

at all? This would be to mount a construction upon a construction and to destroy the plain import and meaning of the words "who shall flee". The object and design of the Constitution was to secure the recapture of persons who had committed a crime in one State and then fled to another State as an asylum or sanctuary - It never occurred to the framers of that instrument, to secure the delivery of criminals who had never fled from one State to the other - Great evils may result from the omission as to provide: - For illustration a man may on the borders of his State wantonly shoot across the line and kill a person in an adjoining State. He may do this openly, and in the light of day and yet if he has not fled from the State where his victim is shot he cannot be demanded as a fugitive: - In such a case and until the Federal Constitution may be amended, the punishment of such crimes must be left with the State, where the offender resides. On the other hand great evils would spring from allowing a State to extend its criminal Code in any manner its Legislature might think proper, to charge persons residing in other States with a violation of its laws and then to demand the person charged as a fugitive, because he is absent from jurisdiction when the charge is made: - If such was the settled practice, innocent citizens might be seized and surrendered to answer in a distant State, some charge of constructive crime enacted into the form of law by the Legislature for political consideration, And even this might be extended to demands by foreign nations. Suppose for example that a Treaty should be formed between Russia and the United States, for the delivery of persons fleeing from justice: Russia might immediately declare any man in any part of the World guilty of a high crime who should publish and disseminate through the public mails in that Country, doctrines subversive of monarchical institutions and then a prosecution being found in the Courts of Russia against one of our eminent Statesmen who had on his place in the Capitol proclaimed the rights of the people to self government he might be claimed as a fugitive because he was not found in Russia, to answer the charge. I am therefore of opinion that no man can be said to have fled from justice in a State, unless he has while in that State, offended against its laws and then fled to another State. In such a case removal would be taken as sufficient evidence of flight in the meaning of the Constitution: - The remaining enquiry is whether after a requisition is made setting forth that the party is a fugitive the Governor upon whom the demand is made can go behind the requisition to investigate and decide the fact of his being a fugitive: - It seems to me to be perfectly right and proper in such a case to go behind the requisition: - First, because so far as the Constitution speaks, the Executive upon whom the demand is made has as much right to decide the fact as the Executive who makes that demand: - The Constitution presupposes that the party to be surrendered is a fugitive and gives no express power to either Executive to decide the question if disputed: - Therefore the one has much right to decide it as the other so far as the language of the Constitution is to be consulted, Secondly, the right to surrender, turning on the fact of having fled, it would be harsh and unjust that