

Executive Department, Ga.  
Milledgeville 23<sup>rd</sup> August 1838.

To) His Excellency, Edward Kent,  
Sir,

I have had the honor of receiving your Communication, notifying the Executive of Georgia, that the renewed demand which has been lately made of the Executive of Maine for the arrest and delivery to the Agent of this State, of Philbrook and Kelliran, has, like the former, been refused.

I cannot perceive in the reasons assigned by Your Excellency, any sufficient justification, for this determined denial to Georgia, of a right secured by each State to the others, by Contract clearly expressed in the Constitution, and absolutely necessary to the well being of all.

The facts of this case are, that Philbrook and Kelliran being in Savannah engaged in business as Mariners, one, as the Captain, and the other, the Mate of a vessel, on leaving that port on the 4<sup>th</sup> of May 1837, secretly carried off in their vessel a negro slave, the property of two Citizens of that place;— that they returned directly to the State of Maine, where they have since re-



remained; - that they were on the 17<sup>th</sup> June thereafter demanded by the Executive of Georgia as fugitives from the justice of the State, of the Executive of Maine, upon the Copy of a duly authenticated affidavit, charging them with feloniously taking and carrying away said Slave from Georgia, and having fled to the State of Maine; - that this demand was refused; - that afterwards they were indicted for the same Crime in the Superior Court of Chatham County (in which County the City of Savannah is) and found guilty, as charged in the Affidavit upon which the first demand was made; - that the demand upon the Executive of Maine was renewed upon a properly authenticated Copy of that bill of indictment, and rejected by your Excellency.

The question is, whether you and your predecessor have acted in accordance with the Constitution.

The words of the Constitution applicable to this subject are, that, "a person charged in any State with treason, felony, or other Crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive Authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of



the Crime". - The States in adopting this Clause of the Constitution, evidently intended to provide the means by which all offenders against the laws of the States should be brought to trial.

No power has been delegated to the General Government to punish Crimes against the laws of the States. Neither is one State authorized to execute warrants of arrest within the jurisdiction of another. By a principle of law common to all the States, and expressly recognized by the Constitution of the U. States, a person charged with the Commission of a Crime, can only be tried in the State and District where the Crime is committed.

The only protection afforded to Society throughout the U. States against the operations of the lawless, is to be found therefore, in the power of each State, to arrest and bring to trial offenders remaining within its jurisdiction, and to demand from the Governors of the several States the arrest and delivery up of all who may be fugitives from its justice.

The equality of privileges and immunities secured by the Constitution to the Citizens of each State in the several States, - the identity



of the language, habits, pursuits, and feelings of the people throughout the Union, - and the similarity of the form of Government, and the public institutions of the several States, enable offenders against the laws to pass from one State, into another, without sacrifice or difficulty.

Unless, therefore, the Governors of the several States deliver up upon demand all within their jurisdiction, who are charged with the commission of crimes in other States, with the same certainty that criminals are arrested by the officers of justice within the jurisdiction where their offences are committed, the people of this Country have no sufficient security for the protection of their rights, against the facility with which offenders can escape from the jurisdiction where alone they can be tried, and our form of Government will have failed in providing for the performance of one of its most important functions, - the certain punishment of crimes.

The conduct of yourself and predecessor in preventing Philbrooke and Kellerman from being brought before the Courts of Georgia, where alone they could be tried, has certainly not been in conformity with these views of the Constitution. You maintain however, that



"fleeing from justice" in the recited Clause of the Constitution, is a direct, explicit, and preliminary point to be satisfactorily established, before the accused can be demanded as a matter of right. And you justify your refusal to deliver up Philbrook and Kelloran upon the allegation that this Condition had not been complied with by the Authorities of Georgia.

To give to the words "flee from justice" your interpretation, would most obviously tend to thwart the purposes of the Constitution, by increasing the difficulty, if it would not render it impossible to make the demands. But without this general reasoning the point made by these words was established by the express allegation in the demand made of your predecessor and yourself by the Executive of this State, that Philbrook and Kelloran were fugitives from the justice of Georgia: By the Charge against Philbrook and Kelloran of the Commission of Larceny in Georgia, proven by a duly authenticated Copy of an affidavit, and a true bill of indictment found; and by the acknowledgment of your predecessor, that at the time when the demand was first made, and afterwards by yourself when it was renewed, that these persons were at the time in the State of



Maine.

According to the Act of Congress, passed February 12<sup>th</sup> 1793, whenever the Executive Authority of a State demands the arrest and delivery up of a person as a fugitive from its justice, and produces to the Governor of whom the demand is made, the authenticated copy of an affidavit, or true bill of indictment found charging the person so demanded with the Commission of a Crime within the State demanding him, and he is found within the jurisdiction of the State of which he is demanded, the law presumes, without further proof, that he has fled from justice.

But if these facts and legal presumptions had not sufficiently established the proper application of the words of the Constitution "flee from justice" to the case of Philbrooke and Kelloran, the positive proof furnished by the affidavit upon which the demand was first made, did so, beyond a doubt. That affidavit after setting forth the crime charged upon Philbrooke and Kelloran, states "that since the Commission of said felony, the said David Philbrooke, and Edward Kelloran have fled from this State, and are, it is believed, within the limits of the State of Maine".



The arrest of fugitives from justice can never be asked of a Governor as a matter of favour, to be granted according to his discretion as your Excellency seems to suppose. The demand must be made as a matter of right, and if accompanied by the proofs required by the law of the U. States the duty is imperative. The Executive Authority of a State has no right to arrest and deliver up a Citizen upon a demand unless made in the form which would compel the arrest. The Constitution allows no option. It gives no room for the exercise of the will or caprice of the Governor, or his yielding to public opinion or feelings around him.

The rule of conduct in making demands, and arresting fugitives from justice, to be just, must be applicable to all the States, at all times, and to all crimes.

The difficulties which the Authorities of this State have met with in bringing to trial Philbrook and Kelleran, have proceeded from the nature of the particular crime with which they are charged, and not the want of sufficient proof that they were fugitives from justice, or the failure on the part of the Authorities of Georgia to perform the requirements of the Constitution and laws of the U. States in demanding them.



If these persons had committed a secret murder, robbery, or forgery, in the transaction of their business in Savannah, or stolen bales of Cotton instead of a negro slave, no one can doubt but that they would have been delivered up without the repeated demand upon the various proofs upon which their arrest has been refused.

If Philbrook and Kelloran had been charged with any other crime than stealing a slave, is it possible that the Governor of Maine would have constituted himself into a judicial tribunal, to receive the voluntary statements of the accused, — have inferred their innocence from the very facts which usually accompany guilt in such cases, — their being mariners coming from a non-slave holding State into the sea ports of Georgia in the usual course of their business, and when returning home carrying away slaves (this being the mode in which the citizens of the seaboard of this State are most frequently deprived of their property) have determined in consequence that the accused were not fugitives from justice, and <sup>have</sup> refused to deliver them up to the authorities of Georgia, where alone their guilt or innocence could be legally enquired into?

The opinion that the demand of Philbrook and Kelloran has been re-



=fused, not because the Case did not conform to the requirements of the Constitution and Laws of the U. States, but because these persons were charged with Stealing a Slave is Confirmed by the Act of the Legislature of Maine to which your Excellency has referred as Sanctioning your Course.

The right of the States to demand from each other the delivery up of fugitives from their justice, is derived from the Mutual agreement entered into in their Sovereign Capacity by all the States who are parties to the Constitution, and is secured by making it obligatory upon the Executive Authorities of each State, to comply with such demands. The manner in which this is to be performed has been prescribed by a law of the U. States. The Legislative Department of a State cannot therefore limit, restrain, or control the Executive Department in the exercise of this power which is not derived from the State, but is thus imposed as a duty by the Constitution, or pass any law whatever upon the subject, except to aid or compel the Governor to execute what the Constitution and Laws of the U. States enjoin upon him.

And yet, the Legislature of Maine, on the 20<sup>th</sup> of March last, after your Predecessor had refused to deliver up, Philbrook and Kelloran, and the Legislature of Georgia had directed the demand



to be renewed, passed a law, giving Authority to the Governor to Satisfy himself by an investigation into the grounds of a demand, and whether it ought to be complied with, before he should arrest fugitives from the justice of other States. —

The Authorities of Maine Cannot but be aware that if public Sentiment in Maine, requires the Governor to protect persons from punishment who take from the Citizens of Georgia, their Slave property, that the Authorities of Georgia must necessarily protect the rights of its Citizens from the danger to which their Slave property will be thus exposed from Mariners coming from Maine into her ports.

I shall not attempt to trace out the Consequences to which such a State of things must lead. Those who know how to estimate the Blessings derived from the Union, need no such Commentary. And those who think it doing God Service, to plunder us of our Slave property, will not regard it.

The Legislature of this State has directed me to request you to transmit to the Legislature of Maine, at its next Session, the enclosed Copy of resolutions adopted at its last Session.

Your Excellency is



requested to Communicate to this Department  
whatever proceedings may be had, by the Legisla-  
-ture of Maine, upon these resolutions.

Very Respectfully  
Yours &c.

George R. Gilman



Gen. W. Johnson Esq  
Care of Georgia  
Aug 23, 1838,

