CHAPTER XII.

THE STATE CONSTITUTIONS OF 1845.

Of all the State constitutions existing at this time, 1845, (excepting that of Florida, which I have not seen,) not one of them contains provisions that are sufficient, (or that would be sufficient

if not restrained by the constitution of the United States,) to authorize the slavery that exists in the States. The material deficiency in all of them is, that they neither designate, nor give the legislatures any authority to designate the persons, who may be made slaves. Without such a provision, all their other provisions in regard to slaves are nugatory, simply because their application is legally unknown. They would apply as well to whites as to blacks, and would as much authorize the enslavement of whites as of blacks.

We have before seen that none of the State constitutions, that were in existence in 1789, recognized slavery at all. Since that time, four of the old thirteen States, viz., Maryland, North Carolina, South Carolina and Georgia, have altered their constitutions so as to make them recognize slavery; yet not so as to provide for any legal designation of the persons to be made slaves.

The constitution of South Carolina has a provision that implies that *some* of the slaves, at least, are "negroes;" but not that all slaves are negroes, nor that all negroes are slaves. The provision, therefore, amounts to nothing for the purposes of a constitutional designation of the persons who may be made slaves.

The constitutions of Tennessee and Louisiana make no direct mention of slaves; and have no provisions in favor of slavery, unless the general one for continuing existing laws in force, be such an one. But both have specific provisions inconsistent with slavery. Both purport to be established by "the people;" both have provisions for the writ of *habeas corpus*. Indeed, the constitutions of most of the slave States have provisions for this writ, which, as has been before shown, denies the right of property in man. That of Tennessee declares also "that all courts shall be open, and *every man*, for an injury done him in his lands, goods. person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." Tennessee also was formerly a part of North Carolina; was set off from her while the constitution of North Carolina was a free one. Of course there has never been any legal slavery in Tennessee.

The constitutions of the States of Kentucky, Missouri, Arkansas, Mississippi, and Alabama, all have provisions about slaves; yet none of them tell us who may be slaves. Some of them indeed provide for the admission into their State of such persons as are slaves under the laws, (which of course means only the

constitutional laws,) *of other States.* But when we go to those other States, we find that their constitutions have made no designation of the persons who may be made slaves; and therefore we are as far from finding the actual persons of the slaves as we were before.

The principal provision, in the several State constitutions, recognizing slavery, is, in substance, this, that the legislature shall have no power to *emancipate* slaves without the consent of their owners, or without making compensation. But this provision is of no avail to legalize slavery, for slavery must be *constitutionally established*, before there can be any legal slaves to be emancipated; and it cannot be established without describing the persons who may be made slaves.

Kentucky was originally a part of Virginia, and derived her slaves from Virginia. As the constitution of Virginia was always a free one, it gave no authority for slavery in that part of the State which is now Kentucky. Of course Kentucky never had any legal slavery.

Slavery was positively prohibited in all the States included in the Louisiana purchase, by the third article of the treaty of cession —which is in these words:—

Art. 3. "The *inhabitants*" (that is, *all* the inhabitants,) "of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, *according to the principles of the federal constitution*, to the enjoyment of all the rights, advantages, and immunities of *citizens* of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

The cession of Florida to the United States was made on the same terms. The words of the treaty, on this point are as follows:—

"Art. 6. The *inhabitants* of the territories, which his Catholic majesty cedes to the United States by this treaty, shall be incorporated in the Union of the United States, as soon as may be consistent with the principles of the federal constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the *citizens* of the United States."

To allow *any* of the "inhabitants," included in those treaties, to be held as slaves, or denied the rights of citizenship under the United States constitution, is a plain breach of the treaties.

The constitutions of some of the slave States have provisions like this, viz., that all laws previously in force, shall remain in force until repealed, unless repugnant to this constitution. But I think there is no instance, in which the slave acts, then on their statute books, could be perpetuated by this provision—and for two reasons; 1st. These slave acts were previously unconstitutional, and therefore were not, legally speaking, "laws in force."* 2d. Every constitution, I think, that has this provision, has one or more other provisions that *are* "repugnant" to the slave acts

* This principle would apply, as we have before seen, where the change was from the *colonial* to a state government. It would also apply to all cases where the change took place, under the constitution of the United States, from a *territorial* to a state government. It needs no argument to prove that all our territorial statutes that have purported to authorize slavery, were unconstitutional.