taking the chair, Mr. Adams delivered a carefully prepared address, in which he maintained that the law was repugnant to the spirit of our institutions and the constitution, and fraught with as much danger to free colored people as to fugitives.

He was followed by Frederick Douglas, who described the consternation the law had created among the colored people, free and fugitive, and said that he knew of hundreds of both classes who were fleeing to Canada. The free colored people were in fear of seizure by conspiring complainants, aided by perjured affidavits.

Richard H. Dana, Jr., after expressing regret that the meeting was not made up of somewhat different material, of the leading men in all branches of business, and of men of property and reputed respectability, read a long letter from Josiah Quincy, senior, declaring against the law, but at the same time expressing his belief that there was no real ground for alarm, for, in his opinion, the enforcement of the law in Massachusetts would prove to be impracticable.

At the request of the President, Mr. Dana also read a series of resolutions, author unknown, declaring that the moral sense of the individuals composing the meeting, revolted against the law; denouncing it as contradictory to the declaration of independence, and inconsistent with the purposes of the constitution, and in direct violation of its habeas corpus provision, and the right of the people to be secure from unreasonable seizure, &c.; that the meeting could not believe that any citizen of Boston and its vicinity could be so destitute of love of his country and of his race, or devoid of a sense of justice, as to take part in returning a fugitive; and that all present pledge themselves to endeavor to aid and cooperate with all colored people endangered by the law.

Speeches were made by Wendell Phillips, James W. Briggs, of Ohio, Charles Remond, and the Rev. Mr. Colver. The resolutions were

adopted, as a matter of course. The last one provided "for a committee of vigilance to secure the fugitives and colored inhabitants of Boston and vicinity from any invasion of their rights by persons acting under the law," and the committee was styled and made up as follows:—"

The last resolution provides for a committee, of which Charles G. Davis was one. Now I admit that Mr. Davis was in Syracuse, at the time. But he admits that he volunteered upon his return. Why didn't he publicly disclaim any assent to these proceedings? And if he did not, is he not to be presumed to have assented? I want the public to know whether Mr. Davis and those associated with him, abide by the doctrines avowed in Faneuil Hall.

The Statute provides that whoever has been engaged in aiding, abetting, or assisting, *directly or indirectly*, is criminal. I shall contend that the defendant is directly implicated. He is more or less implicated, in the opinions which have been promulgated, and from his conversations with Mr. Riley. What next? He comes and asks whether a certain man is a Southern man. Why? Is not a Southern man to go into a United States Court? Has it come to this?

Mr. Davis then says to Sawin, "this is a d—d nasty piece of business," in the presence of the prisoner. He knew that such an expression was calculated to have two effects; first, to discourage the officer,—and secondly, to encourage and excite the prisoner. This was an indirect aiding,—connecting it with the subsequent escape. He uses language of a very unusual and violent character afterwards.

For some unaccountable reason Mr. Davis remains here; for it is unaccounted for. Was he counsel?

I maintain he was not counsel. Mr. Riley did not know he was counsel when he asked Shadrach in Wright's presence if Davis was counsel. Riley did n't know it then. Shadrach appeared to be in doubt about it.

(It was suggested that there was no such evidence.)

What was he waiting for? What single thing did he do as counsel?

Mr. Lunt here reviewed the evidence of the transactions in the court room more minutely. Davis pushed the door and stuck his back against the post. One expression, "Take him out, boys," is the natural expression of a stranger. The other words testified to by others were, "take him out." He goes down, and does not interfere, according to his own statement. He shows no disposition to prevent a rescue.

The Commissioner inquires whether not interfering may not be indirectly aiding and abetting.

*Mr. Lunt.* I am not ready to take that ground at present.

*The Commissioner.* He is undoubtedly liable, as a magistrate, and subject to a fine of $300.

Mr. Lunt reviews the evidence of what took place in the entry, argues that Mr. Homer could not have seen the whole disturbance, says that as a professional man, he can't say it is proved beyond a reasonable doubt, that Mr. Davis uttered the words "take him out, boys," and does not think they would satisfy a jury, taken by themselves. But there was reasonable cause for binding him over. Mr. Prescott shakes my confidence in my preconceived opinions upon the subject, as to whether Davis went out or not. I did not think before that Davis went out. Mr. Prescott cannot be mistaken. Mr. Prescott's testimony is not met by the negative testimony of Mr. Riley, for it was impossible that Mr. Riley could have constantly watched the left hand or easterly door, while talking with others or disputing with Mr. Wright. If he did go out then, he had an opportunity to concert a signal with the colored men without.

Mr. Lunt argued to show the intenseness of Mr. Davis's interest and zeal in opposition to the law, that it was avowed by him under oath upon the stand; that showed his predisposition and excited state of mind upon the subject, and the greater liability of his being betrayed into an act of overt resistance to the law, if an opportunity occurred. This excited state of mind continued in the court room, as was proved by his addressing the officers in the abusive and sanguinary terms used by him. Up to the moment of leaving the court room, and when expostulated with by the officer, for saying he and others ought to have their throats cut, he admitted that he had said so, and that he said so again. Clark and Hutchins heard the cry—"Take him out boys;" and Byrnes, whose eye was fixed on Mr. Davis, was certain that they came from him.

The words were uttered. He was in that peculiar state of mind, which rendered such words the natural expression of his feelings, and they were in perfect accordance with the general purpose of resistance to the law publicly promulgated by his associates and co-laborers, who had been formed into an organized body in this city. He did not content himself with going out when Hutchins opened the door for him. He braced his back against the door-post, and pushed against the door to open it wider. Then came the cry—"Take him out, boys!" And Byrnes had sworn it came from Mr. Davis. Connected with Mr. Davis's leaving the room was another significant fact. Almost at the moment that he, quitting that part of the room where the fugitive was, started to go out, the fugitive rose, put on his coat, and appearing to be excited, walked forward, just as the first cry was raised.

Mr. Davis lingers on the stair-case, and goes to his office, not knowing or caring, he would have us suppose, what had been the issue. Upon this evidence, it seems to me a clear case for holding the party over for further examination and trial.

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*Wednesday, Feb.* 26. Upon the opening of the Court the Commissioner delivered his decision.

He commenced by stating the offence under the statute with which the defendant is charged, and stated that he should confine himself principally to the question whether the defendant was aiding or abetting the person who had been arrested, and that the legal decisions upon the construction of the statute were merely for the purposes of this examination. The Commissioner then reviewed the evidence as to the expressions of the defendant in the court room, and stated that it had been proved that the defendant said the officers of the Court ought to have their throats cut. No notice was taken in the opinion of the evidence of Geo. W. Minns, Esq. The following extracts are made from the opinion of the Commissioner.

"The defendant has also volunteered the statement in this court, when called as a witness in the preceding examination, that he was glad the prisoner was free, and when further questioned, he left it unexplained whether that opinion also embraced the unlawful means that had been used."

"These facts have a legal bearing upon the *animus*, the wilful intent with which any act may have been done, by the defendant to aid in the rescue; and I should fail in the duty of a magistrate at this time, and under all the circumstances surrounding this examination, to permit to pass unrebuked any manifestation of a resistance to or contempt of legal pro-

cess, especially when coming from intelligent citizens and men in official positions, whose countenance or encouragement may have involved, and may again involve, the excitable and less informed in an open violation of law. At the same time there is a plain distinction as to the penal consequences, between a moral and a legal aiding or abetting; and holding throughout these examinations, as I trust I may be enabled to do, an impartial as well as a firm hand, care shall be taken not to confound an indiscretion or a moral perversion, or any mere expression of opinion, however gross, with a wilful act constituting legal guilt. I fully recognise the doctrine suggested in the defence, of the largest liberty within law, and also the right of the people to make or amend constitutions and laws, by all constitutional means or reserved powers."

* * * * * * *

"But so far as the defendant is here proved to have done any act, there is no evidence which connects him criminally with a preconcerted plan of rescue; and I take pleasure in adding that the conduct of the defence by the learned counsel, and his testimony and disavowals, have greatly aided me in coming to that conclusion." * * *

"Of this preliminary point of the evidence I do not find an aiding or abetting within the provisions of the statute. But, in connection with what immediately followed in the passing of the defendant out at the door, the exclamation supposed by one witness to have come from him, his position and his hand upon the door, immediately followed by the rush of the rioters who surrounded it, and the absence of all evidence of attempt on the part of the defendant to prevent the rescue, it presented, on the part of the evidence for the prosecution, a strong case of probable cause, that made it the duty of the district attorney to bring the party to an examination. But in the view I take of a preliminary inquiry in this form, and especially where not only the evidence that would come before a grand jury, but the defence is gone into, testimony stronger than probable cause should appear, in order to hold the party to a trial." * * *

"Then is that proof found in the acts of the defendant as he passed out of the door, in themselves or in their connection with his preceding declarations and conduct?"

The Commissioner then reviewed the evidence of Mr. Byrnes, and come to the conclusion that taking it as it stands it does not satisfactorily prove that the defendant uttered the words ascribed to him. * *

"The only other evidence refers to the manner the defendant went out of the door. Hutchins, who passed him out, says that the defendant turned his back to the wall, at the outer corner of the casement, instead of going directly forward, and put his head on the outer door, and then it started and was forced open. This act, as it was exhibited to the Commissioner, by the witness, is not inconsistent with the explanation that it was the result of the rush and pressure without, and the force there applied to the door; and if the attack was unexpected by the defendant, his neglect to interpose resistance to the forcing of the door, or to aid the officers, which it was his duty to have done, and which, it has been urged by the district attorney for the prosecution, with much force in the argument, may have been caused from sudden surprise or agitation. And even if, as the previous and subsequent conduct of the defendant might lead to infer, it was a wilful omission of duty, especially in a magistrate, yet, if unaccompanied by any act or expression, aiding in, or inciting to the rescue, and in the absence of a call from a proper officer for assistance, it is not the distinct offence charged in the complaint,

or defined in the statute; and the party, if answerable, is so in another form and tribunal. It is further to be considered, as suggested by the counsel for the defence, that the decision in this hearing is not final, or in any legal form conclusive, and as the defendant has a permanent locality, leaves the inquiry open elsewhere, should this evidence or further proof require it. Upon the whole evidence, therefore, and applying the rule which should govern preliminary examinations, of not binding over a party accused, without testimony beyond that which might constitute legal probable cause for his arrest and examination, I shall order that the defendant be discharged."

The commissioner now addressed the defendant personally, and said—"Charles G. Davis, the court order you to be discharged, and go without day."

# Act of Congress of 1850.

## An Act to amend, and supplementary to the Act, entitled "An Act respecting Fugitives from Justice, and persons escaping from the service of their Masters," approved February 12, 1793.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the persons who have been, or may hereafter be, appointed commissioners, in virtue of any act of Congress, by the circuit courts of the United States, and who, in consequence of such appointment, are authorized to exercise the powers that any justice of the peace or other magistrate of any of the United States may exercise in respect to offenders for any crime or offence against the United States, by arresting, imprisoning, or bailing the same under and by virtue of the thirty-third section of the act of the twenty-fourth of September, seventeen hundred and eighty-nine, entitled, "An act to establish the judicial courts of the United States," shall be, and are hereby authorized and required to exercise and discharge all the powers and duties conferred by this act.

Sec. 2. *And be it further enacted*, That the superior court of each organized territory of the United States shall have the same power to appoint commissioners to take acknowledgments of bail and affidavit, and to take depositions of witnesses in civil causes, which is now possessed by the circuit courts of the United States; and all commissioners who shall hereafter be appointed for such purposes by the superior court of any organized territory of the United States shall possess all the powers and exercise all the duties conferred by law upon the commissioners appointed by the circuit courts of the United States for similar purposes, and shall moreover exercise and discharge all the powers and duties conferred by this act.

Sec. 3. *And be it further enacted*, That the circuit courts of the United States, and the superior courts of each organized territory of the United States, shall from time to time enlarge the number of commissioners, with a view to afford reasonable facilities to reclaim fugitives from labor, and to the prompt discharge of the duties imposed by this act.

Sec. 4. *And be it further enacted*, That the commissioners above named shall have concurrent jurisdiction with the judges of the circuit and district courts of the United States, in their respective circuits and districts within the several States, and the judges of the superior courts of the Territories, severally and collectively, in term time and vacation; and shall grant certificates to such claimants, upon satisfactory proof being made, with authority to take and remove such fugitives from service or labor, under the restrictions herein contained, to the State or Territory from which such persons may have escaped or fled.

Sec. 5. *And be it further enacted*, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process, when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars to the use of such claimant, on the motion of such claimant, by the circuit or district court for the district of such marshal; and after arrest of such fugitive by such marshal or his deputy, or whilst at any time in his custody, under the provisions of this act, should such fugitive escape, whether with or without the assent of such marshal or his deputy, such marshal shall be liable, on his official bond, to be prosecuted for the benefit of such claimant, for the full value of the service or labor of said fugitive in the State, Territory, or district whence he escaped; and the better to enable the said commissioners, when thus appointed, to execute their duties faithfully and efficiently, in conformity with the requirements of the constitution of the United States and of this act, they are hereby authorized and empowered, within their counties respectively, to appoint in writing under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; with an authority to such commissioners, or the persons to be appointed by them, to execute process as aforesaid, to summon and call to their aid the bystanders, or *posse comitatus* of the proper county, when necessary to insure a faithful observance of the clause of the constitution referred to, in conformity with the provisions of this act; and all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law, whenever their services may be required, as aforesaid, for that purpose; and said warrants shall run and be executed by said officers anywhere in the State within which they are issued.

Sec. 6. *And be it further enacted*, That when *a person held to service or labor in any State or* Territory of the United States has heretofore or shall hereafter escape into another State or Territory of the United States, the person or persons to whom such service or labor may be due, or his, her, or their agent or attorney, duly authorized, by power of attorney, in writing, acknowledged and certified under the seal of some legal office or court of the State or Territory in which the same may be executed, *may pursue and reclaim such fugitive person*, either by procuring a warrant from some one of the courts, judges, or commissioners aforesaid, of the proper circuit, district or county, for the apprehension of such fugitive from service or labor, or by seizing and arresting such fugitive where the same can be done without process, and by taking and causing such person to be taken forthwith before such court, judge or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being made, by deposition or affidavit, in writing, to be taken and certified by such court, judge, or commissioner, or by other satisfactory testimony, duly taken and certified by some court, magistrate, justice of the peace, or other legal officer authorized to administer an oath and take depositions under the laws of the State or Territory from which *such person owing service or labor* may have escaped, with a certificate of such magistracy or other authority, as aforesaid, with the seal of the proper court or officer thereto attached, which seal shall be sufficient to establish the competency of the proof, and with proof, also by affidavit, of the identity of the person whose service or labor is claimed to be due as aforesaid, that the person so arrested does in fact owe service or labor to the person or persons claiming him or her, in the State or Territory from which such fugitive may have escaped as aforesaid, and that said person escaped, to make out and deliver to such claimant, his or her agent or attorney, a certificate setting forth the substantial facts as to the service or labor due from such fugitive to the claimant, and of his or her escape from the State or Territory in which such service or labor was due to the State or Territory in which he or she was arrested, with authority to such claimant, or his or her agent or attorney, to use such reasonable force and restraint as may be necessary under the circumstances of the case, to take and remove such fugitive person back to the State or Territory from whence he or she may have escaped as

aforesaid. In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence; and the certificates in this and the first section mentioned shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of said person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.

SEC. 7. *And be it further enacted*, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting *such fugitive from service or labor*, either with or without process as aforesaid; or shall rescue, or attempt to rescue, *such fugitive from service or labor*, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or shall aid, abet, or assist such person, so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons, legally authorized as aforesaid; or shall harbor or conceal *such fugitive*, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which such offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States; and shall moreover forfeit and pay, by way of civil damages to the party injured by such illegal conduct, the sum of one thousand dollars for *each fugitive so lost* as aforesaid, to be recovered by action of debt in any of the district or territorial courts aforesaid, within whose jurisdiction the said offence may have been committed.

SEC. 8. *And be it further enacted*, That the marshals, their deputies, and the clerks of the said district and territorial courts, shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and where such services are rendered exclusively in the arrest, custody, and delivery of the fugitive to the claimant, his or her agent or attorney, or where such supposed fugitive may be discharged out of custody for the want of sufficient proof as aforesaid, then such fees are to be paid in the whole by such claimant, his agent or attorney; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his or her agent or attorney; or a fee of five dollars in cases where the proof shall not, in the opinion of such commissioner, warrant such certificate and delivery, inclusive of all services incident to such arrest and examination, to be paid in either case by the claimant, his or her agent or attorney. The person or persons authorized to execute the process to be issued by such commissioners for the arrest and detention of fugitives from service or labor as aforesaid, shall also be entitled to a fee of five dollars each for each person he or they may arrest and take before any such commissioner as aforesaid at the instance and request of such claimant, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them: such as attending to the examination, keeping the fugitive in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner: and in general for performing such other duties as may be required by such claimant, his or her attorney or agent, or commissioner in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid by such claimants, their agents or attorneys, whether such supposed fugitive from service or labor be ordered to be delivered to such claimants by the final determination of such commissioners or not.

SEC. 9. *And be it further enacted*, That upon affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which the arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent or attorney. And to this end the officer aforesaid is hereby authorized and required to employ so many persons as he may deem necessary, to overcome such force, and to retain them in his service so long as circumstances may require; the said officer and his assistants, while so employed, to receive the same compensation, and to be allowed the same expenses as are now allowed by law for the transportation of criminals, to be certified by the judge of the district within which the arrest is made, and paid out of the treasury of the United States.

SEC. 10 *And be it further enacted*, That when any person held to service or labor in any State or Territory, or in the District of Columbia, shall escape therefrom, the party to whom such service or labor shall be due, his, her, or their agent or attorney, may apply to any court of record therein, or judge thereof in vacation, and make satisfactory proof to such court, or judge in vacation, of the escape aforesaid, and that the person escaping owed service or labor to such party. Whereupon the court shall cause a record to be made of the matters so proved, and also a general description of the person so escaping, with such convenient certainty as may be; and a transcript of such record authenticated by the attestation of the clerk, and of the seal of the said court, being produced in any other State, Territory, or District in which the person so escaping may be found, and being exhibited to any judge, commissioner, or other officer authorized by the law of the United States to cause persons escaping from service or labor to be delivered up, shall be held and taken to be full and conclusive evidence of the fact of escape, and that the service or labor of the person escaping is due to the party in such record mentioned. And upon the production by the said party of other and further evidence, if necessary, either oral or by affidavit, in addition to what is contained in the said record, of the identity of the person escaping, he or she shall be delivered up to the claimant. And the said court, commissioner, judge, or other person authorized by this act to grant certificates to claimants of fugitives, shall, upon the production of the record and other evidences aforesaid, grant to such claimant a certificate of his right to take any such person identified and proved to be owing service or labor as aforesaid, which certificate shall authorize such claimant to seize or arrest and transport such person to the State or Territory from which he escaped: *Provided*, That nothing herein contained shall be construed as requiring the production of a transcript of such record as evidence as aforesaid; but in its absence, the claim shall be heard and determined upon other satisfactory proofs competent in law.

HOWELL COBB,
*Speaker of the House of Representatives.*
WILLIAM R. KING,
*President of the Senate, pro tempore.*

Approved September 18th, 1850.

MILLARD FILLMORE.