Chapter 131 – *Prigg v Pennsylvania* Adds To Mounting Tension Over "Fugitive Slaves"

Dates:
March 1, 1842

Sections:
- The Supreme Court Upholds The Fugitive Slave Law
- A Loophole In the *Prigg* Decision Leaves Enforcement In Doubt
- The *Prigg* Decision Prompts Garrison To Call For Disunion

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The Supreme Court Upholds The Fugitive Slave Law


A Ruling Delivered

Slavery is also in the headlines in early March 1842, when the Supreme Court decides another case dealing with run-aways.

This one centers on a black woman, Margaret Morgan, whose parents were slaves to a mill owner named John Ashmore, in Hartford County, Maryland. While never signing formal manumission papers, Ashmore "constantly declares that he has set them free" as of 1820. Their daughter, Margaret, marries a free black man, Jerry Morgan, and they start a family. After living for several years in Maryland, the couple decides to move to York County, Pennsylvania. Ashmore makes no protest to these outcomes.

Then, five years later in 1837, John Ashmore dies and a female heir, his niece Margaret Beamis, claims that both Morgan and her children are now her property.

She hires a neighbor, Edward Prigg, to capture and return "the runaways." While Prigg has a warrant, the constable in York County refuses to act on it, so Prigg forcibly abducts Morgan and her two children, and sells them to a slave dealer, who plans to ship them South.

A grand jury in Pennsylvania indicts Prigg and his three accomplices for violating the state's 1826 Personal Liberty statute, and asks Maryland to arrest and extradite him. It agrees to do so, with the understanding that, if convicted, he will not be jailed until the U.S. Supreme Court rules on the case.

Prigg is tried in Pennsylvania and found guilty of kidnapping under the state law in question:

> *If any person…after the passing of this act, by force and violence, take and carry away…any negro or mulatto, from any part or parts of this commonwealth…with a design and intention of selling and disposing of…such negro or mulatto, as a slave or servant for life…his or their aiders or abettors, shall on conviction thereof…be deemed guilty of a felony..*

This decision alarms the slave-holding states, especially Maryland, which appeals the decision in May 1840 on behalf of Prigg. It argues that the 1826 Pennsylvania law violates the euphemistic "Fugitives From Labor Clause" in Article IV of the Constitution, and the subsequent 1793 Fugitive Slave Act:

> *No person held to service or labor 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 labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.*

While clear about intent, neither law spells out whether enforcement belongs at the state or federal level.

On appeal, the Prigg case finally reaches the Supreme Court, where arguments are heard by Roger Taney and his associates on February 8-10, and a judgment is rendered on March 1, 1842.

Justice Joseph Story issues the overall "Opinion of the Court" which, by an 8-1 majority, strikes down the Pennsylvania law and rules in favor of Maryland and Prigg.

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A Loophole In the *Prigg* Decision Leaves Enforcement In Doubt

That apparent unanimity, however, is diminished when seven of the justices feel compelled to publish their own individual interpretations.

One such clarification belongs to Chief Justice Taney, ever a state's rights advocate and a stickler for detail. He agrees that it is the right of the master to arrest a run-away in any state where found, but objects to the notion that local laws to support the effort have no bearing vis a vis federal statutes.

> *I concur in the opinion pronounced by the Court that the law of Pennsylvania, under which the plaintiff in error was indicted, is unconstitutional and void, and that the judgment against him must be reversed. But…I do not assent to all the principles contained in the opinion…(and) I agree entirely in all that is said in relation to the right of the master, by virtue of the third clause of the second section of the Fourth Article of the Constitution of the United States, to arrest his fugitive slave in any State wherein he may find him**…** But, as I understand the opinion of the Court, it goes further, and decides that the power to provide a remedy for this right is vested exclusively in Congress, and that all laws upon the subject passed by a State since the adoption of the Constitution of the United States are null and void.…*

A second opinion comes from the lone dissenter in the case, the formidable John McLean of Ohio. McLean is nominated to the high court in 1829 by Andrew Jackson and serves for 32 years, while

repeatedly being offered various cabinet posts (including by Tyler), and even considered as a presidential candidate.

He is nicknamed the "Politician on the Supreme Court" and is outspoken in his life-long opposition to slavery. His dissent in the *Prigg* decision is one that will be heard in many future run-away cases under the rubric of "once free, forever free."

Thus McLean contends that Margaret Morgan was de facto a free woman, having lived as such for five years without objection from Ashford in the Free State of Pennsylvania. Hence she was no longer a slave and the plaintiff had no right to abduct her in the first place.

This basic logic will be embraced by abolitionists and repeated over time. McLean himself will rely on it in his 1857 dissent from Taney in the landmark *Dred Scott* case.

None of the ongoing legal debates help either Margaret Morgan or her children. With the verdict in, they are returned to captivity in Maryland, and no records exist as to their subsequent fates.

But ironically the 8-1 decision in *Prigg* is not an entire loss for anti-slavery forces. A close reading of Story's majority opinion, opens a loophole around enforcing the law. It says that local magistrates will not be bound to cooperate with slave catchers if "prohibited by state legislation" from doing so.

This caveat leads to passage of just such "non-cooperation" statutes across the North which serve to infuriate Southern slave-owners.

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Date: March 1842

The *Prigg* Decision Prompts Garrison To Call For Disunion

Lloyd Garrison (1805-1879)

Abolitionists are shocked by the high court's ruling in the *Prigg* case and none more so than Lloyd Garrison, who characterizes the decision as follows:

The slaveholding power (may now) roam without molestation through the Northern states seeking whomever it may devour.

In typical fashion, Garrison uses the adverse news to notch up his inflammatory rhetoric in *The Liberator*.

His first barrage calls upon the slaves to continue to free themselves by running away from their masters.

His inner circle, including Lucretia Mott, support this plea, but others feel that inciting slaves to escape will only lead to greater hardships and repression. Garrison is unbowed. The timid may embrace caution, but he will not.

And thus comes his second salvo – an outright call for Disunion.

Ever the investigative journalist, Garrison has now read Madison's "secretarial notes" on the closed door debates from the 1787 Convention, finally published in 1840, three years after the ex-president's death. He is appalled by the litany of immoral compromises made on slavery to achieve the union.

This was a Union at the expense of our coloured population.

In turn, he throws his outrage directly into the faces of the Boston Brahmins who are ever ready to defend the wisdom and courage of the founding fathers.

The Constitution, he writes, is "the Devil's pact" and he declares the time has come to break the bond.

The repeal of the Union between Northern liberty and Southern slavery is essential.

Garrison is virtually alone in 1842 in his call for Disunion.

Mainstream Americans, both South and North, dismiss him as a radical trouble-maker – and those within the emerging "political wing" of the abolitionist movement see one more reason to distance themselves from him.

Yet his core supporters, often members of the New England Anti-Slavery Society he founded in 1831, remain loyal. On May 31, 1844, this regional group votes 250-24 in favor of Disunion.