

THE FUGITIVE SLAVE CASE.

From The Cincinnati Gazette.

INDICTMENT AGAINST THE NEGROES FOR MURDER—RETURN OF THE SHERIFF TO THE COURT OF COMMON PLEAS.

In response to the *capias* issued by the Sheriff for the arrest of Margaret Garner, Simon Garner, sen., Simon Garner, jr., and Mary Garner, charged with the murder of the child of Margaret Garner, one of the defendants, the Sheriff presented the following as his return yesterday afternoon before Judge Carter:

FEBRUARY 20, 1852.—I found the within named persons defendants, named in this writ, confined in the jail at Hamilton County, where they were put by George S. Bennett, esq., a United States Marshal for the Southern District of Ohio, who holds them by virtue of a writ officially issued by J. L. Fendley, esq., a United States Commissioner for the Southern District of Ohio and do not feel authorized under this writ to take them into his custody.

G. BRASHEARS, Sheriff, Hamilton County.

Mr. Cox, the State's Attorney, asked that the Sheriff be ordered to amend his return by saying that he holds the defendants in custody under the *capias*. The case involved questions of great importance to the people of this State, and the considerations upon which he pressed his motion were:

First: The prisoners are in custody of the Sheriff. They are under an indictment for murder, upon which a *warrant* has been issued and is now in the hands of the Sheriff, and they are in the jail of the county, a place over which the Sheriff has full control and entire charge of all persons by law confined therein. (Criminal Statute, §71.)

Second: The United States Marshal, by placing these parties in the jail of this county, neither the Sheriff nor the Jailor being a sworn Deputy United States Marshal, has parted with the custody of them, and the only authority under which the Sheriff keeps them in jail is under his *capias*.

Third: There is no law directing or even permitting a Sheriff to place a fugitive slave in any jail in the State of Ohio.

The Fugitive slave law gives authority to the owner of a fugitive slave, or his agent or attorney to arrest, with or without process, and the Marshal is authorized to appoint deputies and summon such assistance as may be necessary to serve his process and to take the fugitive before competent authority; but nowhere in the act is the fugitive treated as a prisoner of the United States for an offense committed against her laws, but simply as a party whose labor is claimed by another.

The only use to which a jail in this State can be applied is for the confinement of those who have violated some of the laws of this State, or prisoners who shall be committed for "any offense" by the authority of the United States, and then such prisoners "are shall be supported during their confinement in jail at the expense of the United States."—[Ohio's Statute, last edition, page 485, also 483-3-4.

In neither of these classes does a fugitive slave fall. He certainly violates no law of this State by coming within her territory. Does he violate any law of the United States? Most certainly not. The Fugitive Slave law does not declare him a criminal—does not subject him to any punishment nor occupying lives his master, nor does it make the United States liable for

... in keeping the prisoner in custody; on the other
... it expressly provides that the Marshal, Deputee, and
Commissioner, whoever shall expenses of keeping the pris-
... in custody, and providing him with food and clothing during
... detention, and until the final determination of the Commissioner,
... shall be paid by the claimant, his agent or attorney—Section 8,
Act of Congress. And the United States only pays the expenses
of Marshals and Assistants while removing the fugitive, after
... Commissioner has decided in favor of the claimant, upon a
... claimant making affidavit of the fear of a reward—Section 9.

The Court said they did not recognize the paper put
... by the Sheriff as his return at all. The responsi-
... bility was on the Sheriff to perform his duties accord-
... ing to law.

Mr. Mills said the Sheriff advised with his firm in-
... tellect to the question, and they gave him their opin-
... ion, having due regard to the serious question as be-
... tween the Marshal of the United States and the
... Sheriff, representing the Criminal Court of the State
... of Ohio. He (Mr. M.) suggested whether it would not
... be proper the Court should indicate an opinion as to
... the course the Sheriff should take. The present ap-
... pearances were that there was to be a grand scramble
... for the prisoners, and if the city could be saved from
... it it should be by the action or advice of the Court,
... it would be desirable it should be given. He offered
... these remarks without asking anything.

Court—We cannot advise the Sheriff officially. We
... would suggest, however, under circumstances like
... these, that the Sheriff should take advice, and that the
... proper adviser of the Sheriff in a matter of this kind
... would be the State's Attorney. This return does not
... amount to anything. Only two returns can be made;
... one, that he has not the body; the other, that he has.
... All we need say now is that the Sheriff has the law to
... act upon, and if he does not according to that, he is
... punishable.

Mr. Cox—I advise the Sheriff to return that he has
... the prisoners in custody. I ask that he be ruled to
... make a return to the court to-morrow morning.

Court—I cannot do that. He is bound by his writ,
... and is obliged to obey it.

Mr. Cox—The writ has been in his hands since the
... 23d day of last month, and I think it should be returned.
... The Sheriff subsequently made a return on the
... back of the writ that he had the parties in his custody.