

# THE SLAVE IN CANADA

BY

THE HONORABLE WILLIAM RENWICK RIDDELL

LL.D.; F. R. HIST. SOC.; F. R. SOC. CAN.; &C., &C.

JUSTICE OF THE SUPREME COURT OF ONTARIO

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LIFE AND HISTORY

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## PREFACE

When engaged in a certain historical inquiry, I found occasion to examine the magnificent collection of the Canadian Archives at Ottawa, a collection which ought not to be left unexamined by anyone writing on Canada. In that inquiry I discovered the proceedings in the case of Chloe Cooley set out in Chapter V of the text. This induced me to make further researches on the subject of slavery in Upper Canada. The result was incorporated in a paper, *The Slave in Upper Canada*, read before the Royal Society of Canada in May 1919, and subsequently published in the *JOURNAL OF NEGRO HISTORY* for October, 1919. Some of the Fellows of the Royal Society of Canada and the editor of the *JOURNAL OF NEGRO HISTORY* have asked me to expand the paper. The present work is the result.

I have spent many happy hours in the Canadian Archives and have read all and copied most of the documents referred to in this book; and I cannot omit to thank the officers at Ottawa for their courtesy in forwarding my labor of love, in furnishing me with copies, photographic and otherwise, and in unearthing interesting facts. It will not be considered invidious if I mention William Smith, Esq., I.S.O. and Miss Smillie, M.A., as specially helpful. My thanks are also due to Messrs. Herrington, K.C., of Nananee, F. Landon, M.A., of London, Mrs. Hallam and Mrs. Seymour Corley of Toronto, General Cruikshank of Ottawa, the Very Reverend Dean Raymond of Victoria, as well as to many others of whose labors I have taken advantage. This general acknowledgment will, I trust, be accepted in lieu of special and particular acknowledgment from time to time.

The chapter on the Maritime Provinces is almost wholly taken from the Reverend Dr. T. Watson Smith's paper on *Slavery in Canada* in the *Nova Scotia Historical Society's Collections*, Vol. X, Halifax, 1899.

WILLIAM RENWICK RIDDELL

OSGOODE HALL,  
TORONTO, February 5, 1920



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## TABLE OF CONTENTS

PREFACE .....	iii
CHAPTER I. Before the Conquest .....	1
CHAPTER II. The Early British Period .....	11
CHAPTER III. After the Peace .....	31
CHAPTER IV. Lower Canada .....	43
CHAPTER V. Upper Canada, Early Period .....	54
CHAPTER VI. Fugitive Slaves in Upper Canada .....	78
CHAPTER VII. Slavery in the Maritime Provinces....	97
CHAPTER VIII. General Observations .....	114
INDEX .....	116



# THE SLAVE IN CANADA

## CHAPTER I

### BEFORE THE CONQUEST

That slavery existed in Canada before its conquest by Britain in 1759–60, there can be no doubt, although curiously enough it has been denied by some historians and essayists.<sup>1</sup> The first Negro slave of which any account is given was brought to Quebec by the English in 1628. He was a young man from Madagascar and was sold in Quebec for 50 half crowns.<sup>2</sup> Sixty years thereafter in 1688, Denonville, the Governor and DeChampigny, the Intendant of New France, wrote to the French Secretary of State, complaining of the dearness and scarcity of labor, agricultural and domestic, and suggesting that the best remedy would be to have Negro slaves. If His Majesty would

<sup>1</sup> For example in Garneau's *Histoire du Canada* (1st Edit) Vol. 2, p. 447 after speaking of correspondence of 1688–9 referred to in the text he says of the answer of the authorities in Paris:

“C’était assez pour faire échouer une enterprise, qui aurait greffé sur notre société la grande et terrible plaie qui paralyse la force d’une portion si considérable de l’Union Américaine, l’esclavage, cette plaie inconnue sous notre ciel du Nord”—“That was effective to strand a scheme which would have engrafted upon our society that great and terrible plague which paralyses the energies of so considerable a part of the American Union, Slavery, that plague unknown under our northern sky.”

<sup>2</sup> He was sold by David Kertk or Kirke the first English Conqueror of Quebec. England held her conquest only from 1629 to 1632, if it be permissible to call Kirke's possession that of England when he was repudiated by his country. *Relations des Jesuites*, 1632, p. 12: do. do. 1633, p. 25. Much of the information which follows concerning slavery in Quebec is taken from a paper in the *Memoirs of the Historical Society of Montreal*, 1859, *De L’esclavage en Canada*, written by M. Jacques Viger and Sir L. H. LaFontaine. I have made an independent investigation and am satisfied that the facts are truly stated. This general acknowledgment will prevent the necessity of particular reference.

In a local history of Montreal, *Memoirs de la Société Historique de Montreal*, 1869, p. 200, there is a reference to Panis slaves in Montreal in 1670.

agree to that course, some of the principal inhabitants would have some bought in the West Indies on the arrival of the Guinea ships. The minister replied in 1689 in a note giving the King's consent but drawing attention to the danger of the slaves coming from so different a climate dying in Canada and thereby rendering the experiment of no avail.<sup>3</sup>

The Indians were accustomed to make use of slaves, generally if not universally of those belonging to other tribes: and the French Canadians frequently bought Indian slaves from the aborigines. These were called "Panis."<sup>4</sup> It would seem that a very few Indians were directly enslaved by the inhabitants: but the chief means of acquiring Panis was purchase from *les sauvages*.

The property in slaves was well recognized in International Law. We find that in the Treaty of Peace and Neutrality in America signed at London, November 16, 1686,<sup>5</sup> between the Kings of France and England, which James II had arranged shortly after attaining the throne,

<sup>3</sup> "Mais il est bon de leur faire remarquer qu'il est à craindre que ces nègres, venant d'un climat si différent, ne périssent en Canada et le projet serait alors inutile." "Il est à craindre" that the prospect of "le projet" being "inutile" was more alarming than that of "ces nègres" perishing in frozen Canada.

<sup>4</sup> The name Pani or Panis, Anglicized into Pawnee, was used generally in Canada as synonymous with "Indian Slave" because these slaves were usually taken from the Pawnee tribe. It is held by some that the Panis were a tribe wholly distinct from the tribe known among the English as Pawnees—e.g., Drake's *History of the Indians of North America*. Those who would further pursue this matter will find material in the *Wisconsin Historical Collections*, Vol. XVIII, p. 103 (note); Viger and Lafontaine, *L'Esclavage en Canada* cited above n. 2; *Michigan Pioneer and Historical Collections*, Vol. XXVII, p. 613 (n); Vol. XXX, pp. 402, 596; Vol. XXXV, p. 548; Vol. XXXVII, p. 541. From Vol. XXX, p. 546, we learn that Dr. Anthon, father of Prof. Anthon of Classical Text-book fame, had a "Panie Wench" who, when the family had the smallpox "had them very severe" along with Dr. Anthon's little girl and his "ælttest boy"—"whaever they got all safe over it and are not disfigured." Thwaites, an exceedingly careful writer, in his edition of *Long's Travels*, Cleveland, 1904, says in a note on page 117; "Indian Slavery among the French was first practised in the Illinois Country." He gives no authority and I know of none.

<sup>5</sup> Referred to in Chalmers' *Collection of Treaties between Great Britain and Other Powers*, London, 1790, p. 328: Pap. Off. B. 25.

Article 10 provides that the subjects of neither nation should take away the savage inhabitants, or their slaves, or the goods which the savages had taken belonging to the subjects of either nation, and that they should give no assistance or protection to such raids and pillage. In 1705 it was decided that Negroes in America were "moveables," meubles, corresponding in substance to what is called "personal property" in the English law.<sup>6</sup> This decision was on the *Coutume de Paris*, the law of New France.

The Panis and Negro slaves were not always obedient. Jacques Randot, the Intendant, April 13, 1709, made an ordinance on "the Subject of Negroes and Savages called Panis." In this he recited the advantage the colony would acquire by certainty of ownership of the savages called Panis "whose nation is far removed from this country" and that certainty could only be brought about through the Indians who capture them in their homes and deal for the most part with the English of Carolina, but who sometimes in fact sell them to the Canadians who are often defrauded of considerable sums through an idea of liberty inspired in the Panis by those who do not buy,<sup>7</sup> so that almost daily they leave their masters under the pretext that there are no slaves in France—that is not wholly true since in the islands of this Continent all the Negroes bought as such are regarded as slaves.

The further recital says that all the colonies should be on the same footing, and that the Panis were as necessary for the Canadians for the cultivation of the land and other work as the Negroes were for the islands, that it was necessary to assure the property in their purchases those who have bought and those who should buy in the future. Then comes the enactment "Nous sous le bon plaisir de Sa

<sup>6</sup> We shall see later in this work that by the English law, the "villein" was real property and in the same case as land: also that when Parliament came to legislate so as to make lands in the American Colonies liable for debts, "Negroes" were included in "hereditaments" and therefore "real estate."

<sup>7</sup> Thus early do we find the Abolitionist getting in his fiendish work—the enemy of society, of God and man!

Majesté ordonnons, que tous les Panis et Nègres qui ont été achetés et qui le seront dans la suite, appartiendront en pleine propriété à ceux qui les ont achetés comme étant leurs esclaves.” “We with the consent of His Majesty enact that all the Panis and Negroes who heretofore have been or who hereafter shall be bought shall be the absolute property as their slaves of those who bought them.”<sup>8</sup>

This ordinance was not a dead letter. On February 8, 1734, Gilles Hocquart, the Intendant at Quebec issued an ordinance in which he recited that in 1732 Captain Joanne of the Navy brought a Carib slave of his to Canada and employed him as a sailor; that he had deserted when Captain Joanne was ready to embark for the West Indies; and that the master had seen and recognized him a short time theretofore in the Parish of St. Augustine but on reclaiming him certain evil-disposed persons had facilitated his escape. The ordinance directed all captains and officers of the militia to give their assistance to the master in recovering the Carib slave and forbade all persons to conceal him or facilitate his escape on pain of fine or worse.<sup>9</sup>

Slavery thereafter tended to expand. The Edict of October 1727 concerning the American islands and colonies and therefore including Canada in the preamble spoke of the islands and colonies being in a condition to support a considerable navigation and commerce by the consumption and trade of Negroes, goods and merchandise, and the measures taken to furnish the necessary Negroes, goods

<sup>8</sup> This ordinance is quoted (*Mich. Hist. Coll.*, XII, p. 511, 517) and its language ascribed to a (non-existent) “wise and humane statute of Upper Canada of May 31, 1798”—a curious mistake, perhaps in copying or printing.

In Kingsford's *History of Canada*, Vol. 2, p. 507, we are told: “In 1718, several young men were prosecuted on account of their relations with Albany carried on through Lake Champlain. One of them, M. de la Découverte, had made himself remarkable by bringing back a Negro slave and some silver ware. One of the New York Livingstones resided in Montreal and was generally the intermediary in these transactions.” The author adds in a note: “This negro must have been among the first brought to Canada.”

<sup>9</sup> “A peine d'amende arbitraire et de plus grande peine si le cas y escheoit.”

and merchandise. It was decreed that only such Negroes, goods, and merchandise should be received by the islands and colonies as should be brought in French bottoms. Very explicit and rigid regulations were made to that end.

Some of these slaves were too vindictive to be good servants. There is given by Abbé Gosselin in a paper in the *Transactions, Royal Society of Canada for 1900*, an account of a mutiny of part of the garrison at Niagara incited by a Panis probably in the service of an officer at the post. Some of the mutineers were sentenced to death but made their escape while the Panis, Charles, was sent to Martinique with a request to the authorities to make him a slave and to take every precaution that he should not escape to Canada or even to the English colonies. A female slave of color belonging to Mme. de Francheville who had been bought in the English Colonies set fire to her mistress' home the night of the 10-11 April 1734, thus causing a conflagration which destroyed a part of the city of Montreal. The unfortunate slave was apprehended and tried for the crime then and for long after a capital felony. Being found guilty, she was hanged June, 1734.

The increase in the number of slaves made necessary some regulation concerning their liberation. September 1, 1736, Gilles Hocquart, the Intendant already mentioned, made an ordinance concerning the formalities requisite in the enfranchisement of slaves. Reciting that he had been informed that certain persons in Canada had freed their slaves without any other formality than verbally giving them their liberty, and the necessity of fixing in an invariable manner the status of slaves who should be enfranchised, he ordered that for the future all enfranchisements should be by notarial act and that all other attempted enfranchisements should be null and void.

Slaves unable to secure their freedom by legal means, however, undertook sometimes to effect the same by flight. A royal decree of July 23, 1745, recited the escape of three male and one female Negro slaves from the English West

India Island of Antigua to the French Island of Guadeloupe and there sold. There followed a decision of the Superior Council of Guadeloupe that the proceeds of the sale belonged to the King of France and Negro slaves belonging to the enemy when they came into a French colony became at once the property of His Majesty. To make clear the course to pursue for the future, the decree declared that Negro slaves who escape from enemy colonies into French colonies and all they bring with them belong to His Majesty alone in the same way as enemy ships and goods wrecked on his coasts.

With all of this security the ownership of slaves became common. In the Registers of the Parish of La Longue Pointe is found the certificate of the burial, March 13, 1755, of the body of Louise, a female Negro slave, aged 27 days, the property of M. Deschambault. In the same Parish is found the certificate of baptism of Marie Judith, a Panis, about 12 years of age belonging to Sieur Preville of the same Parish, November 4, 1756. On January 22, 1757, one Constant a Panis slave of Sieur de Saint Blain, officer of Infantry, is sentenced by de Monrepos, Lieutenant-Governor civil and criminal in the Jurisdiction of Montreal,<sup>10</sup> to the pillory in a public place on a market day and then to perpetual banishment from the jurisdiction.

The conquest of Canada begun at Quebec in 1759 and completed by the surrender to Amherst of Montreal by de Vaudreuil in 1760 had some bearing on slavery. One of the Articles of Capitulation, the 47th, provided that "the Negroes and Panis of both Sexes shall remain in the possession of the French and Canadians to whom they belong; they shall be at liberty to keep them in their service in the Colony or to sell them: and they may also continue to bring them up in the Roman religion."<sup>11</sup>

<sup>10</sup> Canada was at this time divided into three Jurisdictions or Districts—those of Quebec, Trois Rivières and Montreal.

<sup>11</sup> There are trifling variations in the English text in the several versions in the *Capitulations and Extracts of Treaties relating to Canada, 1797*; *Knox's Journal*, Vol. 2, p. 423: *Documents relative to the Colonial History of*

Having now reached the end of the French period, it will be well to say a word as to the rights of the slaves. There is nowhere any intimation that there was any difference in that regard between the Negro and the Panis. The treatment of the latter by their fellow Indians depended upon the individual master. The Panis had no rights which his Indian master was bound to respect. Remembering the persistence of customs among uncivilized peoples, one may conclude that the description given of slavery among the Chinook Indians about a century later will probably not be far from the mark concerning the Indians of the earlier time and their slaves.

Paul Kane, the celebrated explorer and artist,<sup>12</sup> in a paper read before the Canadian Institute<sup>13</sup> in 1857 said: "Slavery is carried on to a great extent along the North-

*the State of New York*, Vol. 10, p. 1107. That in the text is from Shortt & Doughty's *Constitutional Documents 1759-1791, Canadian Archives Publication*, Ottawa, 1907. There is no substantial difference in terminology and none at all in meaning. I give the French version, as to which there is no dispute: "Les Nègres et panis des deux Sexes resteront En leur qualité d'Esclaves, en la possession des françois et Canadiens à qui Ils apartiennent; Il leur Sera libre de les garder à leur Service dans la Colonie ou de les vendre, Et Ils pourront aussi Continuer à les faire Elever dans la Religion Romaine."

<sup>12</sup> The Province of Ontario is the proud possessor of the entire series of Paul Kane's paintings.

<sup>13</sup> Now the Royal Canadian Institute. The paper appears in Series II of the *Transactions*, Vol. 2, p. 20 (1857).

The use by the Indians of Slaves is noted very early: for example in Galinée's *Narrative* of the extraordinary voyage of LaSalle and others in 1669-70 the travellers are shown to have obtained from the Indians, slaves as guides. See pp. 21, 27, 43 of Coyne's edition, 4 *Ont. Hist. Soc. Papers* (1903). These Indians were accustomed to take their slaves to the Dutch. *Ibid.*, p. 27.

Still there is not very much in the old authors about slavery among the Indians: the references are incidental and fragmentary and the institution is taken for granted. Thus in Lescarbot's *History of New France*, published in 1609, the only reference which I recall is on pp. 270, 449 of The Champlain Society's edition, Toronto, 1914; speaking of the Micmacs the author says: ". . . the conquerors keep the women and children prisoners . . . herein they retain more humanity than is sometimes shown by Christians. For in any case, one should be satisfied to make them slaves as do our savages or to make them purchase their liberty."

West Coast and in Vancouver Island and the Chinooks. . . . The inhabitants still retain a large number of slaves. These are usually procured from the Chastay Tribe who live near the Umqua, a river south of the Columbia emptying into the Pacific. They are sometimes seized by war-parties but are often bought from their own people. . . . Their slavery is of the most abject description: the Chinook men and women treat them with great severity and exercise the power of life and death at pleasure.”

Kane gives shocking instances of this. He tells of a chief who sacrificed five slaves to a colossal wooden idol he had set up and says that the unfortunate slaves were not considered entitled even to burial but their bodies were cast out to the crows and vultures.

Amongst the French such an extreme of barbarity did not obtain. Their law was based upon the civil law, that is, the law of Rome, which in its developed form recognized the slave as a human being. The Roman world was full of slaves. Not only were there slaves born but debtors sometimes sold themselves<sup>14</sup> or their children. The criminal might be enslaved. In early pagan times the slave had no rights. He was a chattel disposable according to the will of his master who had *jus vitæ necisque*, who could slay, mutilate, scourge at pleasure.<sup>15</sup> In the course of time

<sup>14</sup> It will be remembered that the ancient law of Rome, the Twelve Tables, authorized creditors to take an insolvent debtor, kill him and divide his body amongst them, a real execution against the person more trenchant if not more effective than the *capias ad satisfaciendum* dear to the English lawyer.

<sup>15</sup> Everyone has shuddered at the awful picture drawn by Juvenal in his Sixth Satire of the fashionable Roman dame who had eight husbands in five years and who ordered her slave to immediate crucifixion. When her husband mildly ventured to suggest that there should at least be some evidence of guilt and that no time should be considered long where the life of a man is in question he was snubbed, just as the Roman lady who was expostulated with for taking her bath in the presence of man slaves asked “*An servus homo?*” The horrible but pithy dialogue reads:

“Pone crucem servo.” “Meruit quo crimine servus  
Supplicium? Quis testis adest? Quis detulit? Audi.  
Nulla umquam de morte hominis cunctatio longa est”  
“O demens, ita servus homo est? Nil fecerit, esto.  
Hoc volo, sic jubeo, sit pro ratione voluntas.”

—*Juvenal, Sat., VI, ll. 219–223.*

this extreme power was restrained. Hadrian forbade the killing of slaves, Marius allowed the slave to lay an information against his master. The prefect at Rome and the presidents of the provinces took cognizance of crimes against the slave: and Constantine allowed a master to go free on killing his slave in chastisement only if he used rods or whips, but not if he used sticks, stones or javelins or tortured him to death.<sup>16</sup> Hard as was his lot, the unhappy

“The cross for the slave!” “What is the charge? What is the evidence? Who laid the information? Hear what he has to say—No delay is ever great where the death of a man is in question.” “You driveller! So a slave is a man! Have it your own way—he did nothing. I wish it, that is my order, my wish is a good enough reason.”

The natural death for a Roman slave was on the cross or under the scourge.

<sup>16</sup> Constantine also by his Constitution No. 319 provided for slaves becoming free: the Constitution referred to in the text is No. 326. The best short account of slave legislation in Rome which I have seen is in a paper read by the late Vice Chancellor Proudfoot of the Ontario Court of Chancery, February 7, 1891, before the Canadian Institute. *Trans. Can. Ins.*, Series IV, Vol. 2, p. 173. Many of the judgments of Vice Chancellor Proudfoot (venerable nomen) show a profound knowledge and appreciation of the Civil Law.

The following is taken from Prof. Sherman's great work *Roman Law in the Modern World*, Boston, 1917. The learned author has laid philosophical lawyers of all countries under heavy obligations by this splendid book, as noted for its lucidity as for its learning.

Vol. 1, 69. “To inflict unnatural cruelty upon—and finally to kill—a slave was prohibited by Augustus Claudius and Antoninus Pius. Moreover, because by natural law all men were born free and equal (see Digest, 50, 17, 32) the Emperor often restored to slaves the status of a freeborn person.”

I, 146. “Constantine . . . abolished crucifixion as a punishment; encouraged the emancipation of slaves. . . .”

I, 150. “. . . It is regrettable that Christianity did not change other parts of the Roman law of persons which ought to have been reformed. The chief example of this failure is slavery, which the law of Justinian fully recognized. The inertia of past centuries as to slavery was too great to be overcome. St. Paul's attitude towards slavery was to recognize the *status quo*, and he did not counsel wholesale emancipation. But Christianity continued the progress of the pagan law along the lines of mercy and kindness, *e.g.*, to poison a slave or brand him was treated in later Imperial Roman law as homicide, and manumission was made easier; but the Church did not recognize the marriage of slaves until over 300 years after Justinian's death.”

II, 434, “In Roman law . . . the slave was a thing or chattel—nothing more legally. Slaves could no hold property—slaves could not marry, their actual unions were never legally recognized.”

slave had at least some rights in the later civil law, few and slight as they were, and these he had under the *Coutume de Paris*, the law of French Canada.

II, 436, "With the advent of Greek culture and Christianity the harsh manners of ancient Rome became greatly altered."

II, 828, "One feature of the *Lex Aquilia* is . . . that it granted an action in damages for the unlawful killing of . . . the slave of another man." *Inst.*, 413, pr; *Gaius* 3, 210.

II. 829, ". . . the owner had his option either of suing the culprit for damages under the *lex Aquilia* or of causing him to be criminally prosecuted." *Inst.*, 4, 3, 11 *Gaius* 3, 213.

II, 935, "A free person called as a witness could not be subjected to torture, but a slave could be tortured."

## CHAPTER II

### THE EARLY BRITISH PERIOD

When Canada passed under the British flag by conquest there was for a time confusion as to the law in force. During the military regime from 1760 to 1764 the authorities did the best they could and applied such law as they thought the best for the particular case. There was no dislocation in the common affairs of the country. When Canada was formally ceded to Britain by the Treaty of Paris, 1763,<sup>1</sup> it was not long before there was issued a royal proclamation creating among other things a "Government of Quebec" with its western boundary a line drawn from the "South end of Lake Nipissim"<sup>2</sup> to the point at which the parallel of 45° north latitude crosses the River St. Lawrence. In all that vast territory the English law, civil and criminal, was introduced.<sup>3</sup> It is important now to see what was the law of England at the time respecting slavery.

The dictum of Lord Chief Justice Holt: "As soon as a slave enters England he becomes free,"<sup>4</sup> was succeeded by the decision of the Court of King's Bench to the same effect in the celebrated case of *Somerset v. Stewart*,<sup>5</sup> where Lord Mansfield is reported to have said: "The air of England has long been too pure for a slave and every man is free who breathes it."<sup>6</sup>

<sup>1</sup> See this Treaty which was concluded at Paris, February 10, 1763 "au Nom de la Très Sainte & indivisible Trinité, Pere, Fils & Saint Esprit"—Shortt & Doughty, *Constitutional Documents*, 1759-1791, pp. 73 sqq.

<sup>2</sup> What we now call Lake Nipissing.

<sup>3</sup> See the Proclamation, Shortt & Doughty, *Const. Docs.*, pp. 119, sqq.

<sup>4</sup> Per Hargrave, *arguendo*, *Somerset v. Stewart* (1772), Lofft 1, at p. 4; the speech in the State Trials Report was never actually delivered.

<sup>5</sup> (1772) Lofft, 12 Geo. III, 1, (1772) 20 St. Trials, 1.

<sup>6</sup> These words are not in Lofft or in the State Trials, but will be found in Campbell's *Lives of the Chief Justices*, Vol. II, p. 419, where the words are

James Somerset,<sup>7</sup> a Negro slave of Charles Stewart in Jamaica, "purchased from the African coast in the course of the slave trade as tolerated in the plantations," had been brought by his master to England "to attend and abide with him and to carry him back as soon as his business should be transacted." The Negro refused to go back, whereupon he was put in irons and taken on board the ship *Ann and Mary* lying in the Thames and bound for Jamaica. Lord Mansfield granted a writ of habeas corpus requiring Captain Knowles to produce Somerset before him with the cause of the detainer. On the motion, the cause being stated as above indicated, Lord Mansfield referred the matter to the full court of King's Bench; whereupon, on June 22, 1772, judgment was given for the Negro.<sup>8</sup> The basis of the decision and the theme of the argument were that the only kind of slavery known to English law was villeinage, that the Statute of Tenures enacted in 1660, expressly abolished villeins regardant to a manor and by implication villeins in gross. The reasons for the decision would hardly stand fire at the present day. The investigation of Paul Vinogradoff and others have conclusively established that there was not a real difference in status

added: "Every man who comes into England is entitled to the protection of the English law, whatever oppression he may heretofore have suffered and whatever may be the color of his skin. *Quamvis ille niger, quamvis tu candidus esses*"—and certainly Vergil's verse was never used to a nobler purpose. Verg. E. 2, 19.

William Cowper in *The Task*, written 1783–1785, imitated this in his well-known lines:

"Slaves cannot breathe in England; if their lungs  
Receive our air, that moment they are free.  
They touch our country and their shackles fall."

<sup>7</sup> I use the spelling in Lofft. The State Trials and Lord Campbell have "Somerset" and "Steuart."

<sup>8</sup> This was in direct opposition to the opinion of Sir Philip Yorke, Attorney General (afterwards Lord Chancellor Lord Hardwicke) and Sir Charles Talbot, Solicitor General (afterwards Lord Chancellor Lord Talbot) who had pledged themselves to the British planters for all the legal consequences of Slaves coming over to England. The law of Scotland agreed with that of England.

between the so-called villein regardant and villein in gross, and that in any case the villein was not properly a slave but rather a serf.<sup>9</sup> Moreover, the Statute of Tenures deals solely with tenure and not with status.

But what seems to have been taken for granted, namely that slavery, personal slavery, had never existed in England and that the only unfree person was the villein, who, by the way, was real property, is certainly not correct. Slaves were known in England as mere personal goods and chattels, bought and sold, at least as late as the middle of the twelfth century.<sup>10</sup> However weak the reasons given for the decision, its authority has never been questioned and it is good law. But it is good law for England, for even in the Somerset case it was admitted that a concurrence of unhappy circumstances had rendered slavery necessary<sup>11</sup> in the American colonies; and Parliament had recognized the right of property in slaves there.<sup>12</sup> Consequently so long as the slaves, Panis or Negro, remained in the colony they were not enfranchised by the law of the conqueror but retained their servile status.

The early records show the use of slaves. General James Murray, who became Governor of the Quebec Forti-

<sup>9</sup> See e.g., Vinogradoff, *Villeinage in England*, passim. Hallam's *Middle Ages* (ed. 1827), Vol. 3, p. 256; Pollock and Maitland, *History of English Law*, Vol. 1, pp. 395, sqq. Holdsworth's *History of English Law*, Vol. 2, pp. 33, 63, 131; Vol. 3, pp. 167, 377-393.

<sup>10</sup> See Pollock and Maitland's *History Eng. Law*, Vol. 1, pp. 1-13, 395, 415; Holdsworth's *Hist. Eng. Law*, Vol. 2, pp. 17, 27, 30-33, 131, 160, 216.

<sup>11</sup> "So spake the fiend and with necessity,  
The tyrant's plea, excused his devilish deeds."

Paradise Lost, Bk. 4, ll. 393, 394.

Milton a true lover of freedom well knew the peril of an argument based upon supposed necessity. Necessity is generally but another name for greed or worse.

<sup>12</sup> For example, the Statute of (1732) 5 Geo. II, c. 7, enacted, sec. 4, "that from and after the said 29th September, 1732, the Houses, Lands, Negroes and other Hereditaments and real Estates situate or being within any of the said (British) Plantations (in America) shall be liable" to be sold under execution. Note that the Negroes are "Hereditaments and Real estate," as were the villeins—a rule wholly different from that of the French law.

fications and adjoining territory immediately after the fall of Quebec and in 1763 the first Captain General and Governor in Chief of the new Province of Quebec,<sup>13</sup> writing from Quebec, November 2, 1763, to John Watts in New York speaks thus of the promoting of agriculture in the Province:

“I must most earnestly entreat your assistance, without servants nothing can be done, had I the inclination to employ soldiers which is not the case, they would disappoint me, and Canadians will work for nobody but themselves. Black Slaves are certainly the only people to be depended upon, but it is necessary, I imagine they should be born in one or other of our Northern Colonies, the Winters here will not agree with a Native of the torrid zone, pray therefore if possible procure for me two Stout Young Fellows, who have been accustomed to Country Business, and as I shall wish to see them happy, I am of opinion there is little felicity without a Communication with the Ladys, you may buy for each a clean young wife, who can wash and do the female offices about a farm. I shall begrudge no price, so hope we may, by your goodness succeed.”<sup>14</sup>

From time to time slavery makes its appearance in official correspondence. Moreover, there are still subsisting records which show the prevalence of slavery in the province.<sup>15</sup> In January, 1763, there took place at Longueuil the marriage of Marie, slave of baroness de Longueuil, with Jacques César, slave of M. Ignace Gamelin. From 1763 to 1769 there are found records of the baptism of the

<sup>13</sup> His Commission is dated November 28, 1763, Shortt & Doughty, *Constitutional Documents*, 1759–1761, pp. 126, sqq.

<sup>14</sup> *Canadian Archives, Murray Papers*, Vol. II, p. 15: the Quebec Act mentioned immediately below is (1774) 14 George III, c. 83.

In 1774 the well known Quebec Act reintroduced the former French Canadian law in civil matters while it retained the English law in criminal matters; but the change made no difference in the condition of the slave.

<sup>15</sup> The three which follow I owe to the interesting paper of Mr. E. Z. Massicotte, Archivist of Montréal, published in *Le Bulletin des Recherches Historiques* for November, 1918, pp. 348 sqq.—the advertisement in the Gazette is to be found in Terrill's *Chronicles of Montreal*. The paper was 2½ Spanish dollars per annum, 10 sous per copy, published every Wednesday.

children of slaves in the registers of the Parish of Lachine. In the first issue of the *Gazette* of Montreal, June 3, 1778, there is an advertisement by the widow Dufy Desaulniers, offering a reward of six dollars for the return to her of a female slave who had run away on the 14th. She was thirty-five years old and she was dressed in striped calico of the ordinary cut and was of "tolerable stoutness."

Alexander Henry writing from Montreal, October 5, 1778, to the Governor Sir Frederick Haldimand, says that he had obtained a Judgment in the Court of Common Pleas against one Gillelande in the colonies who owed him a considerable sum of money. "Hearing that a Negro of his had deserted from him," said Henry, "and was lurking in this Province I obtained an execution upon that judgment and got the negro apprehended—who is still in gaol." General Powell who was the Commander there sent to Mr. Gray the Sheriff desiring him to postpone the sale until such time as the Governor should be made acquainted with the matter. Mr. Gray thereafter informed Mr. Henry that he mentioned the affair to Sir Frederick Haldimand, who likewise ordered the sheriff to postpone the sale until the Governor could confer with the Attorney-General. The Attorney-General thereafter informed Mr. Henry that he had spoken to the Governor, who was of the opinion that the civil law should take its course. . . . Mr. Gray thought he should have some definite authority to sell. . . . He said: "There are some gentlemen from the Upper Countries<sup>15</sup> whom I presume will give more for him than any person resident here and . . . they are now on their return." He asked that an order for sale should be sent before the departure of these gentlemen.<sup>15</sup> The higher

<sup>15</sup> The "Upper Countries" were Detroit and Michilimackinac, sometimes including the Niagara region—at this time there were practically no residents in what became the Province of Upper Canada and is now the Province of Ontario. The letter is to be found in the *Canadian Archives*, B. 217, p. 21: as no further record appears, it is to be presumed that an order was made for sale by the Sheriff.

The Report of James Monk, Attorney-General at Quebec, about to be mentioned is to be found in the *Canadian Archives*, B. 207, p. 105.

price which the gentlemen from the "Upper Countries" would pay indicates the objection of those in the old settled parts of the province to slavery.

An official report made in 1778 by James Monk, Attorney General at Quebec, to the Governor, Sir Guy Carleton, (afterwards Lord Dorchester) gives a sufficiently full account of an occurrence the subject of much controversy and correspondence showing the significance of slavery at that time. The Attorney General examined the several papers, making a case of complaint, by Joseph Despin of St. Francois, Merchant, a trader, against Major de Barner Commanding a Regiment of Light Infantry Chasseurs of Brunswick Troops. Despin complained to Brigadier General Ehrenkrook, Commander of the Brunswick Troops at Trois Rivieres, that Major de Barner by his orders or otherwise at Midnight of the first of the previous June, occasioned forcibly to be taken from said Despin a Negro-woman slave, Despin's property and suffered her to be carried out of the province. He therefore prayed Brigadier General Ehrenkrook, that Major de Barner might either return to him the said slave with damages or pay to Despin the value thereof.

Upon this complaint an inquiry was made. In the course of this inquiry Joseph Despin did not support his complaint and charge with those legal proofs which could entitle him to recover from Major de Barner thereupon; "or induce a Court of Justice to consider Major de Barner as having either given any others for the taking of, or even had any knowledge touching the intended escape of the Slave." The complaint of Despin was then deemed very justly dismissed.

Upon the dismissal of this complaint Major de Barner requested of the Governor satisfaction and punishment upon the accuser, and a notary, one Robin, who prepared notarial acts, in an unbecoming affrontive manner. This request was made under three heads: first, that Despin might be exemplarily punished, not merely for a false dis-

honoring accusation of Major de Barner, a commanding officer and injurious to his whole battalion, but punishment for the personal insults to Major de Barner and his character; second, that Despin might pay the expenses of preparing and making out writings; and third, that the said Robin, the notary, may be equally punished for using expressions in his acts hurtful and indecent to persons of honor and character.

The Attorney General asserted that there is reason to conclude from the several testimonies appearing in the case, that Despin had lost his slave by means of some soldiers belonging to the Battalion of Chasseurs which Major de Barner Commanded, *though not in the least by the orders or with the knowledge or consent of Major de Barner as charged.*

One of the most extraordinary stories of the time is told by William Dummer Powell, afterwards Chief Justice of Upper Canada, but in 1780<sup>17</sup> and later practising as a barrister in Montreal. "Meeting in the Street of Montreal an armed Party escorting to the Provost Guard several female prisoners and Children," says Mr. Powell, "curiosity was excited and upon engaging the Non-Commissioned Officer commanding the Escort, Mr. Powell was informed that they were Prisoners of war, taken in the Kentucky Country and brought into Detroit by a Detachment of the Garrison and now arrived from thence. Further Enquiry after procuring necessary relief to the first wants of the party, drew from Mrs. Agnes La Force the following Narrative:

"That her husband was a loyal Subject in the Province of North Carolina,<sup>18</sup> having a good Plantation well stocked and a numerous family. That his political Sentiments ex-

<sup>17</sup> In 1778 a much wronged Negro petitioned Haldimand. His petition dated at Quebec, October 17, 1778, reads: "To His Excellency Frederick

Haldimand, Governor & Commander in Chief of all Kanady and the territories thereunto belonging,

The Petition of Joseph King humbly sheweth that Your Petitioner has been twice taken by the Yankys and sold by them each time at Public Vendue: he has made his escape and brought two white men through the woods: he was

posed him to so much Annoyance from the governing Party, that he determined to retire into the wilderness, that he accordingly mustered his whole family, consisting of several Sons and their Wives and Children, and Sons-in-law with their Wives and Children, a numerous band of select and valuable Slaves Male and female, and a large Stock of Cattle, with which they proceeded westward, intending to retire into Kentucky.

“That after” the accidental death of the father they pursued their route to the westward and settled with their Slaves in the wilderness about five hundred miles from any civil establishment. After a residence of three years, a party of regular Troops and Indians from the British Garrison at Detroit appeared in the plain and summoned them to surrender. “Relying upon british faith,” says Mr. Powell, “they open’d their Gate on condition of Protection to their Persons and property from the Indians; but they had no sooner surrendered and received that promise than her sons and sons-in-law had to resort to arms to resist the Insults of the Indians to their wives and Slaves.<sup>18</sup> Several lives were lost and the whole surviving Party was marched into Detroit, about six hundred Miles, where the Slaves were distributed among the Captors and the rest marched or boated eight hundred miles further to Montreal and driven into the Provot Prison as Cattle into a Pound.”<sup>19</sup>

This story will be credited with difficulty but accident some time after put into the hands of Mr. Powell a document of undeniable credit, which, however, was unnecessary: for on Mr. Powell’s representation of the case to Sir

a servant to Captain McCoy last winter in Montreal and came here (Quebec) last spring. Your Petitioner has gone through many Perils and Dangers of his life for making his escape from the Yankeys. He hoaps that Your Excellency through the abundance of Your Benevolence will grant him his liberty for which your poor Petitioner as in Duty bound will ever pray.” *Canadian Archives*, B. 217, p. 324.

<sup>18</sup> In the Petition referred to *post*, Mrs. La Force states that her husband was “late of Virginia.”

<sup>19</sup> I have followed the Powell MSS. in spelling, capitalization, etc.

F. Haldimand the most peremptory order was sent to the Commandant at Detroit to find out the slaves of Mrs. La Force in whose ever possession they might be and to transmit them to their mistress at Montreal. But Detroit was too far distant from headquarters and interests prompting to disobedience of such an order too prevalent for it to produce any effect; and the commandant acknowledged in answer to a reiterated order that the slaves could not be produced, although their names and those of their new masters were correctly ascertained and the following list transmitted with the order.

List of slaves<sup>20</sup> formerly the property of Mrs. Agnes La Force and in possession of others:

Negro	Scipio	in possession of	Simon Girty <sup>21</sup>
do	Tim	“	“ “ Mr. Le Duc.
do	Ishener	“	“ “ do do
do	Stephen	“	“ “ Captn. Graham.
do	Joseph	“	“ “ Captn. Elliot.
do	Peggy	“	“ “ do do
do	Job	“	“ “ Mr. Baby
do	Hannah	“	“ “ Mr. Fisher.
do	Candis	“	“ “ Capt. McKee.
do	Bess, Grace Rachel, and Patrick—Indians.		

13

The case of Mrs. La Force and some similar cases led Haldimand to require Sir John Johnson, the Superin-

<sup>20</sup> They were taken in an expedition nominally under Captain Bird but he had little control over the Indians and had only a few men of his own, British Regulars. He had had bitter experience of the cruelty and unreliability of the Indians in 1779 but had to go with them in 1780. This was not one of the two large Forts which Bird took in his 1780 expedition, Fort Liberty and Martin's Station, but a smaller fortification. It was taken June 26, 1780 (*Can. Arch.*, B. 172, 480); that there were several small forts is certain; that some of the prisoners brought to Detroit were from the small forts and that they (or some of them) were not rebels appears from the letter from De Peyster of August 4, 1780 (*Canadian Archives*, B. 100, p. 441): "In a former letter to the Commander in Chief," said he, "I observed that it would be dangerous having so many Prisoners here but I then thought those small Forts were occupied by a different set of people."

tendent of Indian Affairs, to report. He wrote from Quebec, July 16, 1781, "Several complaints having been made upon the subject of selling negroes brought into this Province (Quebec) by scouting parties—who allege a Right to Freedom and others belonging to Loyalists who are obliged to relinquish their properties or reclaim them by paying the money for which they were sold, I must desire that you upon the most minute enquiry give in to Brigadier General Maclean a Return of all Negroes who have been brought into the Province by Parties in any Respect under your Directions whether Troops or Indians, specifying their names, their former masters, whether Loyalists or Rebels, by whom brought in and to whom sold, at what price and where they are at present. I shall direct Cols. Campbell and Claus to do the same by which it will be in my Power to reduce the Grievances now complained of and to make such arrangements as will prevent them in future."

Johnson sent a return of Negroes to Maclean and Maclean, July 26, 1781, sent it on to Haldimand: Claus and Campbell made returns direct to Haldimand in August of the same year. Fortunately the covering letters are extant as are the reports. There is also one Negro, Abraham, reported in a Return of Rebel Prisoners in and about Montreal as having been taken June 18, 1781; and, therefore, about a year after Mrs. La Force's capture.<sup>21a</sup>

"Of the fifty or more slaves named in this list," says Dr. T. W. Smith, "nearly half were sold at Montreal, a few being carried by the Indians and Whites to Niagara. The others were handed to their former owners. 'Charles taken at Balls Town making his escape out of a window in Col. Gordon's house' was sold to the Rev. David C. DeLisle,

<sup>21</sup> The well-known so-called Renegade, is in reality a loyal subject whose reputation pays the penalty of a losing cause. The others are all well-known loyalists of Detroit.

<sup>21a</sup> Mrs. La Force's Petition to Haldimand is still extant. *Canadian Archives*, B. 217, p. 116. Her name is included in the list of women and children remaining at Montreal, the list being dated Quebec, September 11, 1782, and she being given as of Virginia and taken June 26, 1780.

the Episcopal rector at Montreal, for £20 Halifax currency; Samuel Judah, Montreal, paid £24 for 'Jacob' also a slave of Col. Gordon, a rebel master, but for a Negro girl of the same owner he gave £60; Nero, another of Col. Gordon's slaves, captured by a Mohawk Indian, Patrick Langan sold to John Mittleberger of Montreal for £60; 'Tom' was sold by Captain Thompson of Col. Butler's Rangers for £25 to Sir John Johnson who gave him to Mr. Langan; and William Bowen, a Loyalist owner, sold his recovered slave 'Jack' for £70 to Captain John McDonell of the Rangers. 'William,' who was also sold for £30 to Mr. McDonell and afterwards carried to Quebec, had been taken from his master's house by Mohawk Indians under Captain John the Mohawk with a wagon and horses which he had got ready to convey his mistress Mrs. Fonda wife of Major Fonda to Schenectady . . . another Negro man, name unknown, was sold 'by a soldier of the 8th Regiment to Lieutenant Herkimer of the Corps of Rangers, who disposed of him to Ensign Sutherland of the Royal Regiment of New York.' "

Negroes were not the only victims of Indian raids. In 1782 Powell had another experience, which is indicative of the practices of the Indians during the Revolutionary War.<sup>22</sup> In his letter to the Commissary of Prisoners at Quebec he wrote:

Montreal, 22 August, 1782.,

"Sir

I should make an Apology for the Liberty I take but that I consider it a public Duty.

When you were here some time since, I am informed that mention was made to you of a young female slave bought of the Indians by a Mr. Campbell, a Publican of this Town, and that when

<sup>22</sup> The correspondence, &c., is in the *Canadian Archives*, B. 129, p. 221, 225; B. 159, p. 152; B. 183, p. 284. A Negro taken "horse hunting" by a party of Puttewatamies in the West is mentioned August 16, 1782, in B. 123, p. 290. He belonged to Epharaim Hart from whom he deserted and was taken about 20 miles up Cross Creek. I copy from a Manuscript of Powell's in my possession which I have compared with a photostat copy of a manuscript in the *Canadian Archives*.

you learned that she was the Daughter of decent family in Pennsylvania<sup>23</sup> captured by the Indians at 10 years of age, your Humanity opposed itself to the barbarous Claim of her Master and you Promised that she should be returned to her Parents by the first Flag with Prisoners.

“In consequence of such a Promise,” continued he, “the Child had been taught to expect a speedy release from her Bondage, and, finding that her Name was in the List permitted by his Excellency to cross the Lines with a flag from St. Johns,<sup>24</sup> she imagined that there could be no Obstacle to her Return; but, being informed that Mr. Campbell had threatened to give her back to the Indians, she eloped last Evening, and took refuge in my House from whence a female Prisoner, (sometime a nurse to my children) was to sett off this Morning for the Neighborhood of the Child’s Parents. Upon Application from Mr. Campbell to Brigadr. Genl. De Speht setting forth that He had furnished her with money, an order was obtained for the delivery of the Child to her Master and there was no time for any other Accommodation than an undertaking on my part to reimburse Mr. Campbell the Price he paid for her to the Indians. This I am to do on his producing a Certificate from some Military Gentleman, whom he says was present at the Sale. I have no objection to an Act of Charity of this Nature, but *all Political Considerations aside*, I am of opinion that the national Honor is interested that this Redemption should not be the Act of an Individual. As Commissary of Prisoners I have stated the Case to you, Sir, that you may determine upon the propriety of reimbursing me, or not, the sum I may be obliged to pay on this occasion.

“That all may be fairly stated I should observe that the Child was never returned a Prisoner,<sup>25</sup> nor has drawn Provisions as such—although there can be no doubt of her political character, having been captured by our Savages.”

<sup>23</sup> The western part of Pennsylvania is meant. This region was seething with conflicts on a small scale between the Loyalists and the Republicans. The Indians for the most part took the side of the former.

<sup>24</sup> In what is now the Province of Quebec.

<sup>25</sup> In 1780 Germain instructed Haldimand that “all prisoners from revolted Provinces are committed as guilty of high treason not as prisoners of war” (*Canadian Archives*, B. 59, p. 54) but a change soon took place and after some intermediate stages, Shelburne, the Home Secretary, in April, 1782, instructed Haldimand that all American prisoners were to be held for exchange. *Canadian Archives*, B. 50, p. 164.

The reply to this communication was:

“I am favored with your’s by Saturday’s post and have since layed it before His Excellency the Commander in Chief, and I have the Pleasure to inform you that he approves much of your Conduct and feels himself obliged for your very humane Interposition to rescue the poor unfortunate Sarah Cole from the Clutches of the miscreant Campbell; and I am further to inform you that your letter has been transmitted by his Secretary to the Judges at Montreal, not only to make Campbell forfeit the money he says he paid for the Girl, but if possible to punish and make him an example to prevent such inhuman conduct for the Future; but in any Event you shall be indemnified for the very generous Engagement you entered into.”

It has been established that Mr. Powell had redeemed his word the day it was given and paid Mr. Campbell Twelve Guineas<sup>26</sup> on production of a string of Wampum delivered by the Indians with the girl and the money paid by Campbell. A cartel went forward August 22, 1782, and in the list of prisoners sent south appears the name “Sarah Coal.”<sup>27</sup> Haldimand gave Mr. Justice Mabane, the man of all work of his administration, instructions to see to it that Campbell did not profit by his inhumanity and also to take such steps that the practice should not prevail for the future.

A petition presented to Haldimand in 1783, however,

<sup>26</sup> By the Ordinance of March 29, 1777, 17 George III, c. 9, the guinea was declared equivalent to £1.3.4, Quebec Currency: this would make the price of the girl, \$42.60. See note 30 post. It is to be presumed that Powell was repaid. He nowhere complains that he was not as he certainly would have done if he had cause to do so.

Negroes were frequently arriving in the colony and seeking aid and subsistence. For example, we find Thomas Scott, J. P., reporting Thursday, May 17, 1781: “The Bearer John Jacob a Negro man just arrived from Montreal has applied to me for relief in his case as set forth in the Annexed Paper. But as I apprehend that can only be given him by His Excellency the Governor I respectfully recommend him to His Excellency’s notice.” *Canadian Archives*, B. 100, p. 72.

<sup>27</sup> See *Canadian Archives*, B. 130, pp. 33, 34.

discloses another transaction with the Indians.<sup>28</sup> Jacob Adams presented the petition December 13 of that year from Carleton Island. He said:

“I have taken a Yankee Boy (by name Francis Cole)<sup>29</sup> with a party of Messesagee Indians—afterwards when I arrived at Carleton Island with the said party of Indians and said Yankee Boy, the Commanding Officer (Captain Aubrey) demanded the Prisoners Vizt. this Boy and an old man<sup>30</sup> the Indians refus'd giving them up on which Capt. Aubrey gave me Liberty to purchase them and so I did by paying sixteen Gallons Rum for the Boy which cost me at this place twenty shillings, York Currency, pr. Gallon,<sup>31</sup> and he the said Yankee Boy was to serve me the term of four years (with his own lawfull consent) for my redeeming him. As for the old man I likewise bought him for two Gallons Rum but Capt. Aubrey requested I should send him Prisoner to Your Excellency. I acted accordingly. I likewise gave a shirt apiece to each of the two. Chiefs who belonged to said party in like manner I lost twenty-four shillings York Currency by four Keggs which the above Rum was put into.<sup>32</sup>

“Now, may it please Yr Excellency this said Yankee Boy remained very peaceably and quietly with me for the space of two

<sup>28</sup> It is more than doubtful that the prohibition of the sale of white captives by the Indians would be productive of good. The natural result would rather be that the Indians would kill their white captives at once or torture them to death. At the best the prisoners would in most cases, if adults become slaves and if young be adopted into the tribe. There are numerous instances of white captives being slain because unsaleable while the Negroes escaped death because they found a ready market. See the story of Thomas Ridout, post, note 37. The order of Haldimand will be found in the Canadian Archives.

<sup>29</sup> Remembering that Sarah Cole was bought by Campbell from the Indians at Carleton Island (near Kingston) it seems likely that Francis Cole was her brother or some other relation. That Adams says nothing of Sarah is not at all strange.

The Mississagua Indians occupied a great part of the territory now the Province of Ontario and were always loyal to the British Crown.

<sup>30</sup> In the “Return of Prisoners who have requested leave to remain in the Province made at Quebec, November 3, 1782,” appear the names of “Mich. & Phoebe Roach to remain at Montreal to receive a child with the Savages and a man at Carleton Island.” These were white. The Report of the Negroes follows. *Canadian Archives*, B. 163, p. 258.

<sup>31</sup> The York Shilling (or shilling in New York currency) was 12½ cents, one eighth of a dollar.

<sup>32</sup> \$5.00 for the rum; \$3.00 for the “Keggs.”

months during which Time I took him several Journeys to Fort Stanwix and Oswego and whilst I was absent he got acquainted with some of the soldiers on this Island who persuaded him to get off from me and accordingly he got off in the manner following: when Lieut. Peppin of the 5th Regiment and his Party were embarking on board the Haldimand to go to Niagara, he privately got on board and remained there Incog. for one Day and a Night on which I made an application to Mr. Peppin to make a search for him and accordingly he did and found him and likewise brought him before the Commanding Officer who asked the Boy his Reasons for Running away from me: he replied He did not chuse to live with me on which Capt. Aubrey has sent him down as Prisoner to Yr. Excellency.

“May it please Your Excellency I expect your Excellency will please to take my Case into consideration by granting me the Request of being paid for what I have lost by said Prisoner or the Yankee Boy, to be returned to me. . . .”<sup>33</sup>

There were not wanting at this time or later instances of those convicted of crime buying their lives by enlistment for life. One case of a mulatto, a slave, may be here mentioned. A mulatto called Middleton was convicted at

<sup>33</sup> *Canadian Archives*, B. 216, pp. 14, sqq.

No proceedings seem to have been taken on this Petition and it is probable that Mr. Adams had to stand the loss on Francis Cole the said Yankee Boy as Campbell did on Sarah Cole of Pennsylvania.

Indians were not the only slavers. As soon as the Declaration of Independence was promulgated, if not before, Boston began to fit out privateers to prey on British trade. We read of four privateers reported by Governor Montague as seen in the Straits of Belle Island in 1776, two off Placentia in 1777 and in 1778 committing daily depredations on the coast of Newfoundland. They harried the unprotected fishermen and the farmers of Newfoundland and Labrador but some at least of them went further. Those who had demanded political freedom themselves denied even personal freedom to others. They seized and carried away into slavery some of the unoffending natives, the Eskimos, who were freemen and whose only crime was their helplessness. One instance will suffice. The *Minerva* privateer of Boston, Captain John Grimes, Master, mounting 20 nine pounders and manned with 160 men landed on Sandwich Bay, Labrador, at Captain George Cartwright's station, took his brig, *The Countess of Effingham*, loaded her with his fish and provisions and sent her off to Boston. Cartwright not unnaturally said: “May the Devil go with them.” “The *Minerva* also took away four Eskimo to be made slaves of.” W. G. Gosling, *Labrador*, Toronto, n. d., pp. 192, 244, 245, 333.

Montreal in 1781 of a felony (probably larceny) which carried the sentence of death. He was an expert mechanic of a class of men much in demand in the army and he was given a pardon conditioned upon his enlisting for life. He chose the Second Batallion of Sir John Johnson's Royal American Regiment then in Quebec and was handed over by Sheriff Gray to the officers of that corps after having taken the oath of allegiance administered to all recruits.<sup>34</sup>

Many slaves were employed as boatmen, laborers, and the like, in the army. We find a letter from headquarters at Quebec to Captain Maurer who was at Montreal, dated October 6, 1783, which reads:

“Having had the Honor to communicate to His Excellency, the Commander-in-Chief, your intimation that applications have been made by the Proprietors of some Negro's Serving Capt. Harkimer's (Herkimer) Company of Batteau Men to have them restored to them and desiring to receive His Excellency's Pleasure therein, I am directed to signify to you His Excellency's Commands that all such Negro's to be given up on the Requisition of their owners, provided they produce sufficient Proofs of their Property and give full acknowledgments or Receipts for them which must be taken in the most ample manner to prevent future claims and to have the necessary recourse to those Persons who receive them should different applications be made for the above Negro's.”<sup>35</sup>

Peace had come<sup>36</sup> and there was no more need for a large army. But it was some years before the Indians of the western country ceased from their practice of making prisoners.<sup>37</sup>

<sup>34</sup> See *Canadian Archives*, B. 61, p. 83, where he is called a Negro. *Ibid.*, B. 158, p. 261, where he is called a mulatto.

<sup>35</sup> *Canadian Archives*, B. 215, p. 236.

<sup>36</sup> The Definitive Treaty of Peace between the mother country and her revolted colonies, now become the United States of America, was signed at Paris, September 3, 1783, but it had been incubating for months before that date.

<sup>37</sup> It may not be out of place to give some account of the capture by Indians of Thomas Ridout, afterwards Surveyor General and Legislative Councillor of Upper Canada. His story is given in his own words by his granddaughter, Lady Edgar, in her interesting *Ten Years of Upper Canada*.

Thomas Ridout, born in Dorsetshire, when twenty years of age came to Georgia in 1774. After trading for a few years he left Annapolis, Maryland, in 1787 for Kentucky with letters of introduction from George Washington, Colonel Lee of Virginia and other gentlemen of standing. Sailing with Mr. Purviance, his man James Black and two other men towards the Falls of the Ohio, the party was taken by a band of about twenty Indians. Ridout was claimed by an elderly man, apparently a chief, who protected him from injury, but could not save his hat, coat and waistcoat. Soon he saw tied two other young men who had been taken that morning and set aside for death. Ridout was able to secure their release. The Indians were Shawanese, Pottawatamies, Ottawas and Cherokees. One prisoner, William Richardson Watson, said to be an Englishman but who had lived for some years in the United States, they robbed of 700 guineas and then burnt to death. Purviance, they beat to death but Ridout was saved by the Indian who claimed him as his own. A white man, Nash, about twenty-two who had been taken by the Indians when a child and had become a chief, encouraged him and told him that he would be taken to Detroit where he could ransom himself. He was more than once within a hairsbreadth of death but at length he was brought by his master, Kakinathucca, to his home. He was a great hunter and went every year to Detroit with his furs for sale, taking with him his wife Metsigemawa and a Negro slave. The chief had a daughter Altowesa, about eighteen years of age "of a very agreeable form and manners." She saved Ridout from death from the uplifted hand of an Indian who had his hand over him ready to strike the fatal blow with his tomahawk.

At the end of three weeks the whole village set off for the Wabash. Arriving at the Wabash his papers were read by the interpreter, a white man who had been taken prisoner several years before and held in captivity. The Indians were assured that Ridout was an Englishman and not an American and they consented that he might go with his master to Detroit for ransom. The Indians were excessively enraged at the Americans who they claimed were the cause of their misfortunes. The preceding autumn the Americans had come to their village on the Scito River from Kentucky and in times of profound peace and by surprise destroyed their village and many of their people, their cattle, grain and everything they could lay their hands on.

Ridout witnessed the torture and heard the dying shrieks of an American prisoner Mitchell who had been captured with his father Captain Mitchell on the Ohio. The father had been liberated but the son given to a warrior who was determined to burn him.

After three or four days, Ridout's master collected his horses and peltry and with his wife, the Negro and Ridout set out for Detroit. On the way there were met other Indians among whom was the noted Simon Girty. A council was held at which the murderer of Mitchell claimed Ridout as his, but at length Kakinathucca prevailed and Ridout's life was again spared. The murderer asserted that he was a spy but his papers proved his innocence. The little party went on to Fort Miami where several English and French gentlemen received Ridout with open arms. Mr. Sharpe clothed him and a French gentlemen lent a canoe to carry the party and furs 250 miles by water to Detroit. Reaching Detroit, which, it should be remembered, remained in

British hands until August 1796, he was received with every attention and a bed was provided for him at Government House. The officers furnished him with money and gave him a passage to Montreal where he arrived about the middle of July, 1788. Ridout settled in Upper Canada. In 1799, Kakinathucca and three other Shawanese chiefs came to pay him a visit at York, (Toronto), and were hospitably treated, the great and good Kakinathucca receiving substantial testimony of the gratitude of the man he had saved from a death of torture.

Ridout's memorandum of the fate of the other prisoners is terribly significant: "Samuel Purviance, Killed; Barland, Killed; Wm. R. Watson, burnt; James Black, beat to death; Symonds, burnt; Ferguson, sold for corn; a negro woman unharmed."

RETURN OF NEGROES AND NEGRO WOMEN BROUGHT INTO THE PROVINCE BY PARTIES UNDER THE COMMAND AND DIRECTION OF LIEUT. COL. SIR JOHN JOHNSON, BART, 1783.

Names	Former Masters	Property of Loyalists	Rebel Property	By Whom Brought In	To Whom Sold	Price Sold For	Where They Are at Present
Tom	Conyne	Loyalist	Rebel	Canada Indians	Jacob Jordon	Halifax Curry.	Montreal with Mr. Jordon.
Charles <sup>1</sup>	Smyth		ditto	Mohawk Indians	Rev. Mr. DeLisle	£ 12-10	Montreal with Mr. DeLisle.
Nero <sup>2</sup>	Col. Gordon		ditto	Mohawk Indians	John Mittleberger	60—	Montreal in Provost Gaol.
Jacob <sup>3</sup>	ditto		ditto	Mohawk Indians	Saml. Judah	24—	Quebec.
A Negro Wench <sup>4</sup>	ditto		ditto	Mohawk Indians	ditto	60—	Montreal with Mr. Judah.
Betty	Capt. Collins		ditto	Mohawk Indians	John Gregory	45—	Montreal with Mr. Gregory.
Tom <sup>5</sup>	Col. Fisher		ditto	ditto	Captn. Thomson	25—	Montreal with Mr. Tange.
Jack	Barney Wimple		ditto	Royal Rt., N. Y.			Montreal with Capt. Anderson.
Diana	Adam Fonda		ditto	ditto			ditto
William <sup>6</sup>	Major Fonda		ditto	Mohawk Indians	Mr. McDonell	30—	Quebec.
Combwood	J. Wimple		ditto	ditto	Capt. Sherwood	12-10	St. James with Capt. Sherwood.
Catharine	Dora Fonda		ditto	Canada Indians	John Grant	12-10	St. Genevieve with Capt. A. McDonell.
Simon <sup>7</sup>							Niagara with A. Wimple.
Boatswain	Lewis Clemont	ditto		Canada Indians			Niagara with his former master.
Jane	ditto	ditto		ditto			ditto
Dick	Col. Butler	ditto		Mohawk Rangers			ditto with his former master.
Jack <sup>8</sup>	Wm. Bowen	ditto		Royal Rt., N. Y.			ditto with Captn. McDonell.
Peggy	Mr. Young	ditto		ditto			ditto with her former master.
Mink <sup>9</sup>	Capt. Harkemaw	ditto			Captn. J. McDonell	70—	Coteau du Lac with his former master.

<sup>1</sup> Taken at Bells Town, making his escape out of a window in Col. Gordon's House.

<sup>2</sup> Runed away some time ago from his late Master.

<sup>3</sup> Taken at the same place endeavoring to make his escape, also runed away from his late Master.

<sup>4</sup> Sold by Sir John Johnson in lieu of a Negro wench and child of his Property which Col. Gordon exchanged for this Wench.

<sup>5</sup> Sold by Capt. Thomson of Col. Butlers Rangers, to Sir Johnson who gave him to W Langen Since Dead.

<sup>6</sup> Taken at his masters house by Capt John the Mohawk, with Waggon & Horses which he got ready to convey his mistress to Schenectady.

<sup>7</sup> Sold by John Grant to Captn Alexander McDonell.

<sup>8</sup> Sold by Wm. Bowen his Former Master, to Captn John McDonell of Col. Butlers Rangers.

<sup>9</sup> Came in with Sir John Johnson, and are now employed in Captn Harkimers company of Batteau Men.

Names	Former Masters	Property of Loyalists	Rebel Property	By Whom Brought in	To Whom Sold	Price Sold For	Where They Are at Present
Tance	Adam Fonda		Rebel				Coteau du Lac.
Cato	Pruyne		ditto				ditto
Jack	Major Fonda		ditto				ditto
Jack	ditto		ditto				With his Master.
William	Sir J. Johnson	Loyalist		Rl. Rt., N. Y.			ditto
Frank	ditto	ditto		ditto			ditto
Farry	ditto	ditto		ditto			ditto
Jack	ditto	ditto		ditto			ditto
Abraham	ditto	ditto		ditto			ditto
Tom <sup>10</sup>	ditto	ditto		ditto			ditto
Sam	ditto	ditto		ditto			ditto
Jacob a boy	ditto	ditto		ditto			ditto
Tance a boy	ditto	ditto		ditto			With her master.
Phillis	ditto	ditto		ditto			ditto
Betty	ditto	ditto		ditto			ditto
Jade	ditto	ditto		ditto			ditto
Jane	ditto	ditto		ditto			ditto
Hager	ditto	ditto		ditto			ditto
Nicholas	Col. Claus	ditto		Mohawk Rangers			With his master.
Tom	ditto	ditto		ditto			ditto
Peter	ditto	ditto		ditto			ditto
Maria	ditto	ditto		ditto			ditto

A Negro man name unknown<sup>11</sup>  
N. B. several others carried to Niagara by Indians and White Men<sup>12</sup>  
Chas. Grandison Col. Warner

<sup>10</sup> Since dead—All these marks for Sir John Johnson Joyned him on the Mohawk.

<sup>11</sup> Sold by a Soldier of the 8th Regt to Lieut Harkemer of the Corps of Rangers, who sold him to Ensign Sutherland of the Rl Rt N. Y.

<sup>12</sup> Sent a Prisoner to Fort Chambly—The Indians still claim the allowance promised them by ye Commandr in Chief.

JOHN JOHNSON,  
Lieut Col Comm.

## CHAPTER III

### AFTER THE PEACE

Early in the summer of 1782, Haldimand received orders from Sir Guy Carleton then in New York to act only on the defensive. This was due to the negotiations for peace being on the way, and from that time it may fairly be said that Canada was at peace.

One slave felt the movement in the air. This was Plato, an old Negro slave who had been taken in Carleton's operations against Fort George in 1780 and brought to Montreal where he entered the service of St. Luc, a personage in those days. Plato had belonged to a Mr. Stringer who, the slave always asserted, never joined the rebels. But when, on November 3, 1782, there was made by the Commissary of Prisoners at Quebec a return of the prisoners who had requested to remain in the province, Plato's name appeared in the list. The next year he changed his mind and on July, 17, 1783, he presented a petition to Haldimand asking him to "excuse these few lines from a slave who would wish to go again to his own Master and Mistress." He added: "The Gentleman I am now living with Mr. St. Luc says he is very willing to let me go with the first party that sets out from here" (Montreal).<sup>1</sup> Another Negro slave Roger Vaneis (Van Ness) who had also been taken at Fort George declined to go. He was living with Lieutenant Johnson and was to have his freedom on serving for a time already about completed.<sup>2</sup>

The declaration of peace, however, brought many more slaves into Canada. Even before the treaty was signed some of those who had kept their faith to England's crown and desired to live and die under the old flag made their

<sup>1</sup> *Canadian Archives*, B. 163, p. 258: *ibid.*, B. 163, p. 324.

<sup>2</sup> *Ibid.*, B. 163, p. 258.

way to the north. After the peace when the cause was lost, many thousands came. Many of these had been slaveholders and they brought their slaves with them. Some settled in what was afterwards Lower Canada in Sorel and elsewhere, some in the upper country, around Cornwall, Kingston, and Niagara, and a very few crossed the river at Detroit.<sup>3</sup>

Returns made about the time show a large number of slaves—euphemistically disguised as *servants* in some cases. A Report of 1784 shows 14 near Cataraqui (Kingston). Another of the same year for the new townships on the River St. Lawrence beginning at Township No. 1, on Lake St. Francis and running upwards, gives

1st Battn. late King's R. Rifles .....	25
Tps. 1, 2, 3, 4, 5.	
Part Major Jessup's Corps .....	12
Tps. 6, 7 & pt. 8.	
2nd Battn.	
Tps. 3, 4, Cataraqui .....	10
Capt. Grass, Party	
Tp. 1 Cataraqui (apparently none)	
Part Major Jessup's Corps	
Tp. 2 Cataraqui .....	12
Major Rogers' Corps .....	14
Tp. 3 Cataraqui	
Major VanAlstine's Party of Loyalists <sup>4</sup> .....	17
	90

In the return of the disbanded troops and Loyalists at Sorel the same year, the number of servants is given at 5; none near Chambly, 3 about St. John's, 40 about Montreal,

<sup>3</sup> As Britain kept possession of Detroit until 1796, many United Empire Loyalists settled on the west side of the river at that point. A few remained on the east side of the Niagara River as Fort Niagara was held in the same way.

<sup>4</sup> *Canadian Archives*, B. 168, p. 42.

Different detachments of disbanded regulars on Tp. 5 Cataraqui, detachment of Germans under Baron Kritzenstein on Tp. 5 Cataraqui and Rangers of 6 Nations Department settled with the Mohawks on Bay of Quinte return no servants. *Canadian Archives*, B. 168, p. 42. Report dated Montreal, July 1, 1784.

and 8 about Lachine.<sup>5</sup> In the Niagara district in 1782 the blunt word "slave"<sup>6</sup> is used and the number given at only one. In 1784 the first census in which slaves were counted was made. In the District of Quebec there were 88, in the District of Trois Rivières 4, and in the District of Montreal 212. In what was afterwards the Province of Lower Canada there were in all 304.

The sale and marriage of Negro slaves continued to be<sup>7</sup> recorded. For example, there are extant two notarial acts of sale of a female Negro slave called Peg, June 9, 1783 from Elias Smith to James Finlay and May 14, 1788 from Finlay to Patrick Langan. In each case the price was £50<sup>8</sup>. On January 20, 1785 there took place at Christ Church the marriage of Francis and Jane both slaves to Colonel Campbell. On March 9, 1785, there was a sale of a female Negro slave named Sarah, by James Morison, merchant, as agent for Hugh McAdam, of Saratoga, New York, to Charles Lepallieur, Clerk of the Court of Common Pleas. The price was 36 louis. On April 1, 1785 Elizabeth Cady of New York, sold to William Ward of Vermont, four Negroes: Tobi 24 years, Joseph 20 years, Sarah 19 years and a child six months, the price being 250 louis. On April 26, William Ward sold three of these slaves at Montreal to William Campbell—that is Tobi, Sarah and the child for \$425. On May 6, William Campbell sold these three slaves to Dr. Charles Blake for \$300.

On September 5, there followed the sale of a Pani slave

<sup>5</sup> *Canadian Archives*, B. 168, pp. 44, 47, 48, 51, 55, 61, 63, 67, 68, 71, 77, September, 1784. See also B. 168, pp. 81, 88, 92, 95, 99, 100, 101, 102. These may be found in the Report for 1891 of the *Canadian Archives* Department, pp. 5-20.

<sup>6</sup> *Ibid.*, B. 169, p. 1. There is a column for "Male Slaves" and one for "Female Slaves." Thomas McMicken has the proud monopoly, he had one male slave. The other fifteen householders had none. But then he had 20 hogs to look after and no one else had more than 14; most many fewer.

<sup>7</sup> *Canadian Archives*, B. 225, 2. p. 406. Massicotte B. R. H. *ut supra*.

<sup>8</sup> LaFontaine *ut supra*, pp. 21, 22.

<sup>9</sup> Those in the text are taken from M. Massicotte's Article, B.R.H. *ut supra*. The letter of Campbell is *Can. Arch.*, B. 162, p. 351. That of Doty, *ibid.*, p. 365: the Report is *ibid.*, p. 385.

called Charlotte, aged eighteen years, by Dame Marie-Josephe Deguire, widow of Jean-Etienne Waden, to Jacob Schieffelin, auctioneer, for 21 louis. The said slave had been brought from Upper Canada by Mr. Waden in 1776. To increase her value it was said that the slave had had the measles and the small-pox and was not scrofulous nor had any other defect.

On January 22, 1786, there took place at Christ Church the marriage of the slaves, Thomas York and Margaret Mc-Cloud. On March 17, 1787, Samuel Mix, Merchant of Saint-Jean on the Richelieu, sold to Louis Gauthier, merchant tanner of the Faubourg Saint Laurent, a female Negro slave named Rose aged 14 years for the sum of 40 louis. On June 6, 1789, Charles Lepallieur resold to James Morison the female Negro slave Sarah whom he had sold to him in 1785. The price was 36 louis. On the sixth of June James Morison sold the same Sarah for 50 louis to Joseph Andrews, at a profit of 14 louis. On April 3, 1790 there was a sale by Oliver Hasting to M. le chevalier Chs. Boucher de la Bruère, de Boucherville, of a Negro of the name of Antoine, aged eight years and a half. The price was 90 minots de blé. On September 9, 1791 followed the sale at auction of the female Negro slave Rose, aged 19 years, by William Matthews, merchant of Sorel, to Lambert Saint-Omer, Merchant of Montreal, for 38 louis and 5 shillings. This slave had already belonged to S. Mix as set forth above.

Alexander Campbell writing from Montreal August 16, 1784, to Major Mathews says that having sent to Albany to recover some of his debts, Adam Fondea of Cauchnawago of Tryon's County gave as an excuse for not paying his debt that a certain Negro woman named Dine born in his own family and his actual property was taken away from his house by Captain Samuel Anderson of Sir John Johnson's First Batallion, and was still detained by him as his property. Fondea being willing to pay the debt had sent a power of attorney to take his slave, sell her and

pay the debt with the proceeds. Campbell asked that the governor should order Dine to be seized and sold as no Magistrate had the power or the inclination to give such an order. No attention seems to have been paid to this request.

On September 15, 1784, James Doty writing also from Montreal says that "with some difficulty to myself I have . . . purchased a Negro boy from Lieut. Clench of the Indian Department which boy has been allowed his provisions drawn at Cataraque (Kingston) from the time of his first coming into the Province with other Loyalists from N. York last year." He asked to have this allowance continued. There was no answer. The report of settlers near Cataraque for this year gave 3 "servants" and near Oswegatchie 11. But the importation of Slaves was not encouraged indiscriminately.<sup>10</sup>

The accustomed abuses were not wanting. In an action *Poirée v. Lagord* in the Court of Common Pleas at Montreal July 1788, it was proved that Lagord had sold to Poirée in September, 1787, a free Negro for £37.6. He was ordered to repay the price with interest. Another and more celebrated case was that of the Negro Nero. In 1780 Haldimand sent a detachment of troops accompanied by Mohawk Indians to attack Ballstown and the Saratoga region. They captured a number of Negroes some of them the slaves of Colonel Gordon of the American service. These were claimed by the white men and Indians, and as was the custom, they were brought to Montreal and sold. One Negro called Dublin was known to be free. He was liberated and enlisted in the army. Lieutenant Patrick Langan acted as agent for the Indians and sold Nero to John Mittleberger for £60, December 5, 1780. Claiming the Negro as a prisoner of war General Allan Maclean im-

<sup>10</sup> In a letter from Henry Hope, Lieutenant-Governor dated Quebec, November 6, 1786, to Captain Enys, 29th Reg't., we read:

"I am by desire of His Excellency the Commander in Chief (Lord Dorchester) to require that no negro slaves shall be permitted on any account to pass into this Province by the Post under your command."

prisoned him "in the public Provot." He made his escape and went to his master Colonel Gordon and Mittleberger sued Langan in 1788 for the price and for damages. In January 1789 he was awarded judgment for the £60 and interest.<sup>11</sup> About the same time Rossiter Hoyle, attorney for the trustees of Mary Jacobs, obtained a judgment in the Court of Common Pleas at Montreal that Donald Fisher and Elizabeth his wife should forthwith deliver "two negro women, the one named Silvia Jane, the other Ruth Jane," which said Negro women, they had sold to Mary Jacobs by a notarial deed for £50 or pay £50 with costs.<sup>12</sup>

There are also in existence advertisements for the sale of Negroes. In the *Quebec Gazette* of March 18, 1784, is the advertisement of the sale of a female Negro slave, price to be obtained on inquiry of Madame Perrault. In the issue of March 25, 1785, there is advertised for sale a Negro of about twenty-five years of age who has had the smallpox. There appear also a few advertisements for runaway slaves.

There arose also some complaints like the following: In 1784 there was presented at Quebec to Sir Frederick Haldimand, Governor in Chief, a petition from John Black showing that the petitioner hath served as a seaman in His Majesty's service on board the sloop, *Happy Couple* of New York for which he had a certificate to shew, and was then living servant to Mrs. Martin, the wife of Captain Martin of this place, who wanted to deprive him of his liberty and humbly begged His Excellency to grant him a passport.<sup>13</sup>

The immigration into Canada of those who had been British subjects was ardently desired by the home authorities. To encourage this immigration, the Imperial Parlia-

<sup>11</sup> LaFontaine *ut supra*, pp. 22, 23, 24, 44, 45, 46. *Le Monde Illustré* December 9, 1893. Massicotte, *Bulletin des Recherches Historiques* for November, 1918, pp. 348 sqq.

<sup>12</sup> LaFontaine *ut supra*, p. 43. The advertisements spoken of are on p. 21.

<sup>13</sup> *Can. Arch.*, B. 217, p. 397. What if anything was done on the petition does not appear.

ment in 1790 passed an Act<sup>14</sup> which had some effect in increasing the slave population. Intended to encourage "new settlers in His Majesty's Colonies and Plantations in America," it applied to all "subjects of the United States." It allowed an importation into any of the Bahama, Bermuda or Somers Islands, the province of Quebec (then including all Canada), Nova Scotia and every other British territory in North America. It allowed the importation by such American subjects of "Negroes, household furniture, utensils of husbandry or cloathing free of duty," the "household furniture, utensils of husbandry and cloathing" not to exceed in value £50 for every white person in the family and £2 for each Negro, any sale of Negro or goods within a year of the importation to be void. After the division of the Old Province of Quebec into Upper and Lower Canada in 1791 the course of slavery was different.<sup>15</sup>

It seems appropriate to close this chapter by adding a number of available advertisements including some of runaway apprentices.<sup>16</sup>

Il s'est enfui de chez les Soussignés, la nuit du 12 du courant, Un Nègre Esclave nommé POMPÉ d'environ cinq pieds cinq pouces d'hauteur, robuste, il a été acheté dernièrement de M. Perras, négociant de cette ville; il avoit sur lui quand il a décampé un gilet et des culottes brunes: Celui qui le ramenera aura HUIT PIASTRES de Récompense, et les frais raisonnables qu'il aura faits. Quiconque le retirera chez lui sera poursuivi suivant la dernière rigueur de la Loi, par

JOHNSTON & PURSS.

RUN-AWAY from the subscribers, in the Night of the 12th inst. a Sailor Negro Slave named POMPEY, about 5 Feet, 5 Inches

<sup>14</sup> (1790) 30 George III, c. 27.

<sup>15</sup> The division of the Province of Quebec into two provinces, that is, Upper Canada and Lower Canada, was effected by the royal prerogative, Sec. 31, George III, c. 31, the celebrated Constitutional Act of Canada. Technically and in law, the new province was formed by Order in Council, August 24, 1791, but there was no change in administration until December 26, 1791.

<sup>16</sup> These I owe to the kindness of the officers of the Canadian Archives Department of Ottawa.

high, and is Robust; he was lately bought of Mr. Perras, Merchant in this Town; had on when he went away a brown Jacket and Breeches. Whoever brings him to the Subscribers shall have EIGHT DOLLARS Reward and reasonable Charges paid. Any Person Harboursing him will be prosecuted according to the utmost Rigor of the Law, by

JOHNSTON & PURSS.

Run-away from the Subscriber, living in Québec, on the Evening of the 9th Instant, an indented Servant Woman, named Catharine Osburn, about 20 or 21 years of Age, red fac'd, very fat and rough skin'd, about 5 Feet 5 Inches high, a little mark'd with the Small-Pox; She had on a purple colour'd Stuff Jacket flower'd with green and white, a blue thick Kersey Petticoat, blue Stockings with White clocks, an old red Cloak; and took with her two new Shifts of good Dowlas Linen, seven plain and two lac'd caps. She was inticed away by two discharg'd soldiers, John Linsey and John McDonald, said to be going for New-England. McDonald was formerly Turnkey at the Gaol; they were both of the 60th Regiment. Whoever takes them up, and secures them, so that they may be brought to Justice, shall receive Five Dollars Reward for each of them; and whoever secures the Woman, or brings her to her Master, shall receive Five Dollars Reward, and all reasonable Charges, paid by

WILLIAM LAING.

N. B. All Persons are forbid to harbour or carry any of them off. It is thought that they are still harbour'd in and about this City Quebec, 14th March, 1767.—*Quebec Gazette*, 1767.

Whereas William Russey, an article'd Servant to Mr. Suckling, of this City, hath lately run-away, and absented himself from the Service of his said Master: If any Person will give Information to the said Mr. Suckling of the said Servant, so that he may be apprehended and brought before John Collins, Esq; one of His Majesty's Justices of the Peace for the District of Quebec, shall, upon such Apprehension and Bringing, receive Eight Dollars Reward, to be paid by me the Subscriber: And any Person or Persons who shall, after this Notice, employ, harbour or conceal the said Servant, will be prosecuted with the utmost Severity of the Law, by me,

GEO. SUCKLING.

QUEBEC, 14th April, 1767.

—*Quebec Gazette*, 1767.

Run-away, from James Crofton, Vintner in Montreal, the Third of May, 1767, a Mulatto Negro Slave, named Andrew, born in Maryland Twenty-three Years of Age, middle sized, very active and sprightly, has a remarkable large Mouth, thick lips, his Fingers crooked, speaks good English and French, a little Dutch and Earse; is supposed to have with him forged Certificates of his Freedom, and Passes. Whoever takes up and secures the said Negro, so that his Master may have him again, shall have Eight Dollars Reward, besides all reasonable charges, paid by Mr. Henry Boone, Merchant, at Quebec, or James Crofton, at Montreal.

N. B. He is remarkable for being clean dres'd and wearing a Handkerchief tied round his Head: is very well known to all the Gentlemen at Quebec, that has been in Montreal, and who have used my House, and was Three Months with Mr. Joseph Howard, of Montreal Merchant, last Summer in Quebec.—*Quebec Gazette*, 1767.

#### TO BE SOLD,

For no Fault, the Owner having no employ for him,

A likely Negro fellow, about 23 or 24 Years of Age; understands Cooking, waiting at Table, and Houshold Work, &c, &c. He speaks both English and French. For further Particulars enquire of the Printers.—*Quebec Gazette*, 1770.

From the Subscriber, on Sunday morning the 24th ult, about four o'Clock, a Negro Lad named NEMO, born in Albany, near eighteen years of age, about five feet high full round fac'd, a little marked with the Smallpox, speaks English and French tolerably; he had on when he went away a double-breasted Jacket of strip'd flannel, old worsted Stockings, and a pair of English Shoes. Also a Negro Wench named CASH, twenty-six years old, about 5 feet 8 inches high, speaks English and French very fluently; she carried with her a considerable quantity of Linen and other valuable Effects not her own; and as she has also taken with her a large bundle of wearing apparel belonging to herself, consisting of a black satin Cloak, Caps, Bonnets, Ruffles, Ribbons, six or seven Petticoats, a pair of old Stays, and many other articles of value which cannot be ascertained, it is likely she may change her dress. All persons are hereby forewarned from harbouring or aiding them to escape, and Masters of vessels from carrying them off, as they may depend on being prosecuted to the utmost rigour of the Law;

and whoever will give information where they are harboured; or bring them back to the Subscriber at Quebec, or to Mr. George Ross, Merchant at Sorel, shall have TEN DOLLARS Reward for each, and all reasonable charges. HUGH RITCHIE.

N. B. The Lad was seen at Sorel on Friday morning the 29th ult. and there is reason to believe they are both lurking thereabout.

QUEBEC, November 2, 1779.

—*Quebec Gazette*, 1779.

Ran-Away on Sunday the 24th of October, JOHN BARCLAY, an Apprentice, aged 15 years, small of his age, has short black and lank Hair, dark hazle Eyes, good complexion a little freckled, speaks good English and a little French: had on when he went away a light grey Coat and Waistcoat, and stript cotton Trowsers with leather Breeches under them. Whoever will apprehend him or give information so that he may be apprehended, shall receive Five Guineas Reward from

SHOOLBRED & BARCLAY.

QUEBEC, November 2, 1779.

—*Quebec Gazette*, 1779.

Run Away from his bail, an indented servant man named Christian Miller, born in Germany, by trade a Tailor, he is about 5 feet 9 or 10 inches in stature, well made, middling long black hair, speaks English tolerably well, he was formerly a servant to a German Hessian officer, one Mr. Seiffort, Lieutenant in Capt. Schoels regiment, has very much the art and behvaious of a sham beau and has a variety of cloaths, viz. a Maroon Coat, a brown ditto, lined with light blue silk, the one had Gold the other Silver Buttons, a brown Great Coat and a variety of Waistcoats and Breeches: Whoever will apprehend the said Run-away, so as the subscriber may have him in custody shall receive FIVE GUINEAS reward, over and above any reasonable expences; and all masters of vessels, officers of the army and others, are forwarn'd not to harbour or entertain him nor to be aiding in his escape, on pain of being prosecuted as the law directs.

Note. If apprehended at Quebec, apply to Mr. Wm. Laing, Merchant, or to the subscriber at Montreal.

(Signed) JOHN MITTLEBERGER.

MONTREAL, 4th July, 1782.

*Quebec Gazette* 1782.

Ran Away from the subscriber, on Thursday evening the 21st instant, an Apprentice Boy named JOSEPH POWERS, a Shoemaker, about fifteen years of age, of a fair complexion short hair, speaks English and French, had on when he went away a Blanket Coat, light blue Waistcoat and Breeches very dirty, a Check Shirt much wore, a round Hat, and a pair of Slippers: this is to give notice to the public that they are not to harbour the said Apprentice in their houses or families, otherwise they will be prosecuted as the law directs.

ALEXR. WALLACE.

QUEBEC, November 27, 1782.

—*Quebec Gazette*, 1782.

Ran-Away from the Printing-Office, On Monday night last, an Apprentice Lad named Duncan M'Donell, about 19 years of age, about five feet five inches high, of a fresh complexion; speaks English, French and Erse: all persons are hereby forwarn'd from harbouring him, as they may depend on being prosecuted to the utmost rigour of the Law, and whoever will bring him back shall have One Guinea Reward from the

PRINTER.

QUEBEC, April 17, 1783.

—*Quebec Gazette*, 1783.

#### TO BE SOLD.

A NEGRO WENCH about 18 years of age, who came lately from New York with the Loyalists. She has had the Small Pox—The Wench has a good character and is exposed to sale only from the owner having no use for her at present.

Likewise will be disposed of a handsome Bay Mare.

For particulars enquire of the Printer.

—*Quebec Gazette*, 1783.

A Gentleman going to England has for sale, a Negro-wench, with her child, about 26 years of age, who understands thoroughly every kind of house-work, particularly washing and cookery: And a stout Negro—boy, 13 years old: Also a good horse, cariole and harness. For particulars enquire at Mr. William Roxburgh's Upper-town, Quebec, 10th May, 1785.

—*Quebec Gabette*, 1785.

To be SOLD together.

A Handsome Negro Man and a beautiful Negro Woman married to one another: the man from twenty-three to twenty-four years of age, between five and a half and six English feet high: the woman from twenty-two to twenty-three years of age; both of a good constitution. For further information, such as may be desirous of purchasing them must apply to Mr. Pinguet, in the Lower-town of Quebec, Merchant.

—*Quebec Gazette*, 1788.

## CHAPTER IV

### LOWER CANADA

The Province of Lower Canada continued the former law—in criminal matters, the English law, in civil matters the French law. It was not long before the status of the slave became a burning issue. At the first session of the first Parliament<sup>1</sup> of the new Province Lower Canada, Mr. P. L. Panet, a member of the House of Assembly, moved (January 28, 1793) for leave to introduce a bill for the abolition of slavery in the province and leave was unanimously given. On the twenty-sixth of February, Panet introduced a bill pursuant to leave given, and it was read in French and in English. On the eighth of March, Mr. B. Panet proposed the first reading of the bill and it was so read. On the nineteenth of April Mr. P. L. Panet moved that the bill be taken into consideration by the Committee of the Whole on the following Tuesday. The motion was debated and Mr. Debonne moved an amendment to table the bill, which was carried 31 to 3.<sup>2</sup> There was no further effort toward legislative dealing with slavery until 1799.<sup>3</sup>

The sale of Negroes continued as indicated by the

<sup>1</sup> Under the Canada Act of 1791, the provinces had each a parliament or legislature, an upper house, the Legislative Council, of nominated members, not fewer than seven in Upper and not fewer than fifteen in Lower Canada, and a lower house, the House of Assembly, sometimes called the House of Commons, elected by the people, not fewer than sixteen in Upper and not fewer than fifty in Lower Canada.

<sup>2</sup> In the sister province a bill to the same effect was more fortunate in the same year a little later. This will be considered in the next chapter.

<sup>3</sup> In a work of some authority, Bibaud's *Pantheon Canadien*, page 211, it is said that "Joseph Papineau, Notary Public, Member of the Legislative Assembly for Upper Quebec presented about 1797 a petition of the citizens of Montreal for the abolition of slavery." If that be the case there was nothing done on the petition, but it seems probable that the author refers to the petition of 1799 spoken of later in the Text.

records.<sup>4</sup> On the twelfth of May, 1794, Francois Boucher de la Périère and Marie Pecaudy de Contrecoeur, his wife, gave liberty to James, their Negro slave, aged 21 years, on condition that he should live in the most remote parts of the upper country. If, however, he left those parts, he should return to slavery. On the fifteenth of December, 1795, Frs. Dumóulin, merchant of Bout de l'Île sold to Myer Michaels, merchant, a mulatto named Prince, aged 18 years, for the price of 50 louis.

On the sixteenth of January, 1796 there was found a bill of sale of a female Negro slave named Rose, dated January 15, 1794, the vendor being P. Byrne, the purchaser Simon Meloche, for the price of 360 shillings, deposited with the Notary J. P. Delisle. On the third of September John Shuter by notarial act promised his Negro, Jack, to give him his liberty in six years, if, in the meantime, he served him faithfully. Later, on November 2, 1803, Shuter declared that Jack had fulfilled his obligation, and he accordingly emancipated him. On the thirteenth of September, J. B. Routier, merchant of the Faubourg Saint-Antoine, sold to Louis Charles Foucher, Solicitor-General of His Majesty, Jean Louis, a mulatto, aged 27 years, height 5' 10", the price being 1300 shillings. Routier declared that he had bought Jean Louis as well as his mother at the Island of Saint-Domingue in 1778. On the twenty-third of November César, a free Negro of New London, Connecticut, engaged for ten years as a domestic to Dr. John Aussem, living in the Faubourg Saint Antoine, with a salary of 30 louis in advance. Dr. Aussem reserved to himself the right to sell the services of his domestic to whomsoever he pleased during the ten years.

On the twenty-fifth of May, 1797 Dame Marie-Catherine Tessier, Widow of Antoine Janisse, in his lifetime a voy-

<sup>4</sup> From Massicotte *ut supra* in *Le Bulletin des Recherches Historiques*, Vol. II, p. 136, it is said: "Une annonce publiée dans la Gazette de Quèbec vers: cette époque (*i. e.*, 1797) represente un nègre courant à toutes jambes. 'Il est offert une recompense honnête à qui remenera à son maître marchand de Trois Rivières son esclave fugitif' Ce pauvre diable pensait sans doute que la loi qu'on proposait pourrait pas d'effet retroactif."

ageur, liberated her slave Marie Antoine de Pade, an Indian, aged 23 years, in recognition of her services which she had rendered her, and in addition gave her a trousseau. On the twenty-fifth of August Thomas Blaney, gold painter, sold to Thomas John Sullivan, hotel-keeper of Montreal, the Negro Manuel about 33 years old for 36 louis, payable in monthly instalments of three louis each. On the same date and before the same notary, Sullivan promised the slave to liberate him in 5 years, if he served him faithfully. On the twenty-second of November George Westphall, formerly Lieutenant of the 6th Regiment, who owed 20 louis to Richard Dillon, proprietor of the Montreal Hotel in security for payment, delivered to his creditor a mulatress, a slave called Ledy, aged 26 years. She was to work with Mr. Dillon until he was repaid what was owed him by Westphall for principal and interest.

In the year 1793, there came up in the Court of Appeal at Quebec a case involving slavery but nothing was really decided. The plaintiff Jacob Smith sued Peter McFarlane in the Court of Common Pleas for taking away his wife and her clothes and detaining them. McFarlane claimed that Smith's wife was his slave. The Court of Common Pleas gave the plaintiff judgment for £100 and McFarlane appealed to the Court of Appeal. The Court pointed out that it was for McFarlane to prove that Smith's wife was his slave and that he had not done so: but as there had been error in the proceedings the case was sent back to be retried. It is important to notice that the court considered that if McFarlane could prove that Smith's wife was his slave, he had the right to take her away.<sup>5</sup>

A lawsuit also arose over the Negro Manuel (Allen) sold August 25, 1797, to Thomas John Sullivan. When Blaney sold him for £36 Sullivan paid down only half and the balance with interest £30.15.2 was sued for in the Court of King's Bench at Montreal in 1798. Sullivan pleaded that Manuel was not the plaintiff's slave but a free Negro

<sup>5</sup> LaFontaine *ut supra*, pp. 49-51.

and that he had run away March, 1798, at Montreal where he continued to be: and Sullivan claimed to be reimbursed the £18 which he had paid. On the sixth of October Manuel himself came into the suit and claimed that "by the laws of this land he is not a slave but a freeman." Evidence was given that he had absconded from Sullivan's service alleging as a reason that he was a freeman, "that other blacks were free and that he wanted to be free also." In February, 1799, the court held that no title or right to sell Manuel has been shown and dismissed the action directing the return of the £18.<sup>6</sup>

In 1797 the Imperial Act of 1732 for the sale of Negroes and other hereditaments for debt in the American Plantations was repealed so far as it related to Negroes<sup>7</sup> but this made no difference in their status. The courts, however, were becoming astute in favor of assisting those claiming freedom. In February, 1798, a certain female Negro slave called Charlotte belonging to Miss Jane Cook left her mistress and refused to return. On information laid she was committed by the magistrates to prison. She sued out a writ of habeas corpus from the Court of King's Bench at Montreal and Chief Justice, James Monk, ordered her release. On this becoming known, the Negroes of the city and district of Montreal became very threatening in their demeanor. Many renounced all service and one woman called Jude who had been bought at Albany in 1795 for £80 by Elias Smith, a merchant of Montreal, left her master and was committed to prison in the same way by the magistrates. Being brought up in the Court of King's Bench at Montreal on habeas corpus, Chief Justice Monk discharged her March 8, 1798 without deciding the question of slavery. The Chief Justice declared that he would set free every Negro, articed apprentice, or domestic servant who should be committed to prison in this way by the

<sup>6</sup> LaFontaine *ut supra*, pp. 52 & 56.

<sup>7</sup> For the Act of 1732 (5 George II, c. 7) see *ante* p. 13. The repealing Act was (1797) 37 George III, c. 119 (Imp.).

magistrates. But this was because the statute in force at that time<sup>8</sup> which gave power to the magistrates to cause such due correction and punishment to be ministered to an apprentice as they thought fit and this empowered them to commit apprentices to the house of correction as a punishment, but it gave no authority to commit to a common gaol or other prison.

These decisions alarmed the owners of slaves: and a petition from many inhabitants of Montreal was presented to the House of Assembly April 19, 1799, by Joseph Papi-neau. This petition set forth the ordinance of the Intendant Randot in 1709<sup>9</sup> the Act of 1732,<sup>10</sup> that of 1790,<sup>11</sup> the facts concerning Charlotte, Jude and the other Negroes, the judgments of Chief Justice Monk, and the absence of any house of correction. It prayed that an Act should be passed that until a house of correction should be established every slave, Panis or Negro who should desert the service of his master, might be proceeded against in the same way as apprentices in England, and be committed to the common gaol of the District; and further that no one should aid or receive a deserting slave, or that there should be passed a law declaring that there was no slavery in the Province or such other provision concerning slaves should be made as the House should deem convenient.<sup>12</sup> The petition was laid on the table.

In 1799 there was passed an Act providing houses of correction for several districts, but no provision was made

<sup>8</sup> The Statute of 1562, 5 Elizabeth, c. 4, not repealed until 1814, 54 George III, c. 96 (Imp.).

<sup>9</sup> See ante, p. 3.

<sup>10</sup> *Ibid.*, p. 13, n. 12.

<sup>11</sup> *Ibid.*, p. 37.

<sup>12</sup> "Ou qu'une loi puisse être passée déclarant qu'il n'y a point d'esclavage dans la Province; ou telle autre provision concernant les esclaves que cette Chambre, dans sa sagesse, jugera convenable." The Act of 1799 providing for houses of correction (really the common goal) was 39 George II, c. 6 (L. C.), and was to be in force for two years. It was amended and continued for four years by the Act (1802) 42 George III, c. 6 (L. C.) and again by (1806) 46 George III, c. 6 (L. C.), until January 1, 1810 when it expired.

concerning slavery. Perhaps the wisdom of this house proved insufficient to devise any "provision convenable."

The next year another petition was brought in by Papineau from certain inhabitants of the District of Montreal saying that doubts had been entertained how far property in Negroes and Panis was sustainable under the laws of the province. They cited Randot's ordinance, the recognition of slavery for years, and stated that in a recent case the Court of King's Bench at Montreal in discharging a slave of Mr. Fraser's who had been committed to the house of correction by three justices of the peace, had expressed the opinion that the Act of 1797<sup>13</sup> had repealed all the laws concerning slavery. They asked that the House should pass an act declaring that with certain restrictions slavery did exist in the province and investing the owners with full property in the slave; and that this chamber should also pass such laws and regulations in the matter as should be thought advisable.<sup>14</sup>

The petition on motion of Messrs. Papineau and Black was referred to a committee of five, Papineau, Grant, Craigie, Cuthbert and Dumas. The committee reported and Cuthbert introduced on April 30, 1800, a bill to regulate the condition of slaves, to limit the term of their slavery and to prevent further introduction of slavery in the province. The bill passed the second reading and was referred to the Committee of the Whole, but got no further. The next year Cuthbert introduced a similar bill with the same result, and again in 1803. The reason for the failure of these attempts was that any legislation on slavery would in view of the decisions of the courts be reactionary and change for the worse the condition of the slave.

The most celebrated of these decisions was in the case

<sup>13</sup> See ante, note 7. The effect of this Act was probably not as stated. The slave of Mr. Fraser's was Robin alias Robert to be spoken of *infra*, pp. 49, 50.

<sup>14</sup> The two reasons given for the request are the familiar ones. The petitioners had paid large sums for the slaves who had left them and "they are all wholly convinced that that class of men really lazy leading an idle and abandoned life would attempt to commit crime."

of Robin, *alias* Robert, a black. James Fraser, a Loyalist of the colony of New York, became the owner of Robin a Negro man in 1773, before the American Revolution. The colonies were successful and provisional articles of peace were signed November 30, 1782. Congress proclaimed them April 11, 1783 and it was almost inevitable that they would become a permanent and definitive treaty. Article VII provided for the speedy evacuation by the British forces of territory to be allotted to the United States of America "without carrying away any negroes or other property of the American inhabitants." There was allowed full time for everyone who desired to live under the British flag to leave New York. James Fraser made up his mind to go to Nova Scotia and obtained a pass from William Walton, the Magistrate of Police of the city, for his slave Robin and another, Lydia, September 23, 1783.<sup>15</sup> Fraser went to Shelborne, Nova Scotia, and the following year in September he went to "the Island of St. John,"<sup>16</sup> accompanied by Robin who was and acknowledged himself to be Fraser's property. Afterwards Fraser brought him to the Current of Saint Mary near the city of Montreal where Fraser became a farmer. Robin, infected with the pernicious doctrines of freedom then rather prevalent left Fraser, March 19, 1799, and went to live with Richard, a tavern keeper in Montreal. Fraser laid an Information before Charles Blake, a justice of the peace, and January 31, 1800, Charles Blake, Robert Jones and James Dunlop, justices of the peace of the District of Montreal committed Robin to the "Common Gaol and House of Correction at Montreal" with a warrant to Jacob Kuhn "Keeper of His

<sup>15</sup> The definitive treaty was in fact signed September 3, 1783, but not ratified by Congress until January 14, 1784. The armistice had been concluded January 20, 1783. In the definitive treaty, Article VII contains the same provisions as to Negroes as the corresponding article in the preliminary articles.

<sup>16</sup> Isle St. Jean so called from about the end of the sixteenth century until 1798, when it was given the name Prince Edward Island out of compliment to Prince Edward, Duke of Kent (father of Queen Victoria), then commanding the British Forces in North America. The name it still retains.

Majesty's Jail and House of Correction" to receive "a negroman named Robert who refuses to go home to his owner and him safely to keep till he may be discharged or otherwise dealt with according to law."

In the February Term 1800 of the Court of King's Bench for the District of Montreal<sup>17</sup> Mr. A. Perry, his advocate, obtained a writ of habeas corpus and on the tenth of February the black was produced in court. Mr. Perry for the black and Mr. Kerr for James Fraser presented their arguments upon this day and on the thirteenth of February, and after consideration and consultation the court five days later ordered the discharge of Robin alias Robert from his confinement under the warrant.<sup>18</sup>

The decision proceeded on the ground that the Act of 1797 which repealed the provision for the sale of Negroes to answer a judgment had revoked all the laws concerning slavery. Remembering that the Act of 1732 was intended to change the common law of England which did not allow the sale of land under a writ of execution, *feri facias*, it should probably be considered that the sole effect of the repeal of the act as regards Negroes was to exempt them from sale under *feri facias*, without affecting their status. And it is well known that slavery continued in the West India Islands and in Upper Canada long after the Act of 1797.

<sup>17</sup> The Judges were James Monk, Chief Justice and Pierre Louis Panet and Isaac Ogden, Puisne Justices.

<sup>18</sup> LaFontaine *ut supra*, pp. 56-63. It has often been said that it was Chief Justice Osgoode who gave the death blow to slavery in Lower Canada. For example, in James P. Taylor's *Cardinal facts of Canadian History*, Toronto, 1899, on p. 88 we find a statement that in 1803, Chief Justice Osgoode in Montreal declared slavery inconsistent with the laws of Canada. But Osgoode became Chief Justice of the Province in July, 1794. Continuing as such Chief Justice, he became Chief of the Court of King's Bench for the District of Quebec later on in the same year on the coming into force of the Act of 1794, 34 George III, c. 6, which erected two Courts of King's Bench, one for each District. James Monk became Chief Justice of the Court of King's Bench for the District of Montreal, which position he retained until 1825. Osgoode resigned his position and went to England in 1801 and lived in England until his death in 1824: he was never Chief Justice at Montreal.

The effect of the decisions while not technically abolishing slavery rendered it innocuous. The slave could not be compelled to serve longer than he would, and the burden of slavery was rather on the master who must support his slave than on the slave who might leave his master at will. The legislature refusing to interfere, the law of slavery continued in this state until the year 1833 when the Imperial Parliament passed the celebrated act which forever abolished slavery in British Colonies from and after August 1, 1834.<sup>19</sup>

As Lower Canada passed no legislation on slavery, the extradition of fugitives was made impossible and Canada became therefore an asylum for the oppressed in the United States. Before the Act of 1833 there was one instance of a request from the Secretary of State of the United States for the delivery up of a slave. The matter was referred to the Executive Council by Sir James Kempt, the Administrator of the Government.<sup>20</sup> The report of the Execu-

<sup>19</sup> One result of these decisions was to induce the escape of Negro slaves from Upper Canada where slavery was lawful to Lower Canada. For example one hears of two of the three slaves whom Captain Allan brought with him into Upper Canada from New Jersey running away to Montreal. The owner pursued them to Montreal and searched for them in vain for ten days. The third slave, a woman, he sold with her child.

The Statute is (1833) 3, 4, William IV, c. 73 (Imp.). One result of this Act is exceedingly curious and to the philosophical lawyer exceedingly interesting. Slaves which had been real estate, as soon as the act was passed ceased to be such, and the benefit to be obtained from their labor until fully enfranchised and the money to be paid by the legislature as compensation for their freedom became personal estate. See the luminous judgment of the Judicial Committee of the Privy Council in *Richard v. Attorney General of Jamaica*, Moore's *Report of Cases in the Judicial Committee* (1848), Vol. 6, p. 381.

In a note on p. 35 of a paper in the *Transactions of the Royal Society of Canada*, 1900, on *La Declaration de 1732*, M. 'Abbé Auguste Gosselin, Litt.D., F.R.S., Can., we read:

“On trouve dans le livre de Mgr. Tanguay *A travers les Registres*, p. 157, une notice sur l'Esclavage au Canada, avec un 'Tableau des familles possédant des esclaves de la nation des Panis.' L'esclavage ne fut définitivement aboli par une loi, en Canada, qu'en 1833.”

The learned author does not mean that there was legislation on slavery in Canada in 1833, or that it was Canadian legislation which abolished slavery; for such was not the case.

<sup>20</sup> From September 8, 1828, to October 19, 1830.

tive Council shows the view held that "the Law of Canada does not admit a slave to be a subject of property."

At a meeting of the Executive Council of the Province of Lower Canada held at the Council Chamber in the Castle of St. Lewis, on Thursday, June 18, 1829, under Sir James Kempt, the Administrator of the Government, the following proceedings were had:

"Report of a Committee of the whole Council. Present The Honble. the Chief Justice in the Chair, Mr. Smith, Mr. DeLery, Mr. Stewart, and Mr. Cochran. On Your Excellency's reference of a letter from the American Secretary of State requesting that Paul Vallard accused of having stolen a Mulatto Slave from the State of Illinois may be delivered up to the Government of the United States of America together with the Slave.

"May it please Your Excellency,

"The Committee have proceeded to the consideration of the subject matter of this reference with every wish and disposition to aid the Officers of the Government of the United States of America in the execution of the laws of that dominion and they regret therefore the more that the present application cannot in their opinion be acceded to.

"In the former cases the Committee have acted upon the principle which now seems to be generally understood that whenever a crime has been committed and the perpetrator is punishable according to the *Lex Loci* of the country in which it is committed, the country in which he is found may rightfully aid the police of the country against which the crime was committed in bringing the criminal to justice—and upon this ground have recommended that fugitives from the United States should be delivered up.

"But the Committee conceive that the crimes for which they are authorized to recommend the arrest of individuals who have fled from other Countries must be such as are *mala in se*, and are universally admitted to be crimes in every nation, and that the offence of the individual whose person is demanded must be such as to render him liable to arrest by the law of Canada as well as by the law of the United States.

"The state of slavery is not recognized by the law of Canada nor does the law admit that any man can be the proprietor of another.

“Every slave therefore who comes into the province is immediately free whether he has been brought in by violence or has entered it of his own accord; and his liberty cannot from thenceforth be lawfully infringed without some cause for which the law of Canada has directed an arrest.

“On the other hand, the Individual from whom he has been taken cannot pretend that the slave has been stolen from him in as much as the law of Canada does not admit a slave to be a subject of property.

“All of which is respectfully submitted to Your Excellency’s Wisdom.”<sup>21</sup>

<sup>21</sup> *Canadian Archives*, State K, p. 406.

## CHAPTER V

### UPPER CANADA—EARLY PERIOD

The first Parliament of the Province of Upper Canada sat at Newark formerly and now Niagara-on-the-Lake, September 17, 1792. The very first act of this first Parliament of Upper Canada reintroduced the English civil law.<sup>1</sup> This did not destroy slavery, nor did it ameliorate the condition of the slave. It was rather the reverse, for as the English law did not, like the civil law of Rome and the systems founded on it, recognize the status of the slave at all, when it was forced by grim fact to acknowledge slavery, it had no room for the slave except as a mere piece of property. Instead of giving him rights like those of the "servus," he was deprived of all rights, marital, parental, proprietary, even the right to live. In the English law and systems founded on it, the slave had no rights which the master was bound to respect.<sup>2</sup> At one time, indeed, it was understood in the English colonies that the master had the *jus vitæ necisque* over his slaves; but at the beginning of the eighteenth century the Crown much to the anger and disgust of the colonists made the murder of a Negro a capital offence, and at least some of the governors vigorously upheld this decision.<sup>3</sup>

Upper Canada was settled almost wholly by United Empire Loyalists who had left their homes in the revolted colonies and kept their faith to the Crown. Many of them

<sup>1</sup> The Statute is (1792) 32 George III, c. 1 (U. C.).

<sup>2</sup> Compare the opinion of the Chief Justice of the Supreme Court of the United States in the celebrated Dred Scott case. 19 Howard, 354, pp. 404, 405.

<sup>3</sup> See as to this Reginald W. Jeffery, *The History of The Thirteen Colonies of North America 1497-1763* (London), p. 190. This interesting work which I have found accurate gives Governor Spotswood as enforcing the royal decree rigidly.

brought their slaves as well as their other property to the new land. The statute of 1790 encouraged this practice.<sup>4</sup>

The first Lieutenant-Governor of Upper Canada was Col. John Graves Simcoe. He hated slavery and had spoken against it in the House of Commons in England. Arriving in Upper Canada in the summer of 1792, he was soon made fully aware by the Chloe Cooley case that the horrors of slavery were not unknown in his new province. There came up to the Executive Council the complaint that a Negro girl thus named had been cruelly forced across the border and sold in the United States by one Vroomen. Much indignation was expressed by both citizens and officials.

<sup>4</sup> See ante, p. 37.

<sup>5</sup> This is copied from the *Canadian Archives*, Q. 282, pt. 1, pp. 212 sqq.; taken from the official report sent to Westminster by Simcoe. There is the usual amount of uncertainty in spelling names, Grisley or Crisley, Fromand, Frooman, Froomond or Fromond (in reality Vrooman).

The following is a report of a meeting of his Executive Council:

“At the Council Chamber, Navy Hall, in the County of Lincoln, Wednesday, March 21st, 1793.

“Present

“His Excellency, J. G. Simcoe, Esq., Lieut.-Governor, &c., &c.,

The Honble. Wm. Osgoode, Chief Justice,

The Honble. Peter Russell.

“Peter Martin (a negro in the service of Col. Butler) attended the Board for the purpose of informing them of a violent outrage committed by one Fromand, an Inhabitant of this Province, residing near Queens Town, or the West Landing, on the person of Chloe Cooley a Negro girl in his service, by binding her, and violently and forcibly transporting her across the River, and delivering her against her will to certain persons unknown; to prove the truth of his Allegation he produced Wm. Grisley (or Crisley).

“William Grisley an Inhabitant near Mississague Point in this Province says: that on Wednesday evening last he was at work at Mr. Froemans near Queens Town, who in conversation told him, he was going to sell his Negro Wench to some persons in the States, that in the Evening he saw the said Negro girl, tied with a rope, that afterwards a Boat was brought, and the said Frooman with his Brother and one Vanevery, forced the said Negro Girl into it, that he was desired to come into the boat, which he did, but did not assist or was otherwise concerned in carrying off the said Negro Girl, but that all the others were, and carried the Boat across the River; that the said Negro Girl was then taken and delivered to a man upon the Bank of the River by Froomand, that she screamed violently and made resistance, but was tied in the same manner as when the said William Grisley first saw her, and in that con-

The Attorney-General was John White<sup>6</sup> an English lawyer of no great eminence indeed but of sufficient skill to know that the brutal master was well within his rights in acting as he did. He had the same right to bind, export, and sell his slave as to bind, export, and sell his cow. Chloe Cooley had no rights which Vrooman was bound to respect; and it was no more a breach of the peace than if he had been dealing with his heifer. Nothing came of the direction to prosecute and nothing could be done unless there should be an actual breach of the peace.

It is probable that it was this circumstance which brought about legislation. At the second session of the First Parliament which met at Newark, May 31, 1793, a bill was introduced and unanimously passed the House of Assembly. The trifling amendments introduced by the Legislative Council were speedily concurred in, the royal assent was given July 9, 1793, and the bill became law.<sup>7</sup>

Simcoe, as was his duty, reported to Henry Dundas afterwards Lord Melville, Secretary of State for the Home Department concerning this Act September 28, 1793.

dition delivered to the man . . . Wm. Grisley farther says that he saw a negro at a distance, he believes to be tied in the same manner, and has heard that many other People mean to do the same by their Negroes.

“RESOLVED—That it is necessary to take immediate steps to prevent the continuance of such violent breaches of the Public Peace, and for that purpose, that His Majesty’s Attorney-General, be forthwith directed to prosecute the said Fromond.

“ADJOURNED.”

<sup>6</sup> John White was called to the bar in 1785 at the Inner Temple. He practised for a time but unsuccessfully in Jamaica and through the influence of his brother-in-law, Samuel Shepherd, and of Chief Justice Osgoode was appointed the first Attorney General of Upper Canada. It is probable, but the existing records do not make it certain, that it was he who introduced and had charge in the House of Assembly of the bill for the abolition of slavery passed in 1793, shortly to be mentioned. His manuscript diary is still extant, a copy being in the possession of the writer: One entry reads under date Newark Tuesday March 6 1793 “John Young from Grand River came with Mr. Mac-Michael respecting his runaway negro. Rec’d 5 Dols.”

<sup>7</sup> The statute is (1793) 33 Geo. III, c. 7 (U. C.). The Parliament of Upper Canada had two houses, the Legislative Council, an upper house, appointed by the Crown; and the Legislative Assembly, a lower house or House of Commons, as it was sometimes called, elected by the people. The Lieutenant

Simcoe had discovered that there was much resistance to the slave law. There were many plausible arguments of the demand for labor and the difficulty of obtaining "Servants to cultivate Lands." "Some possessed of Negroes," said he, "knowing that it was very questionable whether any subsisting Law did authorize Slavery and having purchased several taken in war by the Indians at small prices wished to reject the Bill entirely; others were desirous to supply themselves by allowing the importation for two years. The matter was finally settled by undertaking to secure the property already obtained upon condition that an immediate stop should be put to the importation and that Slavery should be gradually abolished."<sup>8</sup>

The Act recited that it was unjust that a people who enjoy freedom by law should encourage the introduction of slaves, and that it was highly expedient to abolish slavery in the province so far as it could be done gradually without violating private property. It repealed the Imperial Statute of 1790 so far as it related to Upper Canada, and to enact that from and after the passing of the act "No Negro or other person who shall come or be brought into this Province . . . shall be subject to the condition of a slave or to bounden involuntary service for life." With that regard for property characteristic of the English-

Governor gave the royal assent. The bill was introduced in the Lower House, probably by Attorney General White, as stated in last note, and read the first time, June 19. It went to the committee of the whole June 25, and was the same day reported out. On June 26 it was read the third time, passed and sent up for concurrence. The Legislative Council read it the same day for the first time, went into committee over it the next day, June 28, and July 1, when it was reported out with amendments, passed and sent down to the Commons July 2. That house promptly concurred and sent the bill back the same day. See the official reports: *Ont. Arch. Reports for 1910* (Toronto, 1911), pp. 25, 26, 27, 28, 32, 33. *Ont. Arch. Rep. for 1909* (Toronto, 1911), pp. 33, 35, 36, 38, 41, 42.

<sup>8</sup> *Canadian Archives*, Q. 279, 2, p. 335.

White in his diary says "To the 21 June, some opposition in the House not much"—under date June 25 when the Bill was in Committee of the whole he says "Debated the Slave Bill hardly: Met much opposition but little argument."

speaking peoples, the act contained an important proviso which continued the slavery of every "negro or other person subjected to such service" who had been lawfully brought into the province. It then enacted that every child born after the passing of the act, of a Negro mother or other woman subjected to such service, should become absolutely free on attaining the age of twenty-five, the master in the meantime to provide "proper nourishment and cloathing" for the child, but to be entitled to put him to work, all issue of such children to be free whenever born. It further declared that any voluntary contract of service or indenture should not be binding longer than nine years. Upper Canada was the first British possession to provide by legislation for the abolition of slavery.<sup>9</sup>

<sup>9</sup> Simcoe was almost certainly the prime mover in the legislation of 1793. When giving the royal assent to the bill he said: "The Act for the gradual abolition of Slavery in this Colony, which it has been thought expedient to frame, in no respect meets from me a more cheerful concurrence than in that provision which repeals the power heretofore held by the Executive Branch of the Constitution and precludes it from giving sanction to the importation of slaves, and I cannot but anticipate with singular pleasure that such persons as may be in that unhappy condition which sound policy and humanity unite to condemn, added to their own protection from all undue severity by the law of the land may henceforth look forward with certainty to the emancipation of their offspring." See *Ont. Arch. Rep. for 1909*, pp. 42-43.

I do not understand the allusion to "protection from undue severity by the Law of the land." There had been no change in the law, and undue severity to slaves was prevented only by public opinion. It is practically certain that no such bill as that of 1798 would have been promoted with Simcoe at the head of the government as his sentiments were too well known.

Vermont excluded slavery by her Bill of Rights (1777), Pennsylvania and Massachusetts passed legislation somewhat similar to that of Upper Canada in 1780; Connecticut and Rhode Island in 1784, New Hampshire by her Constitution in 1792, Vermont in the same way in 1793; New York began in 1799 and completed the work in 1827, New Jersey 1829. Indiana, Illinois, Michigan, Wisconsin and Iowa were organized as a Territory in 1787 and slavery forbidden by the Ordinance, July 13, 1787, but it was in fact known in part of the Territory for a score of years. A few slaves were held in Michigan by tolerance until far into the nineteenth century notwithstanding the prohibition of the fundamental law (*Mich. Hist. Coll.*, VII, p. 524). Maine as such probably never had slavery, having separated from Massachusetts in 1820 after the Act of 1780; although it would seem that as late as 1833 the Supreme Court of Massachusetts left it open when slavery was

It will be seen that the statute did not put an end to slavery at once. Those who were lawfully slaves remained slaves for life unless manumitted and the statute rather discouraged manumission, as it provided that the master on liberating a slave must give good and sufficient security that the freed man would not become a public charge. But, defective as it was, it was not long without attack. In 1798, Simcoe had left the province never to return, and while the government was being administered by the time-serving Peter Russell,<sup>10</sup> a bill was introduced into the Lower House to enable persons "migrating into the province to bring their negro slaves with them." The bill was contested at every stage but finally passed on a vote of eight to four. In the Legislative Council it received the three months' hoist and was never heard of again.<sup>11</sup> The

abolished in that State (*Commonwealth v. Aves*, 18 Pick. 193, 209). (See Cobb's *Slavery*, pp. clxxi, clxxii, 209; Sir Harry H. Johnston's *The Negro in the New World*, an exceedingly valuable and interesting work, but not wholly reliable in minutiae, pp. 355 et seq.)

<sup>10</sup> Russell became administrator of the Government of Upper Canada, July 21, 1796, and held that position until the arrival of the new Lieutenant-Governor General Peter Hunter, August 16, 1799.

<sup>11</sup> *Ont. Arch. Rep. for 1909*, pp. 64, 69, 70, 71, 75; *ibid.* for 1910, pp. 67, 68, 69, 70.

The bill was introduced in the Lower House by Christopher Robinson, member for Addington and Ontario. He was a Virginian Loyalist, who in 1784 emigrated to New Brunswick, and in 1788 to that part of Canada, later Lower Canada; and in 1792 to Upper Canada. Accustomed from infancy to slavery, he saw no great harm in it—no doubt he saw it in its best form.

The chief opponent of the bill was Robert Isaac Dey Gray, the young Solicitor General, the son of Major James Gray, a half-pay British Officer. He studied law in Canada. He was elected member of the House of Assembly for Stormont in the election of 1796, and again in 1804.

The motion for the three months' hoist in the Upper House was made by the Honorable Richard Cartwright seconded by the Honorable Robert Hamilton. These men, who had been partners, generally agreed on public measures and both incurred the enmity of Simcoe. He called Hamilton a Republican, then a term of reproach distinctly worse than Pro-German would be now, and Cartwright was, if anything, worse. But both were men of considerable public spirit and great personal integrity. For Cartwright see *The Life and Letters of Hon. Richard Cartwright*, Toronto, 1876. For Hamilton see Riddell's edition of *La Rochefoucault's Travels in Canada in 1795* (Toronto, 1817), in *Ont. Arch. Rep. for 1916*; Miss Carnochan's *Queen-*

argument in favor of the bill was based on the scarcity of labor which all contemporary writers speak of, the inducement to intending settlers to come to Upper Canada where they would have the same privileges in respect of slavery as in New York and elsewhere; in other words the inevitable appeal to greed.

After this bill became law, slavery gradually disappeared. Public opinion favored manumission and while there were not many manumissions *inter vivos*<sup>12</sup> in some measure owing to the provisions of the act requiring security to be given in such case against the free man becoming a public charge, there were not a few emancipated by will.<sup>13</sup>

*ston in Early Years, Niagara Hist. Soc. Pub. No. 25; Buffalo Hist. Soc. Pub. Vol. 6, pp. 73-95.*

There was apparently no division in the Upper House although there were five other Councillors in addition to Cartwright and Hamilton in attendance that session, viz.: McGill, Shaw, Duncan, Baby and Grant; and the bill passed the committee of the whole.

<sup>12</sup> Slaves were valuable even in those days. A sale is recorded in Detroit of a "certain Negro man Pompey by name" for £45 New York Currency (\$112.50) in October, 1794; and the purchaser sold him again January, 1795, for £50 New York Currency (\$125.00). (*Mich. Hist. Coll.*, XIV, p. 417.) But it would seem that from 1770 to 1780 the price ranged to \$300 for a man and \$250 for a woman (*Mich. Hist. Coll.*, XIV, p. 659). The number of slaves in Detroit is said to have been 85 in 1773 and 179 in 1782 (*Mich. Hist. Coll.*, VII, p. 524).

<sup>13</sup> A number of interesting wills are in the Court of Probate files at Osgoode Hall, Toronto. One of them deserves special mention, viz.: that of Robert I. D. Gray, the first Solicitor General of the Province, whose death was decidedly tragic. In this will, dated August 27, 1803, a little more than a year before his death, he releases and manumits "Dorinda my black woman servant . . . and all her children from the State of Slavery," in consequence of her long and faithful services to his family. He directs a fund to be formed of £1,200 or \$4,800 the interest to be paid to "the said Dorinda her heirs and Assigns for ever." To John Davis, Dorinda's son, he gave 200 acres of land, Lot 17 in the Second Concession of the Township of Whitby and also £50 or \$200. John, after the death of his master whose body servant and valet he was, entered the employ of Mr., afterwards Chief, Justice Powell; but he had the evil habit of drinking too much and when he was drunk he would enlist in the army. Powell got tired of begging him off and after a final warning left him with the regiment in which he had once more enlisted. Davis is said to have been in the battle of Waterloo; he certainly crossed the ocean and returned later on to Canada. He survived till 1871, living at Cornwall, Ontario, a well-known character—with him, died the last of all those

The number of slaves in Upper Canada was also diminished by what seems at first sight paradoxical, that is, their flight across the Detroit River into American territory. So long as Detroit and its vicinity were British in fact and even for some years later, Section 6 of the Ordinance of 1787 "that there shall be neither slavery nor involuntary servitude in the said territory otherwise than as punishment of crime" was a dead letter: but when who had been slaves in the old Province of Quebec or the Province of Upper Canada.

In the *Canadian Archives*, M. 393, is the copy of a letter, the property of the late Judge Pringle of Cornwall, by Robert I. D. Gray to his sister Mrs. Valentine dated at Kempton, February 16, 1804, and addressed to her "at Captain Joseph Anderson's, Cornwall, Eastern District": speaking of a trip to Albany, New York, he says:

"I saw some of our old friends while in the states, none was I more happy to meet than Lavine, Dorin's mother. Just as I was leaving Albany I heard from our cousin Mrs. Garret Stadts who is living in Albany in obscurity and indigence owing to her husband being a drunken idle fellow, that Lavine was living in a tavern with a man of the name of Broomly. I immediately employed a friend of mine, Mr. Ramsay of Albany, to negotiate with the man for the purchase of her. He did so stating that I wished to buy her freedom, in consequence of which the man readily complied with my wishes, and altho' he declared she was worth to him £100 (*i.e.*, \$250) he gave her to me for 50 dollars. When I saw her, she was overjoyed and appeared as happy as any person could be, at the idea of seeing her child Dorin, and her children once more, with whom if Dorin wishes it, she will willingly spend the remainder of her days. I could not avoid doing this act, the opportunity seemed to have been thrown in my way by providence and I could not resist it. She is a good servant yet—healthy & strong and among you, you may find her useful, I have promised her, that she may work as much or as little as she pleases while she lives—but from the character I have of her, idleness is not her pleasure, I could not bring her with me, she wanted to see some of her children before she sets out; I have paved the way for her, and some time this month, Forsyth, upon her arrival here will forward her to you. . . ."

Then follows a pathetic touch:

"I saw old Cato, Lavine's father at Newark, while I was at Col<sup>l</sup>. Ogden's; he is living with Mrs. Gouverneur—is well taken care of & blind—poor fellow came to *feel* me, for he could not *see*, he asked affectionately after the family."

In the will of the well-known Colonel John Butler of Butler's Rangers there are bequests to his son Andrew of "a negro woman named Pat": to his grandson John of "a Negro Boy named George . . . until the said negro arrives at the years that the Law directs to receive his freedom" and to John's sister Catharine "a negro girl named Jane" for a similar time.

Michigan was incorporated as a territory in 1805, the Ordinance of 1787 became legally and at least in form effective. Many slaves made their way from Canada to Detroit, then a real land of the free; so many, indeed, that we find that a company of Negro militia composed entirely of escaped slaves from Canada was formed in Detroit in 1806 to assist in the general defence of the territory.<sup>14</sup>

<sup>14</sup> *Michigan Hist. Coll.*, XIV, p. 659. But the actual effect of the Ordinance of 1787, even after 1805 was not absolute. "As late as 1807 Judge Woodward refused to free a negro man and woman on a writ of habeas corpus, holding in effect that as they had been slaves at the time of the surrender in 1796, there was something in Jay's Treaty that forbade their release." *Michigan as a Province, Territory and State*, 1906, p. 339. "There is a tradition that even as late as the coming of Gen. John T. Mason, as Secretary of the Territory in 1831, he brought some domestic slaves with him from Virginia. It is not improbable that a few domestic servants continued with their old Masters down to the time of the adoption of the State Constitution" (in 1835). *Ibid.*, p. 338, note.

Before Detroit and its adjoining territory were given up by the British to the Americans under Jay's Treaty, August, 1796, there were many instances of slaves escaping from the United States territory to British territory in that neighborhood and vice versa. One instance of escape from British territory will suffice.

Colonel Alexander McKee, a well-known and very prominent Loyalist of Detroit, lost a mulatto slave in 1795 and his friend and colleague Captain Matthew Elliott sent a man David Tait to look for him in what is now Indiana. Tait's success or want of success is shown by his affidavit before George Sharp a justice of the peace for the Western District of Upper Canada residing in Detroit. The whole deposition will be given as it illustrates the terms on which the two peoples were living at the time in that country, and shows that even then the charges were made which were afterwards made one of the pretexts for the War of 1812. It is given in the *Mich. Hist. Coll.*, Vol. XII, pp. 164, 165.

"DEPOSITION

"I being sent by Captain Elliott in search of a Molato man name Bill the property of Colonel McKee, which was thought to be at Fort Wayne, But on my Arrival at the Glaize was inform'd by the officer there that he was gone, they said he had gained his liberty, by getting into their lines he being stole from their Country.

"They abused the Gentlemen in this place very & Told me that Governor Sancom (Simcoe) Colonel England and Captain Elliott caused bills in print to be dropped near their fort, Encouraging their Soldiers to desert.

"They called Coll McKee & Capt Elliott dam'd rasculs and said that they gave the Indians Rum to make them Drunk to prevent them from going to Counsil & That Capt Brent they said was a Dam'd rascul and had done every-

The number of slaves in Upper Canada cannot be ascertained with anything approaching accuracy. The returns of the census of 1784 show that very many of the 212 slaves in the District of Montreal, which then extended from the Rivers St. Maurice and Godfrey to the Detroit River *de jure* and to the Mississippi *de facto*, were the property of the United Empire Loyalists on the St. Lawrence in territory which in 1791 became part of the new Province of Upper Canada.

The settlement crept up the St. Lawrence and Lake Ontario so as to be as far as the River Trent by the end of the eighteenth century: and Prince Edward County had also its quota of settlers. Until the nineteenth century had set in there were practically no settlers from the Trent to near York (Toronto) but that splendid territory of level clay and loam land covered by magnificent forests of beech and maple gradually filled in and by the 30's was fairly well settled. In the latter territory there were very few, if any, slaves.<sup>15</sup>

Farther east, however, in what became the Eastern and Midland Districts there were many slaves. It is probable that by far the greatest number had their habitat in that region. When York became the provincial capital (1796-7) slaves were brought to that place by their masters. In the Niagara region there were also some slaves, in great part bought from the Six Nation Indians as some of these in the eastern part of the province were bought from the Mis-

thing in his power against them. But they said in Course of Nine Months that they Expected to be in full possession of Detroit and all the Country between their & it & I begged liberty to withdraw when Major Hunt told me to make the best of my way from Whence I came, while I was getting ready to return the Serjeant of their Guard came & Told me it was the Majors orders that I should leave the place immediately & not to stay about any of the Indian Camps. Which Orders I obeyed.

(signed) DAVID TAIT.

Sworn before me at Detroit 4th August 1795.

GEO SHARP, J. P. W. D.''

Indian Affairs, M. G. VII.

<sup>15</sup> I have found no reliable accounts of slaves in this region—some traditions which I have investigated proved unreliable and illusory.

sissaguas who had a rendezvous on Carleton Island near Kingston. In the Detroit region there were many slaves, some of them Panis;<sup>16</sup> and many of both kinds, Panis and Negro bought from the Shawanese, Pottawattaimies and other Western Indians, taken for the most part from the Ohio and Kentucky country. Most of these slaves were west of the river, few being in the Province of Upper Canada *de jure*. Omitting Detroit, the number of slaves in the province at the time of the Act of 1793 was probably not far from 500.<sup>17</sup>

In the Eastern District, part of which became the District of Johntown in 1798, there were certainly some slaves. Justus Sherwood one of the first settlers brought a Negro slave Caesar Congo to his location near Prescott. Caesar was afterwards sold to a half pay officer Captain Bottom settled about six miles above Prescott and after about twenty years service was emancipated by his master. Caesar afterwards married a woman of color and lived in Brockville for many years and until his death. Daniel Jones another old settler had a female Negro slave and there were a few more slaves in the district.<sup>18</sup>

<sup>16</sup> I cannot trace many Panis slaves in Upper Canada proper; that there were some at Detroit is certain and equally certain that some were at one time on both shores of the Niagara River. I do not know of an account of the numbers of slaves at the time; in Detroit, March 31, 1779, there were 60 male and 78 female slaves in a population of about 2,550 (*Mich. Hist. Coll.*, X, p. 326); Nov. 1, 1780, 79 male and 96 female slaves in a somewhat smaller population (*Mich. Hist. Coll.*, XIII, p. 53); in 1778, 127 in a population of 2,144 (*Mich. Hist. Coll.*, IX, p. 469); 85 in 1773, 179 in 1782 (*Mich. Hist. Coll.*, VII, p. 524); 78 male and 101 female (*Mich. Hist. Coll.*, XIII, p. 54). The Ordinance of Congress July 13, 1787, forbidding slavery "northwest of the Ohio River" passed with but one dissenting voice, that of a delegate from New York, was quite disregarded in Detroit (*Mich. Hist. Coll.*, 1, 415); and indeed as has been said, Detroit and the neighboring country remained British (*de facto*) until August, 1796, and part of Upper Canada from 1791 till that date.

<sup>17</sup> This is indicated by a number of facts none of much significance and all together far from conclusive—but it is a mere estimate perhaps not much more than a guess and I should not be astonished if it were proved that the estimate was astray by 100 either way. Indeed contemporary estimates gave for the Nassau District alone in 1791, 300 Negro slaves and a few Panis. Col. Mathew Elliott in 1784 brought more than 50 slaves to his estate at Amherstburg.

It is possible that this part of the province was the home of a Negro who at the age of 101 appeared at the Assize Court at Ottawa in 1867 to give evidence. He was born in the Colony of New York in 1766, had been brought to Upper Canada by his master, a United Empire Loyalist, had fought through the war of 1812 on the British side, was present at the Battles of Chippewa and Lundy's Lane and was wounded at Sackett's Harbor.<sup>19</sup>

In the Midland District at Kingston such leading families as the Cartwrights, Herkimers and Everetts were slave owners. Further west the Ruttans, Bogarts, Van Alstyne,<sup>20</sup> Petersons, Allens, Clarks, Bowers, Thompsons, Meyers, Spencers, Perrys, Pruyns, speaking generally all the people of substance had their slaves.<sup>21</sup>

<sup>18</sup> See letter of Sheriff Sherwood, *Papers &c, Ontario Historical Society* 1901, Vol. 3, p. 107. Justus Sherwood came from Vermont, originally from Connecticut, joined Burgoyne's army in 1777 and came to Canada in 1778, joined Rogers' Rangers and served during the war. He came to Prescott in 1784. He had had a not unusual experience with the Continentals. His "Negroe wench and two negroe children" had been seized and "sold to Wm. Drake." (Second *Ont. Arch. Rep.*, 1904, p. 820.) Daniel Jones, father of Sir Daniel Jones of Brockville, came from Charlotte County, New York (*ibid.*, p. 398). He was also a native of Connecticut.

<sup>19</sup> He was in full possession of all his faculties and had been brought to Ottawa to prove the death of one person in 1803 and of another in 1814. The action was *Morris v. Henderson* "Ottawa Citizen" May 3, 1867. Robert I. D. Gray mentioned in note 13 above, came from this district.

<sup>20</sup> A Van Alstyne—Major Peter Van Alstyne—was elected to represent Prince Edward County in the first Legislative Assembly when Philip Dorland was unseated because he would not take the prescribed oath being a Quaker.

<sup>21</sup> See the interesting paper read before the Women's Historical Society of Toronto by Mrs. W. T. Hallam, B.A., and published in *The Canadian Churchman*, May 8, 1919, republished in pamphlet form. I am authorized by Mrs. Hallam to make full use of her researches and I take advantage of this permission. Mrs. Hallam has also the following:

"There is an old orchard between Collins Bay and Bath, Ontario, now used as a garden, which belongs to the Fairfield family. The children of this Loyalist family brought the seeds in their pockets from the old home in Vermont, and here lie buried the slaves belonging to the Fairfield and Pruyne families. On the way over they milked the cows, which were brought with them, and sometimes the milk was the only food which they had. The old Fairfield Homestead, built in 1793, is still standing, but the negro quarters are unused, for as those who live there say, 'On a hot day you would declare the slaves were still there.' "

It may be noted that there are many records of births, deaths and marriages of slaves. In the Register for the Township of Fredericksburg (Third Township) of the Reverend John Langhorn, Anglican clergyman, we find in 1791, November 13, that he baptized "Richard son of Poms and Nelly a negro living with Mr. Timothy Thompson."<sup>22</sup> On October 6, 1793, "Richard surnamed Pruyn a negro, living with Harmen Pruyn," on March 2, 1796, "Betty, surnamed Levi, a negro girl living with Johannes Walden Meyers" of the Township of Thurlow. On April 22, 1805, "Francis, son of Violet, a negro woman living with Hazelton Spencer<sup>23</sup> Esq. by Francis Green." We find

Miss Alice Fairfield of the White House, Collins Bay, a descendant of these Fairfields gives the following account in a paper read before the Woman's Historical Society, Toronto (of which Mrs. Seymour Corley of Toronto has been good enough to furnish me a copy) "In March 1799, Stephen Fairfield married Maria Pruyn (from Kinder Hook, N. Y.), whose marriage portion included several slaves. They remained with the family as a matter of course after the law had given them their freedom. Of their devotion a story is told—"Mott" the old black nurse of my great grandmother walked to York (Toronto) a distance of 160 miles in cold weather to warn her of a plot against her property—the shoes were literally worn off her feet." The writer adds "The Tory branch of the Fairfield family that came to Canada were from Paulet County, Vermont . . . they brought some 'niggers' as they called their black slaves, into Canada." "The first apples grown in the country were raised from the seeds of apples with which the children had filled their pockets at the old home."

A contributor to the *Napanee Banner* writes:

"There has been considerable controversy of late whether slaves ever were owned in this section of Canada. The Allens brought three slaves with them who remained with the family for years. Thomas Dorland also had a number of slaves who were members of the house-hold as late as 1820. The Pruyns who lived on the front of Fredericksburg had, we are informed, over a dozen slaves with them. The Ruttans of Adolphustown brought two able-bodied slaves with them. Major Van Alstyne also had slaves; so had John Huyck who lived north of Hay Bay, and the Bogarts near neighbors, and the Trampours of the opposite side of Hay Bay. The Clarks of Ernestown, now called Bath, owned slaves who were with them years after their residence in Canada. The Everetts of Kingston Township and the Cartwrights of Kingston had theirs."

<sup>22</sup> A man of considerable note: in 1800 appointed with Richard Cartwright, Commissioner to settle the finances between the two Provinces.

<sup>23</sup> Member for Lenox, Hastings and Northumberland Counties in the first Legislative Assembly: and afterwards Sheriff.

that "Francis, son of Violet . . . by Francis Green as was supposed" was buried January 17, 1806.<sup>24</sup>

In a paper by the late J. C. Hamilton, a barrister of Toronto, he says that Lieutenant Governor Sir Alexander Campbell had favored him with a note concerning slaves at Kingston, which concluded "I had personally known two slaves in Canada: one belonging to the Cartwright and the other to the Forsyth family.<sup>25</sup> When I remember them in their old age, each had a cottage, surrounded by many comforts on the family property of his master and was the envy of all the old people in the neighborhood."<sup>26</sup>

York (Toronto) and its neighborhood were settled later but they received their quota of Negro slaves, at least the town did. In 1880, the *Gazette* at York announces to be sold "a healthy strong negro woman, about thirty years of age; understands cooking, laundry and the taking care of poultry. N. B. She can dress ladies' hair. Enquire of the Printers, York, Dec. 20, 1800."<sup>27</sup>

The best people in the capital owned Negroes. Peter Russell who had been administrator of the government of the province and therefore the head of the State advertised in the *Gazette and Oracle* of February 19, 1806:

"To be sold: a Black Woman named Peggy, aged forty years and a Black Boy her son named Jupiter, aged about fifteen years, both of them the property of the Subscriber. The woman is a tolerable cook and washerwoman and perfectly understands making soap and candles. The boy is tall and strong for his age, and has been employed in the country business but brought up principally as a house servant. The price of the woman is one hundred and fifty dollars. For the boy two hundred dollars payable in three

<sup>24</sup> The Pruyns of Fredericksburg are credited with owning more slaves than any other family in that region. Mrs. Hallam, *ut supra*, p. 4.

The above extracts are taken from the Registers published by the *Ont. Hist. Soc.*, Vol. 1.

<sup>25</sup> Both prominent families in Kingston.

<sup>26</sup> *Trans. Can. Inst.*, Vol. 1 (1889-1890), p. 106.

<sup>27</sup> For this and the following incident see that most interesting book "Toronto of Old" by Henry Scadding, D.D., Toronto, 1873, pp. 293, 294, 295.

years with interest from the day of sale and to be secured by bond, &c. But one-fourth less will be taken for ready money.”

Peggy was not a satisfactory slave, she had awkward visions of freedom. On September 2, 1803, Russell advertised: “The subscriber’s black servant Peggy not having his permission to absent herself from his service, the public are hereby cautioned from employing or harbouring her without the owner’s leave. Whoever will do so after this notice may expect to be treated as the law directs.”

Peggy was not the only slave who was dissatisfied with her lot. On March 1, 1811, William Jarvis, the Secretary of the Province “informed the Court that a negro boy and girl, his slaves, had the evening before been committed to prison for having stolen gold and silver out of his desk in his dwelling house and escaped from their said master; and prayed that the Court would order that the said prisoners with one Coachly a free negro, also committed to prison on suspicion of having advised and aided the said boy and girl in eloping with their master’s property. . . .” It was “ordered that the said negro boy named Henry commonly called Prince be recommitted to prison and there safely kept till discharged according to law and that the said girl do return to her said master and Coachly be discharged.”<sup>29</sup>

Jarvis had slaves when he resided at Niagara. We find in the Register of St. Mark’s Parish there an entry of Feb-

<sup>28</sup> Henry Scadding’s *Toronto of Old*, p. 296. Dr. Scadding, speaks of his “in former times” gazing at Amy Pompadour with some curiosity.

Miss Elizabeth Russell, sister of the Administrator, had a slave, a pure Negro Amy Pompadour, whom she gave to Mrs. Denison wife of Captain John Denison, an old comrade in arms of her brother’s.

<sup>29</sup> *Ibid.*, p. 292. The boy if he had stolen his master’s money would be guilty of grand larceny, a capital offence at the time and consequently not tried at the Quarter Sessions. He was, therefore, recommitted to prison to await the Court of Oyer and Terminer and General Gaol Delivery commonly called the Assizes.

The master probably withdrew the charge against the girl and Coachly, or they may have been so fortunate as that there was no evidence against them.

ruary 5, 1797, of Moses and Phoebe, Negro slaves of Mr. "Sec'y Jarvis." Nor is this a unique entry, for we find this: "1819 April 4, Cupitson Walker and Margt. Lee (of Colour)," but these may have been free.

There were baptized: "1793, January 3, Jane a daughter of Martin, Col. Butler's Negro," "1794, September 3, Cloe, a mulatto," "1800, March 29, Peggy a mulatto (*filia populi*)," "1807, May 10, John of a negro girl (*filius populi*)" and in the same list was a soldier shot for desertion, a soldier who shot himself, "an unfortunate stranger," "R. B. Tickel, alas he was starved," an Indian child, "Cut-nose Johnson, a Mohawk chief" and there is recorded the burial of "Mrs. Waters a negro woman," September 29, 1802.<sup>30</sup>

Slaves continued to run away. Colonel Butler in the *Upper Canada Gazette* of July 4, 1793, advertised a reward of \$5 for his "negro-man servant named John."<sup>31</sup> On August 28, 1802, Mr. Charles Field of Niagara advertised in the *Herald*: "All persons are forbidden harbouring, employing or concealing my Indian Slave Sal, as I am determined to prosecute any offender to the extremity of the law and persons who may suffer her to remain in or upon their premises for the space of half an hour, without my

<sup>30</sup> See the lists in the *Ont. Hist. Soc. Papers* (1901), Vol. 3, pp. 9 sqq.

In the list of marriages are found: "1797, Oct. 12, Cuff Williams and Ann, Negroes from Mr. C. McNabb"; "1800, Dec. 1, Prince Robinson and Phillis Gibson, Negroes" and six other marriages down to 1831 between persons "of Colour". These last were probably not slaves.

That Joseph Brant, "Thayendinaga," the celebrated Indian Chief, had Negro slaves has been confidently asserted and as confidently denied. That there were Negroes in his household seems certain and their *status* was inferior. Whether he called them slaves or not, it is probable that he had full control of them. See Stone's *Life of Brant*, New York, 1838. He rather boasted of his slaves. He was attended on his journeys and at table by two of them, Patton and Simon Ganseville. Hamilton in his *Osgoode Hall*, Toronto, 1904, says (p. 21): "Thayendinaga lived surrounded with slaves and retainers in barbarous magnificence at Burlington." But that is rhetoric.

<sup>31</sup> *Trans. Can. Inst.*, Vol. 1 (1889-1890), p. 105.

written consent will be taken as offending and dealt with accordingly.’<sup>32</sup>

There was always a demand for good slaves. For example, in the *Gazette and Oracle* of Niagara October 11, 1797, W. & J. Crooks of West Niagara “Wanted to purchase a negro girl of good disposition”: a little later, January 2, 1802 the *Niagara Herald* advertised for sale “a negro man slave, 18 years old, stout and healthy; has had the Smallpox and is capable of service either in the house or out-doors. The terms will be made easy to the purchaser, and cash or new lands received in payment.” On January 18, 1802, the *Niagara Herald* proclaimed for sale: “the negro man and woman, the property of Mrs. Widow Clement. They have been bred to the business of a farm; will be sold on highly advantageous terms for cash or lands.’<sup>33</sup>

Slavery in Upper Canada continued until the Imperial Act of 1833<sup>34</sup> but there does not seem to be any record of sales after 1806. Probably the last slaves to become free were two who are mentioned by the late Sir Adam Wilson, Chief Justice successively of the Courts of Common Pleas and Queen’s Bench at Toronto. These were “two young slaves, Hank and Sukey whom he met at the residence of Mrs. O’Reilly, mother of the venerable Miles O’Reilly, Q. C., in Halton County about 1830. They took freedom under the Act of 1833 and were perhaps the last slaves in the province.’<sup>35</sup>

<sup>32</sup> Dr. Scadding *ut supra*, p. 295. This is almost the only trace of Panis slavery in Upper Canada, proper, which I have found. The attempt to make a crime by the advertiser is not without precedent or imitation: it was, however, merely a threat and a *brutum fulmen*.

<sup>33</sup> Dr. Scadding *ut supra*, pp. 294, 295.

Such advertisements as these of 1802 indicate an uneasiness as to the security of the slave property. Dr. Scadding remarks “Cash and lands were plainly beginning to be regarded as less precarious property than human chattels,” *ibid.*, p. 295.

<sup>34</sup> See *supra*, p. 51.

<sup>35</sup> *Trans. Can. Inst., ut supra*, p. 106.

These if actual slaves could not have been very young. If they were brought into the province after the Act of 1793 they would become free *ipso*

In the Detroit neighborhood there were undoubtedly many slaves, Panis and Negro: most of these were lost to the province on the delivery up of the retained territory in 1796 under the provisions of Jay's Treaty. But some were on the Canadian side and some were brought over by their masters on the surrender. Colonel Matthew Elliott who settled in 1784 just below Amherstburg brought many slaves, some sixty it is said. The remains of slave quarters are still in existence on the place. Jacques Duperon Baby the well-known fur-trader had at least thirty.

Antoine Louis Descompte dit Labadie, who raised a family of thirty-three children was the owner of slaves also. He was a wealthy farmer of the Township of Sandwich (now Walkerville) and died in 1806, aged 62. On May 26, 1806, he made at Sandwich his will by which he made the following bequest: "I also give and bequeath to my wife the use or service of two slaves that she may select, as long as she continues to be my widow." After a number of bequests there follows: "I will that all my personal property not here above bequeathed as well as my slaves with the exception of the two left to my wife, be portioned out or sold, and that the proceeds arising therefrom be equally divided between my said wife and the nine children<sup>36</sup> born out of my marriage with her."

Some of these slaves were probably Panis. There is extant a parchment receipt dated at Detroit, October 10, 1775, which reads:

"Je certifie avoir vendu et livré au Sieur Labadie, une esclave Paniese<sup>37</sup> nommée Mannon pour et en considération de la quantité de quatre-vingt minots<sup>38</sup> de Blé de froment qu'il doit me payer

*facto*. If born after that Act they would not properly speaking be slaves at all but only subject to service until the age of 25.

If they were slaves they must have been at least 37 in 1830; but probably they were born after 1793 and had not attained the age of 25 in 1833. They might then be young as described by Sir Adam.

<sup>36</sup> Labadie had been twice married.

<sup>37</sup> For "Panise."

<sup>38</sup> The French minot is 39.36 litres; the Canadian 36.34 litres or 63.94 pints—the bushel is 64 pints—the Canadian minot is consequently almost exactly one bushel.

à mesure qu'il aura au printemps prochain, donné sous ma main au Detroit ce dixième jour d'Octobre, 1775.

Temoin

(Signé) James Sterling<sup>39</sup>

Signé) John Porteous.

Some of the reports of judges who presided over criminal assizes, moreover, contain references to slavery. Mr. Justice Powell tried a Negro, Jack York, with a jury at Sandwich for burglary in 1800. He was found guilty and in accordance with the law at that time, was sentenced to death. Powell respited the prisoner that the pleasure of the Lieutenant Governor might be known. The Lieutenant-Governor at that time was General Peter Hunter a rigid disciplinarian. Hunter wrote Powell that as York had been convicted of "the most atrocious offence without any circumstances of doubt or alleviation" he was to be hanged. When York was made aware of his fate, he promptly escaped from the ramshackle gaol at Sandwich.

In the proceedings Captain McKee informed the judge that the main witness had "been an Indian prisoner redeemed by his father and had lived in his kitchen and he did not think her credit good." She was one of Mr. James Girty's three Negroes and "known to be saucy."<sup>40</sup>

<sup>39</sup> *Essex Historical Society—Papers and Addresses*, Vol. 1, Windsor, Ont. (1913), pp. 13, 39, 48-52.

This is translated thus: "I certify that I have sold and delivered to Mr. Labadie a Panis slave called Manon for and in consideration of 80 minots (practically 80 bushels) of wheat which he is to pay me as he has it the coming spring—given under my hand at Detroit this 10th day of October, 1775.

WITNESS:

(Signed)

(Signed) JOHN PORTEOUS.

JAMES STERLING."

<sup>40</sup> The fact was that Jack York had broken into McKee's dwelling house to commit rape and he had committed rape on the person of Mrs. Ruth Sufflemine (or Stufflemine).

Powell's report is dated from Mount Dorchester, September 22, 1800. *Canadian Archives, Sundries U. C. 1792-1800*; Hunter's decision in May is in *Canadian Archives Letters Hunter to Heads of Departments*, p. 65; York's escape is *ibid.*, p. 84; the Death Warrant is referred to in *Canadian Archives Sundries U. C. 1792-1800*.

There were certainly slaves in the Western District. The will of Antoine Louis Descomps Labadie made May 26, 1806, contains a bequest "I also give and bequeath to my wife Charlotte, the use or service of two slaves that she

Another report nearly a score of years later may be of interest. It can be best understood in its historical setting. During the war of 1812, as soon as the American invasion of Canada began, prices of all commodities began to soar.<sup>41</sup> There was a great demand for beef for the troops regular and militia and the commissariat was not too scrupulously particular to inquire the source whence it might come. The result was that a crime which had been almost unknown suddenly increased to alarmingly large proportions. Cattle roaming in the woods were killed and the meat sold to the army. Prosecutions were instituted in many cases. It was found that the perpetrators were generally, but by no means always, landless men, not infrequently refugee slaves, who had come to the province from the United States. The offence was punishable with death:<sup>42</sup> and convictions were not hard to obtain. But the punishment of death was not in practice actually inflicted.

Whatever the cause, the crime continued until normal conditions were reestablished when it became as rare as it had been before the war. At the Fall Assizes, 1819, at York before Mr. Justice Campbell and a jury, a man of color, Philip Turner, was convicted of stealing and killing a heifer and sentenced to death: Mr. Justice Powell who

may select as long as she continues to be my widow." "A black boy slave to Mrs. Benton, widow of the late Commodore of the Lakes" seems to have been as bad as Jack York. Convicted at Kingston of a house robbery, a capital crime he had the "benefit of clergy" that is, set free as a first offence. But he did not mend his ways. He committed burglary and was convicted at Kingston 1795 before Mr. Justice Powell. The judge sentenced him to be hanged but recommended a pardon. He said the boy was said to be 17 but looked no more than 15 and in view of his education as a slave he hoped that his "would not be the first capital example." *Can. Arch.*, B. 210.

<sup>41</sup> In a memorial by the judges of the Court of King's Bench to the Lieutenant Governor, January 10, 1814, they point out that prices have doubled since the war. The prices before the war and at the time were of bread 1 / and 2 /; of beef 6 d and 1 /; of wood 7 / 6 and 15 /.

<sup>42</sup> Before 1772, this was not a crime at all but only a civil trespass; the Waltham Black Act (1722) 9 George I, c. 22 made it a felony punishable with death without benefit of clergy. This continued to be the law in England until the Act (1827) 7, 8 George IV, c. 27 (Imp.), and in Upper Canada until 1841.

had been in the Commission of Oyer and Terminer with Campbell reported to the Lieutenant-Governor<sup>43</sup> that there had as yet been no execution for this offence in the province and recommended that the sentence should be committed to banishment for life from His Majesty's dominions.<sup>44</sup> Tradition has it that Turner was a refugee from the United States and begged to be hanged rather than sent back where he would be again enslaved.<sup>45</sup>

When the fugitive slave reached the soil of Upper Canada he became and was free with all the rights and privileges of any other freeman: but sometimes the former condition of servitude had unhappy results. One case will suffice. John Harris was a slave in Virginia. He rented a house in Richmond and lived in it with his wife Sarah Holloway. Harris was a painter and gave the greater part of his earnings to his master. The wife earned money by washing and gave to her mistress part of her scanty earnings. The wife's second name was that of her master Major Holloway in whose house she had been married in 1825 to Harris by the Reverend Richard Vaughan, a Baptist minister, a free man. The couple had three children.

In 1833 Harris effected his escape to Upper Canada and came to Toronto (then York) in the spring of 1834 under the name of George Johnstone. In 1847 he obtained from John Beverley Robinson, Chief Justice of Upper Canada a deed of three acres of land part of Lot 12 in the First Concession from the bay east of the river Don in the Township of York. He died without a will in February, 1851. The deserted wife after his escape married a man by the

<sup>43</sup> Sir Peregrine Maitland.

<sup>44</sup> Banishment existed as a punishment in Upper Canada until 1841, when it was finally abolished and succeeded by imprisonment. Banishment was a very common alternative for hanging. I have counted as many as four cases at one assize.

<sup>45</sup> The tradition is a floating and rather indefinite one. It has some plausibility but there is nothing which to my mind can be dignified by the name of proof. The facts of the Turner case will be found in a Report by Mr. (afterwards Chief) Justice Powell to Sir Peregrine Maitland's Secretary Edward McMahon, November 1, 1819, *Canadian Archives, Sundries, U. C.*, 1819.

name of Brown. She continued a slave until the fall of Richmond and died in 1869 or 1870.<sup>46</sup>

<sup>46</sup> *Canadian Archives*, Q. 324, pp. 432, 436 Letter, June 8, 1818, from "Thos. N. Stewart, Capt. H. P. late Royal Newfoundland Regiment" to the Right Honourable Earl Bathurst, dated from Barnstable, North Devon.

Turning to a more pleasant subject, while it may not be strictly within the purview of this treatise, it may be permitted to bring to light from the files of the Canadian Archives a story of a poor black woman who showed true humanity. It may be considered by some at the expense of her patriotism. That will not be admitted by everyone, for what share did the Negro have in America in which he lived more than in Britain which offered him freedom?

When in May, 1813, General Dearborn took Fort George in Upper Canada, one of his prisoners was Captain Thomas N. Stewart of the Royal Newfoundland Regiment who was wounded. Taken to the United States, he was with several other British officers kept for months a close prisoner at Philadelphia as a hostage under the retaliation system.

"At length," said he, "I with fourteen other officers made my escape from the prison at Philadelphia by sawing off the iron bars with the springs of watches, but from the active search which was made ten of my companions were retaken in the course of three days. I . . . attribute my success (as well as that of two more British officers) in being enabled to elude the vigilance of the enemy to the kindness and humanity of a poor black woman to whose protection we committed ourselves in our *real character* and situation: and notwithstanding a reward of one hundred dollars was offered for the apprehension of each officer without our even being able to reward her in an equal degree, she persevered in affording us comfort and accommodation, greatly to her own risk and loss by the total resignation of her small hut and a tender of her services to our use visiting us only at night with provisions, &c. This she continued to do for eight days. When it was thought that the active search was in a great degree abated I ventured by night to leave the abode of this black woman with the intention of going to the Headquarters of the British Army in Canada and this I ultimately succeeded in accomplishing."

His companions leaving one by one at different times also succeeded in returning to the service of their country. Having only \$70 and having to travel 600 miles, Capt. Stewart could give the woman only \$20: and all she received from all the officers was only \$50. He wrote Earl Bathurst, Secretary of State for War and the Colonies asking that she should be remunerated and saying that he would "be most happy to give the address and the source thro' which communication could be made."

Bathurst replied June 13, asking for particulars, and Captain Stewart June 18 wrote again on the eighteenth of June saying that the matter required the utmost circumspection and excusing himself from giving information until he had communication with America, hoping to point out the precise object whom "His Lordship has thought worthy of remuneration." No doubt the matter then passed into the Secret Service, as no further correspondence is preserved in documents open to the public.

*Canadian Archives*, Q. 324, pp. 432, 436.

About that time the eldest son came to Canada, and he brought an action as the heir-at-law against one Cooper, the person in possession.<sup>47</sup> All the facts were clear and the only difficulty in the way was as to the validity of the marriage of the Negro. Chief Justice William Buell Richards, of the Court of Queen's Bench tried the case at the Fall Assizes, 1870, at Toronto. Evidence was given by a Virginia lawyer and judge that there was no law in Virginia either authorizing or forbidding the marriage of slaves because "slaves were property and not persons for marital purposes. . . . In short, by the law of Virginia, slaves were but property, treated as property exclusively, except where by special Statute they were made persons."<sup>48</sup>

On this evidence, therefore, the Chief Justice dismissed the action. The plaintiff appealed to the full Court of Queen's Bench<sup>49</sup> urging that the slaves had done all they could to make their marriage legal. In vain, they were not British subjects and the rules of international law were too rigid to allow of the court holding the marriage legal. Mr. Justice Wilson in giving the judgment of the Court said:

"This is, no doubt, an unfortunate conclusion, for the plaintiff is undoubtedly the child of John Harris and Sarah

<sup>47</sup> Two years after her first husband's death, that is, in 1853, the widow who had then married one Scott sold the lot to Mr. Boomer for \$300. Mr. Boomer sold two acres to Edward Osborne and he to Cooper for \$800. By 1871 the land had appreciated in value so as to make it worth a lawsuit. Of course, the widow never had any right to sell the land, but it was at least ungracious for her son to repudiate her deed.

<sup>48</sup> The law of Virginia as to marriages of slaves even with the consent of the master was fully and clearly stated by the Court of Appeals of Virginia in the case of *Scott v. Raub* (1872) 88 Virginia, 721. See also the decision of the Supreme Court of the United States in the case of *Hall v. United States*, 92 U. S. 127; and in Alabama, *Matilda v. Gardner*, 24 Alabama, 719.

<sup>49</sup> The motion was heard in Trinity Term, 34 Victoriae i.e. in February, 1871; see the report in 31 Upper Canada Queen's Bench Reports, p. 182: *Harris v. Cooper*. The Court was composed of the Chief Justice William Buell Richards, afterward Sir William Buell Richards, Chief Justice of Canada, Mr. Justice Joseph Curran Morrison, afterwards a Judge of the Court of Error and Appeal, and Mr. Justice Adam Wilson, afterwards successively Chief Justice of the Court of Common Pleas, and of the Court of Queen's Bench.

who were made man and wife in form and by all the usual solemnities of real matrimony. The parents were of mature age, of sound sense, reason and understanding. The father had a trade which he followed by permission of his master for a yearly sum which he paid to him for the privilege, or as it is said 'he hired his own time.' He rented a house for himself; he was married with the consent of those who could give it by a minister in orders and in form at least under the sanction of religion: he lived with the woman he had taken as his wife and had children by her and left her only to gain his freedom; yet it is manifest by the force of positive human law, there was no marriage and no legitimate issue.'<sup>50</sup>

<sup>50</sup> 31 Upper Canada Queen's Bench Reports at p. 195, 1871.

## CHAPTER VI

### THE FUGITIVE SLAVE IN UPPER CANADA

Before the Act of 1793, there was some immigration of slaves fleeing from their masters in the United States. After the Act of 1793, however, a slave by entering Upper Canada became free, whether he was brought in by his master or fled from him. Legislation of the United States in the same year<sup>1</sup> increased the number of those fleeing to the province under this law. Slaves who had effected their escape to what were considered free States were liable to be reclaimed by their masters. Shocking instances of the forcing into renewed slavery of the escaped slave and even of enslaving free persons of color are on record and there are told worse which never saw the open light of day.

<sup>1</sup> The first Fugitive Slave Law was passed by the United States in 1793. Three years afterwards occurred an episode, little known and less commented upon, showing very clearly the views of George Washington on the subject of fugitive slaves, at least of those slaves who were his own.

A slave girl of his escaped and made her way to Portsmouth, N. H.; Washington on discovering her place of refuge, wrote concerning her to Joseph Whipple the Collector at Portsmouth, November 28, 1796. The letter is still extant. It is of three full pages and was sold in London in 1877 for ten guineas. (*Magazine of American History*, Vol. 1, December, 1877, p. 759.) Charles Sumner had it in his hands when he made the speech reported in Charles Sumner's *Works*, Vol. III, p. 177. Washington in the letter described the fugitive and particularly expressed the desire of "her mistress" Mrs. Washington for her return to Alexandria. He feared public opinion in New Hampshire for he added:—

"I do not mean by this request that such violent measure should be used as would excite a mob or riot which might be the case if she has adherents; or even uneasy sensations in the minds of well disposed citizens. Rather than either of these should happen, I would forego her services altogether and the example also which is of infinite more importance."

In other words if the slave girl has no friends or "adherents," send her back to slavery—if she has and they would actively oppose her return, let her go—and even if it only be that "well-disposed citizens" disapprove of her capture and return, let her remain free.

Eli Whitney's invention of the cotton gin about the same time<sup>2</sup> made slaves much more valuable and not only checked the movement toward gradual emancipation but increased the ardor with which the fugitive was pursued. From 1793 the influx of fugitive slaves into the province never quite ceased. The War of 1812 saw former slaves in the Canadian militia fighting against their former masters and Canada as an asylum of freedom became known in the South by mysterious but effective means. "As early as 1815 negroes were reported crossing the Western Reserve to Canada in great numbers and one group of Underground Railway workers in Southern Ohio is stated to have passed on more than 1000 fugitives before 1817."<sup>3</sup>

It is not proposed here to give an account of the celebrated Underground Railway. It is sufficient to say that it was the cause of hundreds of slaves reaching the province.<sup>4</sup> Some slaves escaped by their own efforts in what can fairly be called a miraculous way. No more dramatic or thrilling tales were ever told than could be told by some of these refugees. Some having been brought by their masters near to the Canadian boundary then clandestinely or by force effected a passage. Some came from far to the South, guided by the North Star. Many were assisted by friends more or less secretly. These refugees joined

<sup>2</sup> Whitney's first patent was 1784. His rights were firmly established in 1807.

<sup>3</sup> Landon, *Canada's Part in Freeing the Slave*, Ontario Historical Society, Papers, etc. (1919), quoting Birney's *James G. Birney and His Times*, p. 435.

Mr. Landon's paper is of great interest and value and I gladly avail myself of the permission to use it.

<sup>4</sup> A fairly good account of the Underground Railway will be found in William Still's *Underground Railroad*, Philadelphia, 1872, in W. H. Mitchell's *Underground Railway*, London, 1860; in W. H. Siebert's *Underground Railway*, New York, 1899, and in a number of other works on Slavery. Considerable space is given the subject in most works on Slavery.

One branch of it ran from a point on the Ohio River, through Ohio and Michigan to Detroit; but there were many divagations, many termini, many stations; Oberlin was one of these. See Dr. A. M. Ross, *Memoirs of a Reformer*, Toronto, 1893, and *Mich. Hist. Coll.*, XVII, p. 248.

settlements with other people of color freeborn or freed in the western part of the Peninsula, in the counties of Essex and Kent and elsewhere.<sup>5</sup> Some of them settled in other parts of the province, either together or more usually sporadically. Toronto received many. These were superior to most of their race, for none but those with more than ordinary qualities could reach Canada.<sup>6</sup>

The masters of runaway slaves did not always remain quiet when their slaves reached this province. Sometimes they followed them in an attempt to take them back. There are said to have been a few instances of actual kidnapping. There were some of attempted kidnapping. Most of these are merely traditional but at least one is well authenticated.<sup>7</sup>

In May, 1830, a young man with finely chiselled features, bright hazel eyes, apparently a quadroon or octoroon applied for service at the house of Charles Baby, "the old Baby mansion in the . . . historical town of Sandwich" in Upper Canada on the Detroit River. He said he had escaped from slavery in Kentucky, had arrived on the previous evening at Detroit and had crossed the river to Canada as quickly as possible. He had been a mason but understood gardening and attending to horses and had other accomplishments. He was engaged and proved a

<sup>5</sup> The Buxton Mission in the County of Kent is well known. The Wilberforce Colony in the County of Middlesex was founded by free Negroes but they had in mind to furnish homes for future refugees. See Mr. Fred Landon's account of this settlement in the recent (1918) *Transactions of the London and Middlesex Hist. Soc.*, pp. 30-44. For an earlier account see A. Steward's *Twenty Years a Slave* (Rochester, N. Y., 1857).

<sup>6</sup> "The Kingdom of Heaven suffereth violence and the violent take it by force." There can be no doubt that the Southern Negro looked upon Canada as a paradise. I have heard a colored clergyman of high standing say that of his own personal knowledge dying slaves in the South not infrequently expressed a hope to meet their friends in Canada.

<sup>7</sup> *Souvenirs of the Past*, by William Lewis Baby, Windsor, Ontario, 1896. Mr. Baby is a member of an old French-Canadian family of the highest repute for honor and public service. Charles Baby was the author's brother. The author lived with him and tells the story of his own knowledge. The quotations are from Mr. Baby's book.

satisfactory servant “respectful, cleanly, capable, lithe and active as a panther.” His former master came from Kentucky and reclaimed him after the lapse of six months. The recognition was mutual and immediate. The Kentuckian, offered \$2000 to Baby for the return of Andrew his former slave, but the offer was indignantly refused. It turned out that Andrew had taken his master’s favorite horse to assist him in his flight but had turned it loose after riding it some twenty-five miles. Whether for this reason or for some other, the Kentuckian did not appeal for the extradition of Andrew<sup>8</sup> but determined to use violence.

A short time afterwards five desperadoes from Detroit attempted to kidnap Andrew while the family were at Church, but they were successfully resisted by Andrew and Charles Baby until the service was over and the people were seen hastening home. The would-be kidnappers made their escape across the river. Finding it dangerous to keep Andrew so near the border, the neighbors took up a subscription and he was sent by stage to York (Toronto). This place he reached in safety. “He made good” and lived a respectable and useful life undisturbed by any fear of Kentucky vengeance.<sup>9</sup>

The law as to such attempts was authoritatively stated in 1819 by John Beverley Robinson, Attorney General of Upper Canada, afterwards Sir John Beverley Robinson, Bart., Chief Justice of Upper Canada. The opinion will be given in his own words:<sup>10</sup>

“In obedience to Your Excellency’s comments I have perused the accompanying letter from G. C. Antrobus Esquire, His Majesty’s charge d’affaires at the Court of Washington and have attentively considered the question referred to me by Your Excellency thereupon—namely—“Whether the owners of several Negro Slaves who have fled from the United States of America and are now resident in this Province can be permitted to come hither and

<sup>8</sup> As was done in the case of Solomon Mosely, spoken of *infra*, p. 85.

<sup>9</sup> I have not been able to verify other tales of attempted abduction to my satisfaction; there are, however, several stories which may be true.

<sup>10</sup> *Canadian Archives Sundries, U. C., 1819.*

obtain possession of their property, and whether restitution of such Negroes can be made by the interposition of the government of this Province” and I beg to express most respectfully my opinion to your Excellency that the Legislature of this Province having adopted the Law of England as the rule of decision in all questions relative to property and civil rights, and freedom of the person being the most important civil right protected by those laws, it follows that whatever may have been the condition of these Negroes in the Country to which they formerly belonged, here they are free—For the enjoyment of all civil rights consequent to a mere residence in the country and among them the right to personal freedom as acknowledged and protected by the Laws of England in cases similar to that under consideration, must notwithstanding any legislative enactment that may be thought to affect it, with which I am acquainted, be extended to these Negroes as well as to all others under His Majesty’s Government in this Province. The consequence is that should any attempt be made by any person to infringe upon this right in the persons of these Negroes, they would most probably call for, and could compel the interference of those to whom the administration of our Laws is committed and I submit with the greatest deference to Your Excellency that it would not be in the power of the Executive Government in any manner to restrain or direct the Courts or Judges in the exercise of their duty upon such an application.’<sup>11</sup>

Then came a number of applications for the return of runaway slaves cloaked under criminal charges, the pretence being made that they had committed some crime and that it was desired to bring them to trial and punishment. There can be no doubt that in the absence of some constitutional provision every country has the right to keep out criminals and, if they have entered the country, to hand them over to the authorities of the country whence they came; but the rules of international law have never gone so far as to make it obligatory on any country to send away immigrant criminals even if demanded by their former country. It has always been the theory in Upper Canada that the Governor had the power independently of statute

<sup>11</sup> John Beverley Robinson was the son of Christopher Robinson mentioned above.

or treaty to deliver up alien refugees charged with crimes.<sup>12</sup> This was not wholly satisfactory and the legislature took the matter up and passed an act governing such cases, February 13th, 1833,<sup>13</sup> providing for the apprehension of fugitive offenders from foreign countries, and delivering them up to justice. This provides that on the requisition of the executive of any foreign country the governor of the province on the advice of his executive council may deliver up any person in the province charged with "Murder, Forgery, Larceny or other crime which if committed within the province would have been punishable with death, corporal punishment, the pillory, whipping or confinement at hard labour." The person charged might be arrested and detained for inquiry, but the act was permissive only and the delivery up was at the discretion of the Governor-in-Council.

It was under this act that the extradition of Thornton Blackburn was sought but finally refused. The case was this: Two persons of color named Blackburn, a man and his wife, were claimed as slaves on behalf of some person in the State of Kentucky. They were arrested in Detroit in 1833 and examined before a magistrate, who, in accordance with the law of the United States, made his certificate and directed them to be delivered over as the personal property of the claimant in Kentucky. The sheriff took them into custody but when one of them was on the point

<sup>12</sup> The same rule obtained in Lower Canada; (1827) re Joseph Fisher, 1 Stuart's L. C. Rep. 245.

<sup>13</sup> This is the Act (1833), 3 Will IV, c. 7 (U. C.). This statute came forward as cap. 96 in the *Consolidated Statutes of Upper Canada*, 1859, but was repealed by an Act of (United) Canada (1860), 23 Vic. c. 91 (Can.).

The Act of 1833 was drawn by Chief Justice Robinson and introduced by him into the Legislative Council of which he was Speaker—it was a "Government measure." Notice of bringing in the bill was given November 28, 1832; the bill brought in November 30; read the second time December 3 passed the committee of the whole on the fourth of December and was finally passed by the Council the following day. It reached the Legislative Assembly the same day where it was passed without opposition and received the Royal Assent February 13, 1833.

of being removed from the prison to be restored to his owner, he was violently rescued and directed across the river into Canada. On the day before the rescue of Thornton Blackburn his wife eluded the jailer in disguise and escaped to Canada.

The Upper Canadian Government was, therefore, called upon to return these prisoners to the United States. Upon examining the record in the case, however, the Attorney General of Upper Canada in reply to the Governor for information in the case, advised that the so-called offences of Thornton Blackburn in trying to effect his own escape from persons seeking to return him to slavery could not be construed as rioting or rescuing a prisoner from an officer of the law as had been set forth in the requisition papers from the Michigan authorities and certainly could not be applied to Thornton Blackburn's wife who, as the evidence showed, had taken no part at all in the rescue.

The council<sup>14</sup> was thereafter called upon to consider the question whether, if a similar charge had been committed in Canada, the offenders would be liable to undergo any of the punishments provided for in the act passed at the session of the Canadian Legislature in 1833. The Attorney General<sup>15</sup> was of the opinion that had the Governor been confined to the official requisition that had accompanied it, he might have been warranted in delivering up these persons inasmuch as there was evidence on which, according to the terms of the Canadian law, a magistrate would have been warranted in apprehending and committing for

<sup>14</sup> At the meeting were present His Excellency Sir John Colborne, K. C. B. Lieutenant Governor, the Hon. and Rev. John Strachan, D.D., Archdeacon of York, the Honorable Peter Robinson, the Honorable George Herchmer Markland, the Honorable Joseph Fells, and the Honorable John Elmsley. The Executive Council at that time was very much under the influence of the Chief Justice and Dr. Strachan, then Archdeacon afterwards the first Anglican Bishop of York or Toronto.

<sup>15</sup> Robert Sympson Jameson an English barrister of the Middle Temple, a familiar friend of Coleridge and Southey and the husband of Anna Jameson of some literary note.

The report is from the *Canadian Archives, State J.*, p. 137.

trial persons charged with riot, forcible rescue and assault and battery. The Attorney General believed, however, that the Governor and the Council were not confined to such evidence since, though limited in their authority to enforcing the provisions of the act against fugitives from foreign States, on being satisfied that the evidence would warrant the commitment for trial, yet in coming to that conclusion, they were bound to hear not *ex parte* evidence alone but matter explanatory to guide their judgment; for even with the authority so to do, they were not required to deliver up any prisoner so charged, if for any reason they deemed it inexpedient so to do.

The conclusion of the Attorney General, therefore, was that Blackburn and his wife were not charged with any of the offences enumerated in the statute of Canada and that the Governor and Council were not authorized by its provisions to send them out of the province. He said, moreover: "It has not escaped our attention as a peculiar feature in this case that two of the persons whom the Government of this Province is requested to deliver up are persons recognized by the Government of Michigan as slaves and that it appears upon these documents that if they should be delivered up they would by the laws of the United States be exposed to be forced into a state of slavery from which they had escaped two years ago when they fled from Kentucky to Detroit; that if they should be sent to Michigan and upon trial be convicted of the riot and punished they would after undergoing their punishment be subject to be taken by their masters and continued in a state of slavery for life, and that, on the other hand, if they should never be prosecuted, or if they should be tried and acquitted, this consequence would equally follow."

The next case was not so happy in its result. It caused much excitement at the time and is not yet forgotten. Solomon Mosely or Moseby, a Negro slave, came to the province across the Niagara River from Buffalo which he had reached after many days travel from Louisville, Ken-

tucky. His master followed him and charged him with the larceny of a horse which the slave took to assist him in his flight. That he had taken the horse there was no doubt and as little that after days of hard riding he had sold it. The Negro was arrested and placed in the Niagara Gaol. A prima facie case was made out and an order sent for his extradition.<sup>16</sup>

<sup>16</sup> The Executive Council on September 7th 1837 recommended his extradition. The following is a copy of the Proceedings:

EXECUTIVE COUNCIL CHAMBER AT TORONTO Thursday 7th September 1837  
REQUISITION FOR SOLOMON MOSELY

Read the Requisition of the Governor of the State of Kentucky and other documents relating to the surrender of Solomon Mosely a fugitive from the State of Kentucky charged with Horse stealing.

Read also the Attorney General opinion thereon as follows:

ATTORNEY GENERAL'S OFFICE

TORONTO 6th September 1837

Sir,

I have the honor to report that in my opinion there is sufficient proof of the guilt of Solomon alias John Mosely a fugitive from the State of Kentucky charged with horse stealing in that Country—to Warrant His Excellency the Lieutenant Governor (with the advice of the Executive Council) to deliver him up upon the request made by the Governor of the State referred to.

I have the honor to be &c

(Signed) CS HAGERMAN, *Atty, Gen*

J JOSEPH ESQ,

*Civil Secretary.*

The Council concur in the above opinion of the Attorney General and consider that the case comes within 3rd Wm 4 Ch 7 and therefore advise His Excellency the Lieutenant Governor to deliver up the Fugitive alluded to in the requisition of His Excellency the Governor of the State of Kentucky.

—*Can. Arch. State J. Upper Canada*, p. 595.

In a despatch from Head to Lord Glenelg, October 8, 1837, *Can. Arch. Q.* 398, p. 149, Head says: "In a case brought before me only a few days previous to that which is the subject of this communication (*i.e.*, the Jesse Happy case) I insisted on giving up to the Governor of the Commonwealth of Kentucky (a slave) who in order to effect his escape had been guilty of stealing his Master's horse. It was suggested that the real object was to get him back to his Master—not to punish him for the crime. But the crime was perfectly proved and the Council followed the judicial opinion in the Thornton Blackburn case that as the black had been shown to have committed an offence clearly coming within the statute of 1833, they could not advise a course to be taken different from that which should be pursued with respect to free white persons under the same circumstances." They, therefore, advised an order for extradition.

The people of color of the Niagara region made the Mosely case their own and determined to prevent his delivery up to the American authorities to be taken to the land of the free and the home of the brave, knowing that there for him to be brave meant torture and death, and that death alone could set him free. Under the leadership of Herbert Holmes, a yellow man<sup>17</sup> a teacher and preacher, they lay around the jail night and day to the number of from two to four hundred to prevent the prisoner's delivery up. At length the deputy sheriff with a military guard brought out the unfortunate man shackled to a wagon from the jail yard, to go to the ferry across the Niagara River. Holmes and a man of color named Green grabbed the lines. Deputy Sheriff McLeod gave the order to fire and charge. One soldier shot Holmes dead and another bayoneted Green, so that he died almost at once. Mosely, who was very athletic leaped from the wagon and made his escape. He went to Montreal and afterward to England, finally returning to Niagara, where he was joined by his wife, who also escaped from slavery.

An inquest was held on the bodies of Holmes and Green. The jury found "justifiable homicide" in the case of Holmes. "Whether justifiable or unjustifiable" there was not sufficient evidence before the jury to decide in the case of Green. The verdict in the case of Holmes was the only possible verdict on the admitted facts. Holmes was forcibly resisting an officer of the law in executing a legal order of the proper authority. In the case of Green the doubt arose from the uncertainty whether he was bayoneted while resisting the officer or after Mosely had made his escape. The evidence was conflicting and the fact has never been made quite clear. No proceedings were taken against the deputy sheriff; but a score or more of the people of color were arrested and placed in prison for a

<sup>17</sup> To his people he seems to have been known as "Hubbard Holmes"; he is always called a "yellow man," whether mulatto, quadroon, octoroon or other does not appear.

time. The troublous times of the Mackenzie Rebellion came on and the men of color were released, many of them joining a Negro militia company which took part in protecting the border.

The affair attracted much attention in the province and opinions differed. While there were exceptions on both sides, it may fairly be said that the conservative and government element reprobated the conduct of the blacks in the strongest terms, being as little fond of mob law as of slavery, and that the radicals including the followers of Mackenzie, looked upon Holmes and Green as martyrs in the cause of liberty. That Holmes and Green and their followers violated the law there is no doubt; but so did Oliver Cromwell, George Washington and John Brown. Every one must decide for himself whether the occasion justified in the courts of Heaven an act which must needs be condemned in the courts of earth.<sup>18</sup>

It was, however, only when the alleged crime was recent and followed up promptly that the rigid rule of extraditing slaves accused of crime was applied. A case which came before the Executive Council a few days after Mosely's is a good illustration of the care taken in such cases. Jesse Happy, a slave in Kentucky, had made his escape to Canada, stealing a horse with which he outran his pursuers. Knowing the indisposition of the Canadian authorities to return fugitives from slavery, the Governor of Kentucky undertook to have this fugitive extradited on the ground that he was charged with a felony in that commonwealth. It appeared that the real object of the application from Kentucky was not so much to bring Happy to trial for the alleged felony as to reduce him again to a state of slavery. In the report of the Attorney General reference was made to an application for extradition in a case in

<sup>18</sup> The contemporary accounts of this transaction, *e.g.*, in the *Christian Guardian* of Toronto, and the *Niagara Chronicle*, are not wholly consistent. The main facts are clear; although there is some doubt as to the time, the military guard were ordered to fire.

which the offence had been recently committed, and because of this fact the requisition was honored. In the case of Jesse Happy, however, the alleged offence had been committed four years prior to making an effort to have him extradited. No process had been issued in the State of Kentucky nor had any steps been taken to punish him for felony. It was suggested, therefore, that the real object of this apprehension was to give him up to his former owners and to deprive him of the personal liberty secured to him by the laws of Canada.

As the delivery of the slave under these circumstances would subject him to a double penalty, the one of being punished for the crime and the other of being returned to a state of slavery even if he should be acquitted, the Canadian authorities were in a dilemma; for punishment of the felony was in strict accordance with the statutes of Canada whereas the enslavement of the fugitive was in direct opposition to the genius of its institutions and the spirit of its laws. Yet as the council<sup>19</sup> could not take the position that because a man happened to be a fugitive slave he should escape the consequences of crime committed in a foreign country to which a free man would be amenable, action was suspended so as to give the accused time to furnish affidavits of the facts set forth in the petition on his behalf, and not wishing to make of this a precedent without the support of the highest authority, the matter was submitted to the Government in England with a request for their views upon this case as a matter of general policy.<sup>20</sup>

Lord Palmerston having had the matter brought to his attention by Lord Glenelg, Secretary of State for War and the Colonies, recognized its very great importance. He accordingly had it submitted to the Law Officers of the Crown.

<sup>19</sup> Present, Allen, Hon. Augustus Baldwin and Hon. William Henry Draper (afterwards Chief Justice of the Court of Common Pleas, 1856, Chief Justice of the Province of Upper Canada, 1863, and President of the Court of Error and Appeal 1868 till his death, 1877).

<sup>20</sup> *Canadian Archives State J.*, p. 597.

The opinion of these officers Sir John Campbell and Sir Robert Mousey Rolfe appears from a letter from W. T. H. Fox Strangeways, Parliamentary Secretary of State for Foreign Affairs addressed February 25, 1838, to Sir George Gray of the Colonial Department. This officer said:

“I have received and laid before Viscount Palmerston your Letter to me of the 6 December 1837 with its accompanying copy of a Dispatch from Sir Francis Head, in which that officer requests Instructions for his guidance, in the general case of Fugitive Slaves who, having escaped to Canada may be demanded from the Canadian Authorities by the Authorities of the United States on the plea of their having committed crimes in the last mentioned Country and in the particular case of Jesse Happy, who having escaped to Upper Canada more than four years ago, had been demanded from the Lieut. Governor of that Province, upon the ground of a charge of Horse Stealing.

“These two questions have by direction of Lord Palmerston been submitted to the Law Officers of the Crown, and I am directed by his Lordship to state to you the opinion of these officers for the information of Lord Glenelg.

“The Law Officers report upon the general question, that they think that no distinction should in the case contemplated, be made between the demand for Slaves or for Freemen.

“It is the opinion of the Law Officers that in every case in which there is such Evidence of criminality as, according to the terms of the Canadian Statutes, would warrant the apprehension of the accused Party, if the alleged offence had been committed in Canada, then on the requisition of the Governor of the Foreign State, the accused Party ought to be delivered up, without reference to the question as to whether he is or is not a Slave.

“The Law Officers desire however that it should be dis-

tinctly understood, that the Evidence for this Purpose must be evidence taken in Canada, upon which (if false) the Parties making it may be indicted for Perjury.

“The Law Officers remark further on this point that the 3rd Section of the Provincial Statute enables the Governor to refuse to deliver up a Party, whenever special circumstances may render it inexpedient to accede to the demand made to the Governor on such a point.

“The Law Officers, reporting upon the subject of Jesse Happy state that they do not think that there was in that case such evidence of criminality, as, according to the Laws of the Province of Upper Canada would warrant the apprehension of Jesse Happy if the offence charged had been committed in U. Canada.

“The Law Officers indeed go farther, and say that so far as there is any evidence of the Facts, what took place was not Horse Stealing according to the Laws of Upper Canada, but merely an unauthorized use of a horse, without any intention of appropriating it.

“The Law Officers conclude by stating, that upon these grounds, they are of opinion, that Jesse Happy ought to be set at liberty, and that instructions to that effect should be sent to the Lieutenant Governor of Upper Canada.”<sup>21</sup>

On the ninth of May Glenelg wrote to Sir George Arthur who succeeded Bond Head as Lieutenant Governor of Upper Canada, saying: “With reference to my Dispatch to Sir Francis Bond Head of the 4th December last No 255, I enclose for your information the copy of a letter from the Under Secretary of State for Foreign Affairs stating the substance of the opinion given by the Law Officers of the Crown in respect to the restitution of Fugitive Slaves who may be demanded from the Government of Upper Canada

<sup>21</sup> *Canadian Archives*, G. 84, p. 277. The letter to Sir George Arthur is *ibid.*, G. 84, p. 275. The despatch from Lord Glenelg to Sir Francis Bond Head dated January 4, 1837, has endorsed on it a pencil memorandum “Jesse Happy has been liberated by Lieutenant Governor’s command November 14, 1837,” *ibid.*, G. 83, p. 238.

on the plea of their having committed crimes at the places from which they have fled. In conformity with the opinion of the Law Officers of the Crown I have to desire that Jesse Happy, the individual with respect to whom this question was raised shall be forthwith set at liberty.”

It is impossible not to see that the very stringent rules laid down by the Law Officers of the Crown at Westminster were intended to be *in favorem libertatis*. Happy was released November 14th, 1837, and so far as appears from the official records no further application was ever made for the extradition of a runaway slave until after 1842. That year the well-known Ashburton Treaty was concluded<sup>22</sup> between Britain and the United States. This by Article X provides that “the United States and Her Britannic Majesty shall, upon mutual requisitions . . . deliver up to justice all persons . . . charged with murder, or assault with intent to commit murder, or piracy or arson or robbery or forgery or the utterance of forged paper. . . .” Power was given to judges and other magistrates to issue warrants of arrest, to hear evidence and if “the evidence be deemed sufficient . . . it shall be the duty of the . . . judge or magistrate to certify the same to the proper executive authority that a warrant may issue for the surrender of such fugitive.”

It will be seen that this treaty made two important changes so far as the United States was concerned. It made it the duty of the executive to order extradition in a proper case and took away the discretion. It gave the courts jurisdiction to determine whether a case was made out for extradition.<sup>23</sup> These changes made it more difficult

<sup>22</sup> Concluded at Washington, August 9, 1842.

<sup>23</sup> It was held in the Province of Upper Canada that the Act of 1833 was superseded by the Ashburton Treaty in respect to the United States, but that it remained in force with respect to other countries (*Reg. v. Tubber*, 1854, 1, P. R. 98). Since the treaty our government has refused to extradite where the offence charged is not included in the treaty. *In re Laverne Beebe* (1863), 3 P. R. 273—a case of burglary. The provisions of the treaty were brought into full effect in Canada (Upper and Lower) by the Canadian Statute of 1849, 12, Vic. c. 19; C. S. C. (1859), c. 89.

in many instances for a refugee to escape; but the courts were astute as ever in finding reasons against the return of slaves.

The case of John Anderson is a well-known one in evidence. He was born a slave in Missouri. As his master was Moses Burton, he was known as Jack Burton. He married a slave woman in Howard County, the property of one Brown. In 1853, Burton sold him to one McDonald living some thirty miles away and his new master took him to his plantation. In September 1853 he was seen near the farm of Brown, when apparently he was visiting his wife. A neighbor, Seneca T. P. Diggs, became suspicious of him and questioned him. As his answers were not satisfactory he ordered his four Negro slaves to seize him, according to the law in the State of Missouri. The Negro fled, pursued by Diggs and his slaves. In his attempt to escape the fugitive stabbed Diggs in the breast and Diggs died in a few hours. Effecting his escape to this province, he was in 1860 apprehended in Brant County, where he had been living under the name of John Anderson, and three local justices of the peace committed him under the Ashburton Treaty. A writ of habeas corpus was granted by the Court of Queen's Bench at Toronto, under which the prisoner was brought before the Court of Michaelmas Term of 1860.

The motion was heard by the full court.<sup>24</sup> Much of the argument was on the facts and on the law apart from the form of the papers, but that was hopeless from the beginning. The law and the facts were too clear, although Mr. Justice McLean thought the evidence defective. The case turned on the form of the information and warrant, a somewhat technical and refined point. The Chief Justice Sir John Beverley Robinson, and Mr. Justice Burns agreed that the warrant was not strictly correct, but that it could be amended. Mr. Justice McLean thought it could not and should not be amended.

<sup>24</sup> The Chief Justice Sir John Beverley Robinson, Mr. Justice McLean (afterwards Chief Justice of Upper Canada) and Mr. Justice Burns.

The case attracted great attention throughout the province, especially among the Negro population. On the day on which judgment was to be delivered, a large number of people of color with some whites assembled in front of Osgoode Hall.<sup>25</sup> While the adverse decision was announced, there were some mutterings of violence but the counsel for the prisoner<sup>26</sup> addressed them seriously and impressively, reminding them "It is the law and we must obey it." The melancholy gathering melted away one by one in sadness and despair.

Anderson was recommitted to the Brantford Jail.<sup>27</sup> The case came to the knowledge of many in England. It was taken up by the British and Foreign Anti-Slavery Society and many persons of more or less note. An application was made to the Court of Queen's Bench of England for a writ of habeas corpus, notwithstanding the Upper Canadian decision, and while Anderson was in jail at Toronto, the court after anxious deliberation granted the writ<sup>28</sup> but it became unnecessary owing to further proceedings in Upper Canada.

<sup>25</sup> The seat of the Superior Courts in Toronto, the Palais de Justice of the Province.

<sup>26</sup> Mr. Samuel B. Freeman Q. C., of Hamilton, a man of much natural eloquence, considerable knowledge of law and more of human nature; he was always ready and willing to take up the cause of one unjustly accused and was singularly successful in his defences. I have heard it said that it was Mr. M. C. Cameron, Q. C., who so addressed the gathering but he does not seem to have been concerned in the case in the Queen's Bench.

<sup>27</sup> The case is reported in (1860) 20 U. Can. Q. B., pp. 124-123. The warrant is given at pp. 192, 193.

<sup>28</sup> The case is reported in (1861) 3 Ellis & Ellis Reports, Queen's Bench, p. 487; 30, Law Jour., Q. B., p. 129; 7 Jurist N. S., p. 122; 3 Law Times, N. S., p. 622; 9 Weekly Rep., p. 255.

It was owing to this decision that the statute was passed at Westminster (1862) 25, 26, Vic. c. 20, which by sec. 1 forbids the courts in England to issue a writ of habeas corpus into any British possession which has a court with the power to issue such writ. The Court was Lord Chief Justice Cockburn and Justices Crompton, Hill and Blackburn, a very strong court. The Counsel for Anderson was the celebrated but ill-fated Edwin James. The writ was specially directed to the sheriff at Toronto, the sheriff at Brantford and the jail keeper at Brantford. Judgment was given January 15, 1861.

In those days the decision of any Court or of any judge in habeas corpus proceedings was not final. An applicant might go from judge to judge, court to court<sup>29</sup> and the last applied to might grant the relief refused by all those previously applied to. A writ of habeas corpus was taken out from the other Common Law Court in Upper Canada, the Court of Common Pleas. This was argued in Hilary Term, 1861, and the court unanimously decided that the warrant of commitment was bad and that the court could not remand the prisoner to have it amended.<sup>30</sup> The prisoner was discharged. No other attempts were made to extradite him or any other escaped slave; and Lincoln's Emancipation Proclamation put an end to any chance of such an attempt being ever repeated.<sup>31</sup>

<sup>29</sup> Common Law of course, not Chancery.

<sup>30</sup> The court was composed of Chief Justice William Henry Draper, C. B., Mr. Justice Richards, afterwards Chief Justice successively of the Court of Common Pleas, of the Court of Queen's Bench and of the Supreme Court of Canada and Mr. Justice Hagarty, afterwards Chief Justice successively of the Court of Common Pleas, of the Court of King's Bench, and of Ontario.

Mr. Freeman was assisted in this argument by Mr. M. C. Cameron, a lawyer of the highest standing professionally and otherwise, afterwards Justice of the Court of Queen's Bench and afterwards Counsel for the Crown on both arguments were Mr. Eccles, Q. C., a man of deservedly high reputation, and Robert Alexander Harrison, afterwards Chief Justice of the Court of Queen's Bench, an exceedingly learned and accurate lawyer.

The case in the Court of Common Pleas is reported in Vol. 11. Upper Can., C. P., pp. 1 sqq.

<sup>31</sup> *Canadian Archives, Sundries U. C.*, 1807.

It would be unfair to the United States to say or suggest that all the flights for freedom were in the one direction. Very early, trouble was experienced by Canadian owners of slaves from their running away to the United States. The following letter tells its own story. D. M. Erskine the British representative writing from New York, May 26, 1807, to Francis Gore, Lieutenant Governor of Upper Canada, says:

"I have the honour to acknowledge the receipt of your letter of the 24th ult enclosing a Memorial presented to you by the Proprietors of Slaves in the Western District of the Province of Upper Canada.

"I regret equally with yourself the Inconvenience which His Majesty's subjects in Upper Canada experience from the Desertion of their slaves into the Territory of the United States, and of Persons bound to them for a term of years, as also of his Majesty's soldiers and sailors; but I fear no Representation to the Government of the United States will at present avail in

checking the evils complained of, as I have frequently of late had occasion to apply to them for the Surrender of various Deserters under different circumstances and always without success.

“The answer that has been usually given, has been, ‘That the Treaty between Great Britain & the United States which alone gave them the Power to surrender Deserters having expired, it was impossible for them to exercise such an authority without the Sanction of the Laws.’

“I will however forward to His Majesty’s Minister for Foreign Affairs the Memorial above mentioned in the Hope that some arrangements may be entered into to obviate in future the great Losses which are therein described.”

In the *Life and Adventures of Wilson Benson, written by himself* (Toronto, 1876), is found the following, pp. 34–36:

“In 1849 I shipped on the schooner *Rose of Milton*, Capt. Hamilton, cruising on Lakes Ontario and Erie. In one trip to the town of Erie, Pennsylvania, for a cargo of coal, while lying at the dock, a diminutive negro man, with a white beard, came on board the vessel, and inquired of me if this was a British vessel. On being informed that it was, he desired to be secreted, stating that he was a runaway slave, and that his pursuers were on his track. I at once secreted him in a closet which served as a store-room for vegetables, &c., and as we were almost ready to set sail, I did not discover his presence to either Captain or crew until we were some distance out on the lake. When he appeared, Capt. Hamilton inquired of me where I had obtained ‘that child,’ and on being informed, expressed some anxiety, as we were liable to be captured had we been followed by a steamer. As it was, he merely looked up at the rigging, and exclaimed, ‘Blow, breezes, blow!’ The negro, who knew no other name than ‘Sambo’ we brought to Toronto. On one occasion, when I offered him some molasses, he shook his head and made grimaces expressive of disgust. He informed me that the slaves employed on the sugar plantations, when beaten by their masters, in order to obtain an indirect revenge, spat in the syrup, and committed other filthy things as an imaginary punishment upon the whites. I frequently saw Sambo in Toronto, and many times he expressed thankfulness to me for his deliverance. I may here mention that shortly after the arrival of Sambo on board the *Rose of Milton* at Erie, two suspicious-looking men, dressed in plain clothes, came aboard and paced up and down the deck several times, and as all the crew were absent at the time, I felt some apprehension for the safety of the poor fugitive; but seeing nothing of a suspicious appearance, and the almost entire absence of the crew, they sauntered away. I made several other trips up and down the lakes during that summer on the same vessel.”

## CHAPTER VII

### SLAVERY IN THE MARITIME PROVINCES

The French population of the territory by the sea, the Acadians, are described by the poet as:

Men whose lives glided on like rivers that water the woodlands,  
Darkened by shadows of earth, but reflecting an image of heaven.

History does not bear out this idyll; but whatever their faults, at least the Acadians had the negative virtue of possessing no slaves,<sup>1</sup> Panis or Negro: nor was it until the coming of the people whose native air was too pure for a slave that the curse came upon the land.

The permanent settlement by the English of Acadia may fairly be considered as beginning when in 1749 Cornwallis founded Halifax.<sup>2</sup> Negro slaves were among the population of Halifax from the beginning or very shortly after. Where they came from is uncertain and it has been suggested that they came with the original settlers across the ocean. In the absence of any other explanation more plausible, this might be accepted. Lord Mansfield's decision in the Somerset case was a quarter of a century in the future. But it seems more probable that they were brought from the English Colonies, and some almost certainly were.

The official records of the country exhibit much evidence to this effect. In September, 1751, the *Boston Evening Post* advertised "Just arrived from Halifax and to be sold, ten strong hearty, Negro men mostly tradesman, such

<sup>1</sup> So far at all events as appeared from any records that I have seen; it is just possible, however, that "La Liberté, le negre" mentioned in de Meulles' Census of Acadia in 1696 was a black slave, notwithstanding his name.

<sup>2</sup> From 1720 on, Annapolis Royal had a fairly firm government and settlement but it was not until Halifax was founded that it became certain that the country would remain English.

as caulkers, carpenters, sailmakers and ropemakers.<sup>3</sup> Any person wishing to purchase may enquire of Benjamin Halliwell of Boston." Such an advertisement indicates that shipbuilding was slack at Halifax and more brisk at Boston. A conjecture may be hazarded that these slaves had been taken by their master to Halifax to build ships and then returned to the colony when required no longer in Acadia.

Some such conjecture receives a little assistance from a will still on record in Halifax. It was made February 28, 1752, by Thomas Thomas "late of New York but now of Halifax" and disposed of his "goods, chattels and negroes" including one bequest to this effect: "all my plate and my negro servant Orange that now lives with me at Halifax, I leave and bequeath to my son."

In the same year, *The Halifax Gazette* of May 15 contains the advertisement "Just imported and to be sold by Joshua Mauger at Major Lockman's store in Halifax, several Negro slaves as follows: A woman aged 35, two boys aged 12 and 13 respectively, two of 18 and a man aged 30." In the *Halifax Gazette* of Saturday, May 30, 1752, sale is advertised thus: "Just imported and to be sold by Joshua Mauger, at Major Lockman's store in Halifax, several negro slaves, viz., a very likely negro wench, of about thirty-five years of age, a Creole born, has been brought up in a gentleman's family, and capable of doing all sorts of work belonging thereto, as needle-work of all sorts and in the best manner; also washing, ironing, cooking, and every other thing that can be expected from such a slave: also two negro boys of about 12 or 13 years old, likely, healthy, and well-shaped, and understand some English. Likewise two healthy negro slaves of about 18 years of age, of agreeable tempers and fit for any kind of business: And also a healthy negro man of about 30 years

<sup>3</sup> This and most of the facts, dates, etc., in this chapter are taken from the Rev. Dr. T. Watson Smith's fascinating article *The Slave in Canada* in the *Nova Scotia Historical Society's Collections*, Vol. X, Halifax, 1899.

of age.” In September 1759, a Halifax merchant, Malachy Salter wrote to his wife then visiting relatives in Boston informing her of the state of the family, saying that “Jack is Jack still but rather worse. I am obliged to exercise the cat or stick almost every day. I believe Halifax don’t afford another such idle, deceitful villain”—“Pray purchase a Negro boy if possible.”

In the year of the surrender of Montreal, the *Halifax Gazette*, November 1, 1760, advertised “To be sold at public auction on Monday the 3rd of November, at the house of Mr. John Rider, two slaves, viz., a boy and a girl, about 11 years old; likewise a puncheon of choice cherry brandy with sundry other articles.”

Some legal sanction, moreover, was given slavery. A General Assembly the first Elective Legislature in what is now Canada, met at Halifax in 1757. In 1762 the second session of the third General Assembly passed an act<sup>4</sup> which seems not to have received very much attention from legists<sup>5</sup> and writers. It contains a recognition of slavery. The act provides by section 2 that “in case any soldier, sailor, servant, apprentice, bound servant or negro slave or any other person whatsoever shall leave any pawn or pledge with a vendor of liquor for the payment of any sum exceeding five shillings for liquor such soldier, sailor, servant, apprentice bound servant or negro slave . . . or the master or mistress of such servant, apprentice, bound servant or negro slave” might by proceedings before a Justice of the Peace obtain an order for the restoration of the pawn or pledge—and the vendor might be fined 20 shillings “for the use of the poor.”<sup>6</sup>

For this reason slavery could easily continue as subsequent records prove. In July, 1767, Charles Proctor of

<sup>4</sup> (1762) 2 George 111, c. 1 (N. S.), *Statutes at Large, Nova Scotia, Halifax*, 1805, p. 77.

<sup>5</sup> It is referred to in a letter from Ward Chipman to Chief Justice Blowers to be mentioned later. See post, p. 110, n. 21.

<sup>6</sup> This Act was continued in 1784 by (1784) 24 George III, c. 14 (N.S.). *Statutes at Large, Nova Scotia*, p. 238.

Halifax sold Louisa, a "Mulotta" girl, to Mary Wood of Annapolis for £15 currency<sup>7</sup> and next year Mary Wood assigned the girl to her daughter Mrs. Mary Day. In June, 1767, James Simonds of the St. John River wrote to Hazen and Jarvis at Newburyport, Massachusetts, a letter in which he complains of "that rascal negro, West" who cannot be got to do a quarter of a man's work. In an advertisement in a Halifax paper in 1769 are offered for sale to the highest bidder "two hogsheads of rum, three of sugar and two well-grown negro girls aged 14 and 12." These were clearly a consignment from the West Indies. The executors of John Margerum of Halifax deceased, in their accounts give credit for £29.9.4.½ "net proceeds of a negro boy sold at Carolina." In 1770 the executors of Joseph Gerrish of Halifax lost £30 on the sale of three Negroes for £150 to Richard Williams and Abraham Constable, the Negroes having been appraised at £180: and a Negro boy named John Fame was not then sold. In April 1770, Mrs. Martha Prichard of Halifax, widow, bequeathed to her daughter, wife of Moses Delesdernier a Negro slave woman named Jessie. If Mrs. Delesdernier did not wish to retain the slave, she was to be sold and the proceeds of the sale given to Mrs. Delesdernier. If she kept her, the slave at the death of Mrs. Delesdernier was to be the property of her son Ferdinand. By the same instrument the testatrix bequeathed to her grand-daughter a mulatto slave John Patten two and a half years old.

By the census of the year 1771 the Rev. James Lyon, the first Presbyterian Minister in Nova Scotia, is shown to have owned a colored boy, the only Negro in the township of Onslow and John Young in the township of Amherst also a Negro boy, the only one in the township. In Annapolis, Magdalen Winnett owned a man, woman and girl; Joseph Winnett owned a woman and a boy; Ebenezer Messenger and Ann Williams each a man, and John Stork

<sup>7</sup>"Halifax currency" was at this time nine-tenths of Sterling £10 currency = £9 sterling and the 5 / dollar being 4/6 sterling.

of Granville owned a man the only Negro in the township; and Henry Evans of Annapolis had the previous year owned a colored girl.

Jacob Hurd of Halifax offered in 1773 a reward of £5 for the apprehension of his runaway Negro, Cromwell, a "short thick set strong fellow," strongly pock marked "especially on the nose" and wearing a green cloth jacket and a cocked hat. In July 1773, in the *Nova Scotia Gazette and Weekly Chronicle* the executor and executrix of Joseph Pierpont of Halifax advertised "a Negro named Prince to be sold at private sale." This perhaps indicated a repugnance to offering human beings for sale by auction. In the *Nova Scotia Gazette and Weekly Chronicle*, March 27, 1775 is an advertisement for the sale of a "likely well-made negro boy about 16 year old."

In the inventory of the estate of the late John Rock appeared in 1776 a Negro woman named Thursday. She was inventoried at £25 but sold for £20. In this year also a Windsor farmer, Joseph Wilson left by will two Negro women Byna and Sylla to his wife. In January 1779 the *Nova Scotia Gazette and Weekly Chronicle* advertised for sale an able Negro woman, about 21 year old, "capable of performing both town and country work and an exceedingly good cook." In the same year Daniel Stratford of Halifax left to his wife a Negro man slave Adam for life, after her death to become the property of his daughter Sarah Lawson. Matthew Harris of Picton sold for £50 to Matthew Archibald of Truro, tanner, a "Negro boy named Abram, about 12 years of age" born of Harris' Negro slave in Harris' house in Maryland.

In 1780 rewards were offered, one of 3 guineas, for the apprehension and delivery at the office of the Commanding Officer of Engineers at Halifax of two runaway Negro men; another "a handsome reward to be paid for securing in any gaol a Negro boy Mungo about 14 years old and well built"—the owner Benjamin De Wolfe of Windsor to be notified. That year the executors of Colonel Henry

Denny Denson of West Falmouth debit themselves with £75 received for "Spruce," £60 for "John" and £30 for "Juba" and credit themselves with £2.11.6 paid for taking two of these to Halifax probably for sale there.

Abel Michener of Falmouth advertised in 1781 a reward of £5 for the capture of a Negro named James; and Samuel Mack of Port Medway wanted a Negro named "Chance" returned.

Richard Wenman of Halifax in September of that year agreed to give his Negro, Cato, his liberty "if he will faithfully serve my said daughter, Elizabeth Susannah Pringle two years." Captain Wilson of the transport *Friends* requested in 1782 that masters of vessels will not ship as a seaman his runaway Negro lad Ben, saying: "He is my own property."

There is no need for further particularization; for we now come to the year of the definitive peace between the mother country and the new republic. As in the upper country so by the sea there was a great influx of Loyalists, accompanied in many instances by their slaves. Thereafter sales, advertisements for auctions, rewards for runaway slaves, bequests of slaves, &c., are very common and there were some manumissions. That, however, was not the cause of the great increase in the Negro population of the Maritime Province. The Island of St. John, afterwards Prince Edward Island had been set off as a separate province in 1769 but the Province of Nova Scotia included what became the Province of New Brunswick until 1786.

During the Revolutionary War, the British commanders, Sir Henry Clinton in particular, had made it a point to invite the slaves to the British line and many had accepted the invitation. No few of these refugees were of material service to the British troops in various ways both menial and otherwise. At the peace Washington demanded the return of these quondam slaves.<sup>8</sup> Sir Guy Carleton

<sup>8</sup> It will be remembered that in the Treaty of Peace it was agreed by Article VII "His Britanic Majesty shall with all convenient speed and without

refused but made a careful inventory of them with full description, name, former master, etc., so that Washington might claim compensation from the British Government, if he saw fit.<sup>9</sup> In addition to these slaves somewhere about 3,000 freed Negroes accompanied the British troops on their withdrawal from New York, nearly all coming to Nova Scotia. Many of these after suffering great hardships were sent to Sierra Leone on the West Coast of Africa in 1792. Some remained in the province where their descendants are found until this day; but not in any very great numbers. The Loyalists, however, retained their property in their own slaves; and immigration was encouraged by the Act of 1790.<sup>10</sup>

The trade in Negroes was very brisk for some years. For example, on June 24, 1783, the *Nova Scotia Gazette and Weekly Chronicle* advertised for sale a Negro woman, "25 years of age, a good house servant." On December 11, 1783, Captain Alexander Campbell late of the South Carolina Loyalists sold to Captain Thomas Green late of the Royal Nova Scotia Foot a Negro woman named Nancy for

causing any destruction or carrying away any negroes or other property of the American inhabitants withdraw his armies, garrisons and fleets from the said United States. . . ."

Sir Guy Carleton claimed that the Negroes who had taken refuge in the British lines at once lost their status of slavery and became free. They were "not Negroes or other property of the American," a rather technical not to say finely drawn distinction but *in favorem libertatis*; and in any event Britain would not betray the helpless who had put their faith in her.

<sup>9</sup> Washington did make a claim; but the United States had not carried out its part of the contract and Britain would not and never did pay. Jones' *Loyalist History of New York*, Vol. 2. p. 256, says that the number of Negroes who found shelter in the British lines was 2000 at least; probably this is an underestimate. Hay's *Historical Reading* at p. 249 gives the number of Negroes who came into Nova Scotia with their Masters at least 3000—and of free Negroes 1522 at Shelburne, 182 at St. John River. 270 at Guysborough, 211 in Annapolis County, and a smaller number at other places. 1200 were sent to Sierre Leone in 1792.

<sup>10</sup> See ante, p. 37. The Negro population in 1784 estimated at about 3000 was included in the 28,347 of *Disbanded Troops and Loyalists called New Inhabitants*, *Can. Arch.*, Report for 1885, p. 10. There were some free Negroes in various companies of the British forces in one capacity or another.

£40. Nancy two years later was sold by Green to Abraham Forst of Halifax and a year later still with her child Tom to Gregory Townsend.

A shipment was made by John Wentworth from Halifax to Surinam, Dutch Guiana, of nineteen Negro slaves, "all American born or well seasoned . . . perfectly stout, healthy, sober, orderly, industrious and obedient." These, said he, "I have had christened and would rather have liberated them than send them to any estate that I am not sure of their being treated with care and humanity which I shall consider as the only favour that can be done to me on this occasion "by his correspondent."<sup>11</sup>

On October 29, 1787, John Rapalje, a Royalist, sent from Brooklign (Brookland or Brooklyn Ferry) to George Leonard by desire of his (R's) father a Negro woman named Eve about 35 years and her child named Suke about 15 to sell as he himself cannot go to Nova Scotia. Eve was one of the best servants "perfectly sober, honest" and the only fault she had was her near sight.

The records show occasional manumission also. In 1784 the inventory of the estate of John Porter late of Cornwallis, a Negro man is valued at £80. That same year Charles Montague of Halifax says: "I have only one Negro, named Francis; he is to have his freedom." In May 1787, Mar-

<sup>11</sup> The Negroes sent were Abraham, James, Lymas, Cyrus, John, Isaac, Quako, January, Priscella, Rachel, Venus, Daphne, Ann, Dorothy and four children Celia, William, Venus, Eleanora—reserving Matthew and Susannah at home. All these had been christened, February 11, 1784. "Isaac is a thorough good carpenter and master sawyer, perfectly capable of overseeing and conducting the rest and strictly honest; Lymas is a rough carpenter and sawyer; Quako is a field negro has met with an accident in his arm which will require some indulgence. The other men are sawyers and John also a good axeman. Abraham has been used to cattle and to attend in the house, &c. All the men are expert in boats. The women are stout and able and promise well to increase their numbers. Venus is useful in the hospital, poultry yard, gardens, etc. Upon the whole they are a most useful lot of Negroes."

John Wentworth, last Royalist Governor of New Hampshire and afterwards Sir John Wentworth, Lieutenant Governor of Nova Scotia, doubtless believed himself to be a good man and a good Christian.

The story of Eve and Suke *infra* is told by Archdeacon Raymond, 3 *N. B. Mag.*, 1899, p. 221.

garet Murray, widow of Halifax by her will manumitted her two Negro women Marianne and Flora; and (when he was 21) her Negro boy Brutus. From the records of a trial at Shelburne, in a magistrate's court in 1788 it appears that one Jesse Gray of Argyle had sold a Negro woman for 100 bushels of potatoes. At a trial the ownership by Gray was proved and the sale confirmed.

We now come to the times of a Chief Justice whose heart was set on destroying slavery in the province of Nova Scotia, therein wholly differing from the Chief Justice of New Brunswick, George Duncan Ludlow, who had received his appointment on the separation of that province in 1784. The forward-looking jurist was Thomas Andrew Strange who became Chief Justice of the Supreme Court in 1791.<sup>12</sup> The same impulse for liberty which about this time was noted in the upper country manifested itself from time to time by the sea. Slaves ran away from their masters; the masters pursued and imprisoned them. Some blacks claimed freedom without fleeing. When a writ of habeas corpus came up in the Supreme Court, Chief Justice Strange did his best to avoid giving a decision. He knew that slavery was lawful but he knew it was detestable and he pursued a course which did not require him to stultify himself but which would nevertheless confer substantial benefits upon the black claiming liberty.

He endeavored in every case to bring the parties to an agreement to sign articles whereby the master would have the services of the Negro for a stated time, after the expiration of which the Negro received his freedom. When the master refused this, as sometimes there was a refusal, the Chief Justice required the matter to be tried by a jury, which usually found for the Negro.<sup>13</sup>

<sup>12</sup> He went to England in 1796 (it was said, for a visit) resigned his position in Nova Scotia, was Knighted and appointed Recorder of Fort St. George, Bombay, India.

<sup>13</sup> A collateral ancestor of my own, the Reverend Archibald Riddell, had the advantage of a similar proceeding a century before. Being apprehended for taking part in the uprising of the Covenanters in Scotland he was given

The practice adopted was like the practice in cases of alleged villenage in England. It was recognized that slavery might exist in Nova Scotia, but it was made as difficult as possible for the master to succeed on the facts. Except the act already mentioned there was no statute recognizing slavery and an attempt in 1787 to incorporate such a recognition in the statute law failed of success by a large majority. The existing act, too, was given what seems a very forced and unnatural interpretation so as to emasculate it of any authority in that regard.

Salter Sampson Blowers, the Attorney General, fully agreed with the Chief Justice's plan. On one occasion he threatened to prosecute a person for sending a Negro out of the province against his will.<sup>14</sup> The Negro managed to get back and the master acknowledged his right, so that no proceedings were necessary. After a number of verdicts for the alleged slaves, masters were generally very willing

(or sold) with others to a Scottish Laird who chartered a vessel and proceeded to take his human chattels to America for sale. The plague broke out on the ship, the Laird and his wife died of it as did some of the crew. When the ship reached New Jersey, there being no master, the "slaves" escaped up country. The Laird's son-in-law and personal representative came to America and claimed Riddell and others. The governor called a jury to determine whether they were slaves and the jury promptly found in their favor. Riddell preached in New Jersey until the Revolution of 1688 made it safe for him to return to Scotland. Juries in such cases are liable to what Blackstone calls "pious perjury." All this practice was based upon the common law proceedings when a claim was made of villenage. When a person claimed to be the lord of a villein who had run away and remained outside the manor unto which he was regardant, he sued out a writ of neif, that is, *de nativo habendo*. The sheriff took the writ and if the *nativus* admitted that he was villein to the lord who claimed him, he was delivered by the sheriff to the lord of the manor; but if he claimed to be free, the sheriff should not seize him but the Lord was compelled to take out a *Pone* to have the matter tried before the Court of Common Pleas or the Justices in Eyre, that is, the assizes. Or the alleged villein might himself sue out a writ of *libertate probanda*: and until trial of the case the lord could not seize the alleged villein. The curious will find the whole subject dealt with in Fitzherbert's *Natura Brevium*, pp. 77 sqq.

<sup>14</sup> This is very much like the Chloe Cooley case in Upper Canada. I do not know what form the prosecution could possibly take if the Negro was in fact a slave. See Chapter V, note 5 ante, p. 55.

to enter into articles whereby the slave after serving faithfully for a fixed number of years was given his freedom.

After Blowers became Chief Justice, 1797,<sup>15</sup> he continued Chief Justice Strange's practice with marked results. In one case of which he tells where he had discharged a black woman from the Annapolis gaol on habeas corpus and an action had been brought, the plaintiff proved that he had bought her in New York; but the Chief Justice held that he had not proved the right of the seller so to dispose of her and directed the jury to find for the defendant which they promptly did.

Slavery continued, however. Almost every year we find records of sales, advertisements for runaway slaves, bequests of slaves, &c, till almost the end of the first decade of the 19th century, the latest known bill of sale is dated March 21, 1807 and transfers a "Negro Woman named Nelly of the age of twenty five or thereabout." It was, however, decadent and from about the beginning of the 19th century was quite as much to the advantage of the Negro in many cases as that of the master.

<sup>15</sup> It is said that August 1797 was the date of the last public slave sale at Montreal, that of Emmanuel Allen for £36.

The last advertisement for sale by auction of a slave in the Maritime Provinces seems to be that in *The Royal Gazette and Nova Scotia Advertiser* of September 7, 1790, where William Millet of Halifax offers for sale by auction September 9 "A stout likely negro man and sundry other articles."

In 1802 the census showed that there were 451 Blacks in Halifax; in 1791 there were 422.

Dr. T. Watson Smith says in a paper "Slavery in Canada" republished in "Canadian History," No. 12, December, 1900, at p. 321.

"About 1806, so Judge Marshall has stated, a master and his slave were taken before Chief Justice Blowers on a writ of habeas corpus. When the case and the question of slavery in general had been pretty well argued on each side, the Chief Justice decided that slavery had no legal place in Nova Scotia."

I have not been able to trace such a decision and cannot think that it has been correctly reported. Dr. Smith is wholly justified in his statement "there is good ground for the opinion that this baneful system was never actually abolished in the present Canadian Provinces until the vote of the British Parliament and the signature of King William IV in 1833 rendered it illegal throughout the British Empire."

A final effort to legalize slavery in Nova Scotia was made in 1808. Mr. Warwick, member for Digby Township, presented a petition from John Taylor and other slave owners setting up that the doubts entertained by the courts rendered their property useless and that the slaves were deserting and defying their masters. They asked for an act securing them their property or indemnifying them for their loss. Thomas Ritchie member for Annapolis introduced a bill to regulate Negro servants within the province. The bill passed its second reading January 11, 1808, but failed to become law; and the attempt was never renewed.

New Brunswick was separated from Nova Scotia in 1784. The Chief Justice of that province was not as averse from slavery as his brother of Nova Scotia. One of the most interesting and celebrated cases came before the Supreme Court of New Brunswick in Hilary Term, February 1800. Captain Stair Agnew who had been an officer in the Queen's Rangers settled opposite Fredericton. He was a man much thought of as is shown by his being chosen for thirty years to represent York County in the Legislature. He owned a slave Nancy Morton<sup>16</sup> who claimed her freedom and whom apparently he had put in charge of one Caleb Jones. A writ of habeas corpus was obtained directed to Jones and the matter was arranged to be argued before the full court of four judges. For the applicant ap-

<sup>16</sup> I. Allen Jack, Q. C., D. C., L., of St. John, New Brunswick, gives a full account of this case from which (and similar sources) most of the facts are taken. In a paper read before the Royal Society of Canada May 26, 1898, *Trans. R. S. Can.*, 1898, pp. 137 sqq., Dr. Jack conjectures that Nancy Morton is the Negro female slave conveyed by bill of sale registered in the office of the Register of Deeds, St. John's, N. B. Slaves were treated as realty as regards fieri facias under the Act of 1732 (see ante, p. 13, n. 12) and at least "savoured of the realty." The bill of sale registered January 31, 1791, was dated November 13, 1778, and was executed by John Johnson of the Township of Brooklyn in King's County, Long Island, Province of New York. It conveyed with a covenant to warrant and defend title to Samuel Duffy, Innkeeper for £40 currency (say \$100) "a certain negro female about fourteen years of age and goes by the name of Nancy," pp. 141, 142. However that may be, Stair Agnew bought Nancy from William Bailey of the County of York in the Province of New Brunswick for £40 with full warranty of title as a slave.

peared Ward Chipman<sup>17</sup> and Samuel Denny Street; for the master, Jonathan Bliss, Attorney General of the province, Thomas Wetmore, John Murray Bliss, Charles J. Peters and Witham Botsford, all men of ability and eminence. On the Bench were Chief Justice Ludlow and Puisne Justices Allen, Upham and Saunders.

The addresses of the Attorney-General and Mr. Chipman are extant. The former divided his speech into thirty-two heads; the latter took eighty pages of foolscap for his. The arguments were extremely able and exhaustive,<sup>18</sup> everything in history, morals and decided cases being brought to bear. The case took two full days to argue and after careful consideration the court divided equally, the Chief Justice and Mr. Justice Upham affirming the right of the master and Mr. Justice Allan and Mr. Justice Saunders held for the alleged slave.

The return of Jones to the writ was that Nancy "was at the time of her birth and ever since hath been a female Negro slave or servant for life born of an African Negro slave and before the removal of the said Caleb Jones from Mary Land to New Brunswick was and became by purchase the lawful and proper Negro slave or servant for life of him the said Caleb Jones . . . , that the said Caleb Jones in the year of our Lord 1785 brought and imported the said . . . Nancy his Negro slave or servant for life into the Province of New Brunswick . . . and has always hitherto held the said . . . Nancy as his proper Negro slave or servant for life . . . or by laws he has good right and authority to do. . . ."<sup>19</sup>

<sup>17</sup> He was born in Boston in 1753, the son of John Chipman, a member of the Bar. Graduating at Harvard, he joined the Boston Bar and practised in that City until 1776. After the Peace he went to England and in 1784 sailed for New Brunswick of which he was appointed Solicitor General. After a quarter of a century of successful practice he was appointed 1808 a puisne judge of the Supreme Court. He died in February, 1826.

His services to Nancy Morton were given without fee or hope of reward.

<sup>18</sup> That of Mr. Chipman is given in *Trans. R. Soc. Can.*, 1898, pp. 155-184.

<sup>19</sup> It will be seen that the return sets up that Jones bought and owned the slave and the case was argued on that hypothesis, but the historians say that Captain Stair Agnew was the owner. The point is not of importance.

The Chief Justice based his opinion on what he called the "Common Law of the Colonies"—and although that expression was ridiculed at the time and has been since, there is no difficulty in understanding it. He meant custom recognized as law not contained in an express legislative enactment. In that sense a modern lawyer will agree that he was right. Practically all the English colonies had slavery thoroughly recognized and often without or before legislation; and all the well known legal maxims asserted the cogency of such custom.<sup>20</sup> Mr. Justice Allen considered that no human power could justify slavery—and his brother Saunders agreed with him. It would seem that these judges were concerned with what the law should be, the others with what it actually was.<sup>21</sup>

In the result the return was held sufficient and the master had his slave. But the decision of the divided court had its effect. Agnew reconveyed Nancy to William Bailey from whom he had bought her and she bound herself to serve for fifteen years, then to receive her freedom.<sup>22</sup> The result of this case was that while slavery was

<sup>20</sup> *Mos regit legem, Mos pro lege, Leges moribus servient, Consuetudo est optimus interpret legum*, custom is the life of the law, custom becomes law, &c., &c. That slavery was necessary and therefore legal in the American Colonies was admitted in the Somerset case.

<sup>21</sup> The modern lawyer, in my opinion, would find no difficulty in coming to the same conclusion as the Chief Justice.

Mr. Chipman in his interesting correspondence with Chief Justice Blowers (*Trans. R. Soc. Can.*, 1898, pp. 148 sqq.) admits that if his opponents had hit upon the Nova Scotia Statute of 1762 as revised in 1783 "the conclusiveness of their reasoning on their principles would have been considered as demonstrated." He adds: "In searching your laws upon this occasion I found this clause but carefully avoided mentioning it," which raises a curious question in legal ethics.

<sup>22</sup> The reconveyance to Bailey, a quit claim deed, is witnessed by George Leonard and Thomas Wetmore and is dated February 22, 1800. The indenture by which Nancy bound herself for fifteen years is dated February 23, 1800.

If Dr. Jack is right in his conjecture the argument took place when she was 36 and she would receive her freedom when she was 51. Agnew challenged Judge Allen for some reflection upon him by the Judge; the challenge was declined and Agnew then challenged Street who accepted—and they fought a bloodless duel. Street later in 1821 fought a duel with George Lud-

not formally abolished, it before many years practically ceased to exist.<sup>23</sup>

Prince Edward Island was called Isle St. Jean until 1798. In this island slavery had the same history as in the other maritime provinces. Shortly after the peace Negro slaves were brought into the Island by their United Empire Loyalist masters. As late as 1802 we find recorded the sale of "a Mulatto boy three years old called Simon" for £20, Halifax currency, then £18 sterling, and a gift of "one Mulatto girl about five years of age named Catherine." We also find Governor Fanning (1786-1804), freeing his two slaves and giving one of them, Shepherd, a farm.

In Cape Breton which was separate from 1784 to 1820, Negro slaves were found as early as the former date: "Cesar Augustus, a slave and Darius Snider, black folks, married 4th September 1788," "Diana Bestian a Negro girl belonging to Abraham Cuyler Esq" was buried September 15, 1792 and a Negro slave was killed in 1791 by a blow from a spade when trying to force his way into a public ball in Sydney.<sup>24</sup> In this province, too, slavery met the same fate.

There is now to be mentioned an interesting series of circumstances.<sup>25</sup> During the War of 1812-15 the British navy occupied many bays and rivers in United States terri-

low Wetmore over words which passed on leaving the Court. Wetmore was struck in the head and died in a few hours. Street was tried and acquitted. One result of this case was that Mr. Justice Upham freed his slaves. His wife had six inherited from her father and he himself had some, one a girl born in the East Indies whom he had bought from her master in New York, the master of a ship, afterwards married a soldier in Colonel Allen's regiment.

<sup>23</sup> What is believed to be the last advertisement for the sale of a slave in any maritime province is in the New Brunswick *Royal Gazette* of October 16, 1809 when Daniel Brown offered for sale Nancy a Negro woman, guaranteeing a good title. The latest offer of a reward for the apprehension of a runaway slave is said to be in the same paper for July 10, 1816.

<sup>24</sup> For this act the perpetrator was excluded by his masonic lodge; being brought to trial before the Supreme Court in August 1792 he was "honourably acquitted" and afterwards he was reinstated by his lodge.

<sup>25</sup> Seldom mentioned and never much boasted of in the United States.

tory and in some cases troops were landed where there was a slave population. These forces came into possession of many slaves, mostly voluntary fugitives, some seduced and some taken by violence from their masters. Admiral Cochrane in April 1814 issued a proclamation inviting all those who might be disposed to emigrate from the United States for the purpose of becoming free settlers in some of "His Majesty's Colonies" to come with their families on board of the British men of war and offering them the choice of joining the British forces or being sent as free settlers to a British possession. He did not say "slaves" but no one could mistake the meaning.<sup>26</sup> Negroes came in droves. Some were taken to the Bahamas and the Bermudas where their descendants are to be found until this day; many were taken to Nova Scotia and New Brunswick.<sup>27</sup>

When the Treaty of Peace was concluded at Ghent, December 24, 1814 the United States did not forget the slaves who had got away from the home of liberty. Article 1 provided for the delivery up of all places taken by either party without carrying away any property captured "or any slaves or other private property." The United States demanded the restoration of "all slaves and other private property which may now be in possession of the forces of

<sup>26</sup> The word *Camouflage* may be new. The practice antedated humanity.

<sup>27</sup> There is a record of 371 arriving at St. John from Halifax on May 25, 1815, by the *Romulus*, who had taken refuge on board the British Men of War in the Chesapeake. The Negro settlement at Loch Lomond was founded by them.

At the Census of 1824, 1421 "persons of color" were found in New Brunswick. The Very Rev. Archdeacon Raymond, an excellent authority, thinks most of these "were at one time slaves or the children of slaves," but many were not slaves in New Brunswick.

Those that were brought by Admiral Cochrane to Halifax became a great burden to the community. It was proposed in 1815 by the British Government to remove them to a warmer climate, but this scheme does not seem to have been carried out. By a census taken in 1816 there was found to be 684 in Halifax and elsewhere in Nova Scotia. In the winter of 1814-15 they had suffered rather severely from small pox and were vaccinated to prevent its spread. Some were placed on Melville Island.

His Britannic Majesty." The British officers refused to surrender the slaves contending that the real meaning of the treaty did not cover the case. At length in 1818 a convention was entered into that it should be left to the Emperor of Russia<sup>28</sup> to decide whether the United States by the true intent of Article 1 was entitled to the restitution or full compensation for the slaves.

In 1822 the Emperor decided in favor of the United States. Thereupon the next year (1824) a mixed commission of two commissioners and two arbitrators determined the average value to be allowed as compensation;<sup>29</sup> for slaves taken from Louisiana \$580; from Alabama Georgia and South Carolina, \$390; from Virginia, Maryland and all other States \$280.

The commissioners adjourned for the purpose of enabling evidence to be obtained as to the numbers. Clay submitted to the British Government that 3601 slaves had been taken away but was willing for a settlement to accept the price of 1650. Britain declined, but the commissioners failed to agree and finally by diplomacy in 1827 Britain agreed to pay £250,000 or \$1,204,960 in full for slaves and other property. Thus Britain assured the freedom of more than 3,000 slaves and paid for them, a fitting prelude to the great Act of 1833 whereby she freed 800,000 slaves and paid £20,000,000 for the privilege.<sup>30</sup>

<sup>28</sup> Presumably because he had the greatest number of serfs in the world and was, therefore, the best judge of slaves.

<sup>29</sup> Of course, Britain refused to give up a single fugitive. She could not betray a trust even of the humblest. She knew that in "the land of the free and the home of the brave" for the Negro returned to his master, to be brave was to incur torture and death and death alone could make him free.

<sup>30</sup> The Act (1833) 3, 4 William III, c. 73 (Imp.), passed the House of Commons August 7 and received the Royal Assent August 28, 1833; and there were no slaves in all the British world after August, 1838.

## CHAPTER VIII

### GENERAL OBSERVATIONS

The curse of Negro slavery affected the whole English speaking world; and that part of the world where it was commercially profitable resisted its abolition. The British part of this world does not need to assert any higher sense of justice and right than had those who lived in the Northern States; and it may well be that had Negro slave service been as profitable in Canada as in the Cotton States, the heinousness of the sin might not have been more manifest here than there. Nevertheless we must not too much minimize the real merit of those who sought the destruction of slavery. Slaves did not pay so well in Canada as in Georgia, but they *paid*.

It is interesting to note the various ways in which slavery was met and finally destroyed. In Upper Canada, the existing slaves, 1793, remained slaves but all those born thereafter were free, subject to certain conditions of service. There was a statutory recognition of the existing status and provision for its destruction in the afterborn. This continued slavery though it much mitigated its severity and secured its downfall in time. But there were slaves in Upper Canada when the Imperial Act of 1833 came in force. The Act of 1793 was admittedly but a compromise measure; and beneficial as it was it was a paltering with sin.

In Lower Canada, there was no legislation, and slavery was never formally abolished until the Imperial Act of 1833; but the courts decided in effect if not in form that a master had no rights over his slave, and that is tantamount to saying that where there is no master there is no slave. The reasoning in these cases as in the Somerset case may not recommend itself to the lawyer but the effect is undoubtedly, "Slaves cannot live in Lower Canada."

In Nova Scotia, there was no decision that slavery did not exist. Indeed the course of procedure presupposed that it did exist, but the courts were astute to find means of making it all but impossible for the alleged master to succeed; and slavery disappeared accordingly.

In New Brunswick the decision by a divided court was in favor of the master; but juries were of the same calibre and sentiments in New Brunswick as in Nova Scotia and the same results were to be anticipated, if Nova Scotian means were used; and the slave owners gave way.

In the old land, judicial decision destroyed slavery on the British domain; but conscience and sense of justice and right impelled its destruction elsewhere by statute; and the same sense of justice and right impelled the Parliament of Great Britain to recompense the owners for their property thus destroyed. If there be any more altruistic act of any people in any age of the world's history I have failed to hear or read of it.

In the United States, slavery was abolished as a war measure. Lincoln hating slavery as he did would never have abolished it, had he not considered it a useful war measure. No compensation was paid, of course.<sup>1</sup> Everywhere slavery was doomed and in one way or another it has met a deserved fate.

<sup>1</sup> I had with the late Hon. Warwick Hough of St. Louis, Missouri, who had been an officer in the Southern Army, several conversations on the subject of slavery. He gave it as his firm conviction that, had the South succeeded in the Civil War, it would shortly have itself abolished slavery and sought re-admission to the Union. His proposition was that the power and influence of the planter class were waning, while the manufacturers, merchants and the like were increasing in number and influence and they would have for their own protection abolished slavery. I have not met a Northerner or a Canadian who agreed with this view; but a few Southerners have expressed to me their general concurrence with my friend's proposition.

## INDEX

- Acadia, Slavery in, 97
- Allen, Mr. Justice, opinion re slavery in N. B., 110
- American prisoners in Revolutionary War, treatment of, 22 (n)
- Anderson, John, refugee slave in U. C., case of, 93, 94, 95
- Anthon, Dr., his Panis slave, 2 (n)
- Antoninus Pius, law re slaves, 9 (n)
- Arbitration between Great Britain and United States, re refugee slaves, 113
- Augustus, Claudius, law re slaves, 9 (n)
- de Barner, Major, complained of in Province of Quebec for slave stealing, 16, 17
- Bird, Captain Henry, captures La Force Settlement (1780), 19 (n)
- Blackburn, Thornton, refugee slave, case of, 83, 84
- Blaney v. Sullivan, 45, 46
- Blowers, Salter Sampson, Attorney General, Nova Scotia, policy re alleged slaves, 106; as Chief Justice N. S., 107
- Brant, Captain Joseph, Indian Chief, his slaves, 69 (n)
- Campbell, Col., report on slaves brought to Canada by Indians and others (1784), 20
- Cape Breton, slaves in, 111
- Carib slave (1732), 4
- Carleton, Sir Guy (See Dorchester, Lord)
- Cataraqui (See Kingston)
- Chambly, slaves at, 32
- De Champigny, Intendant of New France, suggests importation of Negro slaves (1688), 1
- “Charles,” Panis slave, mutiny and banishment of to Martinique, 5
- re Charlotte, a Negress, 46
- Chinook Indians, slavery among, 7
- Christianity and slavery, 9 (n)
- Claus, Colonel, report on slaves brought into Canada by Indians, etc., 20
- Cole, Francis, “Yankee boy,” white slave, 24, 25
- Cole, Sarah, Pennsylvania girl, white slave, 21, 22, 23
- Conquest of Canada (1760). Articles of Capitulation, 6, 6 (n), 11
- Constantine’s law re slavery, 9, 9 (n)
- Cooley, Chloe, a Negro slave, case of in U. C., 55
- Coutume de Paris (See law, French-Canadian)
- Cowper, William, the poet, England and slavery, 12 (n)
- Cuthbert, M.P.P., petition re slaves, L. C., 48
- Davis, John, the last survivor of slavery in Canada, 60 (n)
- Denonville, Governor of New France, suggests importation of Negro slaves (1668), 1
- Despin, Joseph, complaint of kidnapping slaves in Province of Quebec, 16, 17
- District of Quebec, Slaves in, 63
- — — Montreal, Slaves in, 63
- District, Eastern, Slaves in, 63, 64
- — —, Midland, Slaves in, 63, 64, 66, 66 (n), 67 (See Kingston)
- — —, Nassau (Home), 63, 64 (n)
- — —, Hesse (Western), 71
- Dorchester, Lord (Sir Guy Carleton), complaints to, 16, 17; orders to Haldimand, 31; suspends importa-

- tion of slaves, 35 (n); refuses American demand for refugee slaves, 102, 103; his contention as to their status, 103 (n)
- Drake's *History of the Indians of North America*, quoted, 2 (n)
- Eastern District (See District, Eastern)
- de Francheville, Mme., her slave hanged for arson (1734), 5
- Galinée's *Narrative*, quoted, 7 (n)
- Garneau's *History of Canada*, quoted, 1
- Gosselin, Abbé, quoted, 5
- Gray, Robert Isaac Dey, Solicitor-General Upper Canada, opposes Bill to allow importation of slaves into U. C., 59 (n), sets his slaves free by his will, 60 (n)
- Guinea, Slaves from, 2
- Hadrian's Law re slavery, 9
- Haldimand, Sir Frederick, Governor of Quebec, 15, 17 (n), 18, 19, 23; orders from Dorchester, 31
- Halifax, founded, 97, slaves in, 97, 98, 99, 100, 101, 107 (n), 112 (n)
- Hallam's *Middle Ages*, referred to, 13 (n)
- Happy, Jesse, refugee slave, case of in U. C., 88, 90, 91
- Hardwicke, Lord Chancellor (See Yorke, Sir Philip)
- Harris v. Cooper, 75, 76, 77
- Henry, Alexander, request to seize and sell fugitive slave, 15
- Hocquart, Gilles, Intendant of New France, Ordinance re slaves (1738), 4; ordinance re enfranchisement, 5
- Holdsworth's *History of English Law*, cited, 13 (n)
- Holt, Lord Chief Justice, dictum as to slavery in England, 11
- Hough, Hon. Warwick (St. Louis), views as to result upon Southern slavery had South been successful in Civil War, 115 (n)
- Indian slaves (See Panis)
- Indians, Chinook (See Chinook Indians)
- capture and enslavement of whites by, 3, 17, 18, 21, 22, 24, 26 (n)
- capture and enslavement of Negroes by, 17, 18, 19, 20, 21, 26, 29, 30
- Micmac, slavery among, 7 (n)
- Jameson, Robert Sympson, Attorney General, Upper Canada; opinion re refugee slaves in U. C., 84, 85
- Joanne, Captain, his Carib slave, 4
- Johnson, Sir John, Superintendent General of Indian affairs in Canada, report as to slaves brought into Canada (1781), 19, 20, 29, 30
- re Jude, a Negress, 46
- Juvenal, quoted, 8 (n)
- Kane, Paul, description of Indian Slavery, 7, 8; paintings, 7 (n)
- King, Joseph, petition to Haldimand, 17 (n)
- Kingsford's *History of Canada*, quoted, 4 (n)
- Kingston, slaves at, 32, 34, 65, 67 (and see District, Midland)
- Kirke, Sir David, sells first Negro slave in Quebec (1628), 1
- La Fontaine, Sir L. H., paper on slavery in Canada, 1 (n); 2 (n)
- La Force, Agnes, story of emigration and capture (1780), 17, 18, 19, 20
- La Longue Pointe, register of slaves, 6
- La Salle's *Voyage* (1669-70), 7 (n)
- Law, English, re villeins, 3 (n); 12, 105 (n), re slaves, 3, 11, 12, 13 (n), 54
- , English Colonies, re slaves, 13, 110
- , French-Canadian, re slaves, 3, 7, 8, 10, 13 (n)
- , International, re slaves, 2
- , Roman (Civil), re slaves, 12 (n)
- , Scottish, re slaves, 12 (n)

- Lawsuits concerning alleged slaves  
(See titles, *Somerset v. Stewart*;  
*Poirée v. Lagard*; *Hoyle v. Fisher*;  
*Smith v. McFarlane*; *Blaney v. Sul-*  
*livan*; re *Charlotte*; re *Jude*; re  
*Robin* alias *Robert*; *Rex v. Jones*)
- Legislation on Slavery  
Great Britain, 51, 113  
Lower Canada, 43, 47, 48  
Upper Canada, 54, 56, 57, 58, 59, 60  
Nova Scotia, 99, 106, 108  
United States, 58 (n), 78  
New England, New York, New  
Jersey, etc., 58 (n)
- Lescarbot's *History of New France*,  
quoted, 7 (n)
- Ludlow, George Duncan, Chief Justice  
of New Brunswick, appointed, 105;  
judgment re slavery in N. B., 108-  
109, 110
- Mabane, Mr. Justice Adam, instructed  
to prevent white slavery, 23
- Madagascar, boy from, first slave sold  
in Quebec (1628), 1
- Mansfield, Lord Chief Justice, judg-  
ment in *Somerset v. Stewart*, 11, 12
- Marius' Law re slaves, 9
- Micmac Indians, slavery among, 7 (n)
- Milton, John, quoted, 13 (n)
- Monk, James, Attorney General at  
Quebec, report on charge of slave  
stealing, 16; Chief Justice at Mon-  
treal, decision on slavery, 46, 47, 50
- Montreal, slaves at, 14, 20, 21, 29, 30,  
31, 32, 33, 63; last public sale of  
slaves at, 107 (n)
- Morris v. Henderson*, aged Negro  
gives evidence in, 65 (n)
- Mosely, Solomon, Negro refugee, at-  
tempted extradition to U. S. and  
rescue of (1837), 85, 86, 87
- Murray, Sir James, Governor at Que-  
bec, desires slaves, 13, 14
- McKee, Col. Alexander, his runaway  
slave, 62 (n)
- New Brunswick, created a separate  
Province, 102, 108; slaves in, 108,  
112
- Niagara, slaves at, 5, 32, 33, 68, 69,  
70 (and see *District, Nassau, Home*)
- Nova Scotia, slaves in, 97 sqq; chap.  
VII, *passim*; (and see *Halifax*)
- Osgoode, William, Chief Justice of  
Upper Canada, *Chloe Cooley* case,  
55 (n); Chief Justice in Lower  
Canada, 50 (n)
- Panet, P. L., M.P.P., petitions As-  
sembly Lower Canada re slaves, 47,  
48
- Panis (Pawnee) slaves, 1 (n), 2, 2  
(n), 3, 4, 5, 6; 33, 34; 45; 64, 64  
(n), 70 (n), 71
- Papineau, Joseph, M.P.P., petitions  
Assembly Lower Canada re slaves,  
47, 48
- Paul, St., and slavery, 9 (n)
- Plato, a Negro slave, 31
- Poirée v. Lagard*, 35
- Pollock and Maitland's *History Eng-*  
*lish Law*, referred to, 13 (n)
- Powell, William Dummer, Chief Just-  
ice of Upper Canada, 17, 18, 19, 20,  
21, 22; and John Davis the freed-  
man, 60 (n); trial of Jack York,  
72; trial of a black boy, 73 (n)
- Prince Edward Island, slaves in, 102,  
111
- Proudfoot, William, Vice Chancellor,  
referred to, 9 (n)
- Quebec, "Government" of, formed  
(1763), 11
- Randot, Jacques, Intendant of New  
France; ordinance re slaves (1709), 3
- Rex v. Jones*, 108, 109, 110
- Rex v. Philip Turner*, 73, 74
- Rex v. Jack York*, 72
- Riddell, Reverend Archibald, "Cove-  
nanter," experiences as a white  
slave, 105 (n)
- Neif, writ of, 106 (n)

- Ridout, Thomas, capture by and life among Indians, 26 (n)
- Ritchie, Thomas, introduces bill re slavery, N. S., 108
- re Robin, alias Robert, a Black, 49, 50
- Robinson, (Sir) John Beverley, Attorney-General Upper Canada, opinion re refugee slaves, 81, 82, 84
- Robinson, Christopher, M.P.P., introduces bill to import slaves into U. C., 59 (n)
- Russell, Peter, administrator of Upper Canada (1798), 59 (n); Chloe Cooley case, 55 (n); his slaves, 67
- St. John's, slaves at, 32
- Saunders, Mr. Justice (New Brunswick), opinion on slavery in N. B., 110
- "Servants," slaves reported as, 32, 34
- Sherman, Prof. (Yale), *Roman Law*, etc., quoted, 9 (n)
- Sierra Leone, refugee slaves sent to from N. S., 103
- Simeoe, Lieutenant-Governor John Graves (U. C.), hatred of slavery, 55, 58 (n); report on Upper Canada legislature re slaves. (1793), 56; address on same, 58 (n)
- Slavers, Boston, 25 (n)
- Slaves, *passim*
- Baptism of, 6, 14, 15, 66, 69, 104 (n)
  - Marriage of, 14, 33, 34, 69; in Virginia, 76, 76 (n)
  - Burial of, 6, 67, 69
  - Sale of, 1, 2, 3, 4; 20, 21; 33, 34, 35; 41, 42, 44, 45; 67, 68; 98, 99, 100, 101, 102, 103, 104; last public sale at Montreal, 107 (n); last in Maritime Provinces, 107 (n); last in Prince Edward Island, 111
  - Criminal, 5, 6, 25, 26, 68, 72, 73, 73 (n)
  - Enfranchisement of, 5, 44, 45, 59, 60, 60 (n); 64, 70, 102, 104, 110, 111, 114
  - Stolen, 20, 34
  - Runaway, 3, 5, 6, 11, 15, 36, 37, 38, 40, 41, 44 (n); 51, 56 (n); 69, 101, 102
  - Refugee, 51, 52; 61, 62, 62 (n), 74; chap. VI, *passim*; 102, 103; 111, 112, payment for by Great Britain, 113
  - Extradition of, 51, 52
  - White, 21, 22, 23, 24, 24 (n), 26 (n), 27
  - Eskimo, 25 (n)
- Smith v. McFarlane, 45
- Somerset v. Stewart, 11, 12, 13,
- Sorel, Slaves at, 32
- Strange, (Sir) Thomas Andrew, Chief Justice of Nova Scotia, policy re alleged slaves, 105, 106
- Talbot, Sir Charles (Lord Chancellor Talbot), opinion re Colonial slaves, 12 (n)
- Three Rivers, Slaves at, 16, 33
- Thwaites, Dr. Reuben Gold, his edition of Long's *Travels*, quoted, 2 (n)
- Toronto (York), slaves at, 67 (See District, Nassau)
- Treaty of 1686, England and France, 2, 2 (n), 3
- 1763, Great Britain and France, 11, 11 (n)
- 1783, Definitive Treaty, G. B. & U. S., 26 (n), 49, 49 (n)
- 1814, Ghent, G. B. & U. S., 112
- 1818, (Convention) G. B. & U. S., 113
- Tuscarora Indians, intermixture with Negroes, 69 (n)
- Underground Railway, 79
- Upham, Mr. Justice, of New Brunswick, opinion re slavery in N. B., 109, 110
- Van Ness, Roger, a Negro slave, 31
- Vinogradoff, Paul, investigations concerning villenage in England, 12, 13 (n)

- Warwick, M.P.P., presents petition re slavery in Nova Scotia, 108
- Washington, George, runaway slave, 78 (n); demand for return of refugee slaves, 102; demand refused, 103
- West Indies, slaves from, 2, 4, 5; Carib slaves (1732), 4
- White, John, Attorney-General Upper Canada, promotes legislation re slavery, 56
- Whitney, Eli, his cotton gin fastened slavery on South, 79
- York, slaves at (See Toronto)
- York, Jack, Negro burglar (See *Rex v. Jack York*)
- Yorke, Sir Philip, opinion re Colonial slaves, 12 (n)