

Law governs, the law of the State whence the Slave mother escaped, or that of the State in which her offspring is born, but the answer to the enquiry is to be found in the clause of the Federal Constitution which declares that "no persons held to service or labour in one State under the laws thereof escaping into another shall in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered upon claim of the party to whom such service or labour may be due" under this protecting clause, no law or regulation of Pennsylvania can impair the master's right in his fugitives female slave, but it exists during her flight and concealment as fully to all intents as if she never had fled. One of the incidents to that right is not only to recapture and possess the mother, but such increase as she may have while in her fugitive condition:— Any laws or act of Pennsylvania which would impair the right to the incident or natural increase of the fugitive property, would be as null and void as if it sought to deny the right to the property itself:— Therefore if an affidavit should accompany the requisition setting forth specially that the charge was for kidnapping the issue of the party's own slave, it would on its face be no charge, because the Constitution of the United States being a paramount law in each State would upon those special facts protect the party from being a criminal:— And so in like manner if the indictment sent with the requisition, showed the same special facts, it would not on its face charge a crime as the Constitution of the United States would acquit the person charged on such facts:— But if the affidavit or indictment, does not disclose the real facts of the case, then you have the power as before shown to enquire and satisfy yourself, whether on the facts, aliunde the requisition and record, the person claimed was guilty of a crime in Pennsylvania. This power is in you but should be rarely exercised, when an indictment has been found. In my judgment this is a case where it should be exercised, as otherwise an innocent man may be dragged into Pennsylvania and convicted under a law or decision of that State, which is subversive of the Constitution of the United States, I would therefore advise that the Executive Veto be interposed to protect one of our own Citizens from any such demand, if you are satisfied that he is innocent under the Federal Constitution of any crime against Pennsylvania, though her courts might even convict him. Finally, upon the facts conveyed in the second & third enquiries referred to me, I think if they are proved to your satisfaction you can deny the requisition without a violation of the Federal Constitution.

1st Because the party charged is no fugitive from justice.

2nd Because it cannot be a crime in Pennsylvania under the Constitution of the United States for a master to recapture his runaway female slave with the offspring she may have born while a fugitive from service.

Annapolis, March 6th 1851.

Yours, Robert S. Poind.