CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OHIO:
NOVEMBER TERM, 1847.

Driskell *v.* Parish.

FUGITIVE SLAVES—HARBORING—OBSTRUCTING CLAIMANT.

[The following condensed report of this case, was prepared for the Cincinnati Gazette, by one of the learned counsel, and may be relied upon as accurate. Eds.]

The action was brought by Peter Driskell, of Mason county, Kentucky, against Francis D. Parish, a highly respectable lawyer of Sandusky, in this State, to recover several penalties, under the act of Congress, of February 12th, 1793, for harboring certain alleged slaves of the plaintiff, and obstructing their arrest.

The testimony was conflicting. For the plaintiff, two men, Mitchell and Driskell, the latter a son of the plaintiff, testified that in October, 1844, a woman and her five children, slaves of the plaintiff, escaped from his service in Kentucky, and that the witnesses were despatched in pursuit; that on the 28th of February, 1845, they arrested two of the boys in Sandusky, and then called at the house of Mr. Parish,

with whom they had learned that the woman and her youngest boy, a lad of four years old, were living; that an interview took place in front of the house, between them and Mr. Parish and the woman and little boy; that the woman and boy attempted to approach them, but were prevented by Parish; that Mitchell told Parish he had a warrant of attorney to take them; but Parish replied that it would not do—he must have judicial authority; that Mitchell then demanded the privilege of arresting them there, but Parish refused it, and directed or waived the servants into the house, and shut the door. This was the statement of Mitchell. Driskell concurred, except that the said Mitchell attempted to enter the gate to arrest the servants, whereupon Parish pushed them into the house. Mitchell said he had made no statement or admissions variant from this at the Court-House in Sandusky, where he was examined on a charge of riot committed in arresting the two boys, nor at any other time.

On the other hand, Judge Sadler, the President Judge of the 13th Circuit, Justice Barker, the examining Magistrate, Mr. Beecher, the lawyer for the prosecution on the riot charge, Col. Sloan, the lawyer who defended Mitchell on that charge, and Messrs. Barber and Mackay, two respectable citizens, all concurred in testifying, that on the 1st of March, 1845, the day after the transaction at Parish's gate, during the examination of Mitchell and Driskell on the charge for riot, Parish was called to the stand as a witness for the defendants, and was called upon to state the circumstances which transpired in front of his house, and did, accordingly, make a full statement, to which, after being corrected in some trifling particulars, Mitchell gave his full assent, and repeated, himself, the entire statement. In this statement, there was no pretence, on the part of Mitchell, that Parish made any demand of judicial authority, or interfered in any way to prevent either of the servants from approaching Mitchell and Driskell; or that Mitchell made any attempt to arrest them; or that Parish refused to permit such arrest, or directed or pushed the servants into the house. On the contrary, both Mitchell and Parish then agreed in saying, that when Mitchell stated he had come for the slaves, Parish said he should see that they had a fair trial, but would oppose no obstruction to the execution of the law, and they separated, after some conversation as to the Justice of the Peace before whom the trial of the claim to the servants should take place.

Miss Dastin, a witness for the defendant, who was present at the

interview between Mitchell and Parish, also testified that there was no demand for arrest, no pushing of the servants into the house, no attempt by Mitchell to seize, and no prevention of seizure by Parish.

The Court charged the jury at length, recapitulating fully all the evidence, with great ability. The leading points of the charge are these:

The act under which the suit was brought has been held to be constitutional; but it is a penal statute, and must be construed strictly.

Harboring and concealing, in the acts are synonymous, and to make out a case of harboring there must be proof of concealment, with intent to defeat the claims of the master.

Obstruction and hindrance, under the act, are also synonymous; and to make out a case of obstruction, there must be proof of an attempt to seize, and an interposition by the defendant in a way calculated and intended to prevent the seizure.

To see that persons claimed as fugitives from justice have fair trials, and to insist upon their having such trials, is laudable, but these must be in good faith towards the claimant.

The same act of harboring or obstruction can subject the party charged to but one penalty, whatever may be the number of the alleged fugitives, subjects of the act; and so the same act cannot constitute both harboring and obstruction, so as to subject the actor to two penalties. To subject the defendant in the present case, there must be proof of separate acts of harboring and obstruction.

In the present case, the plaintiff must make out his right to recover by strict proof; but if this proof is furnished, he is entitled to a verdict.

The jury, after being out seven hours, found a verdict for the plaintiff on the two counts in the declaration, which charged the defendant with harboring Jane Garrison, and obstructing her arrest, and for the defendant on the other two counts, which charged the harboring and obstruction to the arrest of her son.

A motion for new trial was made and argued, but we are not advised what disposition has been made of it.

Messrs. Henry Stanbery and J. H. Thompson appeared for the plaintiff; Messrs. S. P. Chase and J. W. Andrews for the defendant.