

EDWARD PRIGG, PLAINTIFF IN ERROR, v. THE COMMONWEALTH OF
PENNSYLVANIA, DEFENDANT IN ERROR.

SUPREME COURT OF THE UNITED STATES

41 U.S. 539; 10 L. Ed. 1060

March 1, 1842, Decided

Mr. Justice STORY delivered the opinion of the Court.

....By the general law of nations, no nation is bound to recognise the state of slavery, as to foreign slaves found within its territorial dominions, when it is in opposition to its own policy and institutions, in favour of the subjects of other nations where slavery is recognised. If it does it, it is as a matter of comity, and not as a matter of international right. The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of the territorial laws. This was [***151] fully [**1088] recognised in Somerset's [*612] Case, Lofft's Rep. 1; S.C., 11 State Trials by Harg. 340; S.C., 20 Howell's State Trials, 79; which was decided before the American revolution. It is manifest from this consideration, that if the Constitution had not contained this clause, every non-slave-holding state in the Union would have been at liberty to have declared free all runaway slaves coming within its limits, and to have given them entire immunity and protection against the claims of their masters; a course which would have created the most bitter animosities, and engendered perpetual strife between the different states. The clause was, therefore, of the last importance to the safety and security of the southern states; and could not have been surrendered by them without endangering their whole property in slaves. The clause was accordingly adopted into the Constitution by the unanimous consent of the framers of it; a proof at once of its intrinsic and practical necessity....

The remaining question is, whether the power of legislation upon this subject is exclusive in the national government, or concurrent in the states, until it is exercised by Congress. In our opinion it is exclusive....

In the first place, it is material to state, (what has been already incidentally hinted at,) that the right to seize and retake fugitive slaves, and the duty to deliver them up, in whatever state of the Union they may be found, and of course the corresponding power in Congress to use the appropriate means to enforce the right and duty, derive their whole validity and obligation exclusively from the Constitution of the United States; and are there, for the first time, recognised and established in that peculiar character. Before the adoption of the Constitution, no state had any power whatsoever over the subject, except within its own territorial limits, and could not bind the sovereignty or the legislation of other states. Whenever the right was acknowledged or the duty enforced in any state, it was as a matter

of comity and favour, and not as a matter of strict moral, political, or international obligation or duty. Under the Constitution it is recognised as an absolute, positive, right and duty, pervading the whole Union with an equal and supreme force, uncontrolled and uncontrollable by state sovereignty or state legislation. It is, therefore, in a just sense a new and *positive right*, independent of comity, confined to no territorial limits, and bounded by no state institutions or policy. The natural inference deducible from this consideration certainly is, in the absence of any positive delegation of power to the state legislatures, that it belongs to the legislative department of the national government, to which it owes its origin and establishment....