

In 1837, a slave, Solomon Mosby (or Moseby), escaping from Kentucky, took his master's horse to help him on his way. He came to Niagara-on-the-Lake, but was followed by his master. He was arrested and placed in gaol while an application was made for his extradition on the charge of larceny. This was successful, and an order was made for his delivery up. But the negroes of the district knowing well that the charge was a mere pretext to procure the poor black's return to his master, determined to prevent his extradition. Under the leadership of Herbert (or Hubbard) Holmes, a coloured teacher and preacher, they lay in wait day and night near the gaol, some hundreds in number, and, when the prisoner was brought out in a wagon to be carried to the ferry, they attacked the sheriff's posse and military guard. Holmes and Green (another coloured man) seized the reins. Holmes was shot and Green bayoneted dead by the soldiers, but Mosby leaped from the wagon and escaped to Montreal and afterwards to England. Later he returned to Niagara and was joined by his wife, who also made her escape from slavery. The Deputy Sheriff, who had given the orders to fire, was acquitted by the coroner's jury, who found "justifiable homicide", which indeed was the only verdict which could rightfully be found on the facts.

Public opinion was divided over this occurrence. While there were exceptions, it can be fairly said that, as a rule, the Radical followers of William Lyon Mackenzie approved of the conduct of the negroes, while the Conservative element considered it mere mob law.

Another and an even better-known case was that of John Anderson in 1860-61. Anderson, then known as Jack Burton, was the slave in Missouri of one McDonald and had a wife, also a slave, living some thirty miles away with one Brown. Seneca T. P. Diggs, a Missouri slaveholder, finding Anderson, in November, 1853, near Brown's place, became suspicious of him and

ordered his four slaves to capture him. Anderson fled, pursued by Diggs and his slaves, and in the pursuit Anderson stabbed Diggs in the breast. Diggs died in a few hours. Anderson escaped to Upper Canada; he was arrested in 1860 in the County of Brant and placed in the Brantford gaol. A writ of habeas corpus was granted and the matter was argued before the full Court of Queen's Bench. Two of the judges, Chief Justice Sir John Beverley Robinson and Mr. Justice Burns, were of opinion that the prisoner was liable to be surrendered under the Ashburton Treaty, and that, while the warrant of commitment was defective, it could be amended; Mr. (afterwards Chief) Justice McLean dissented.

The decision was a great disappointment to the many negroes who had congregated in front of Osgoode Hall on the day set for the giving of judgment, but their counsel, Mr. Samuel B. Freeman, Q.C., of Hamilton, addressed them quietly and impressively, saying, "It is the law and we must obey it"; and they went off one by one in mournful silence.

But Freeman did not despair. In those days a prisoner could go to every superior common law court and judge in turn, and the refusal of any court or of any judge to grant a writ of habeas corpus was not conclusive; the last applied to might grant a writ refused by any or all of the others. Freeman obtained a writ from the Court of Common Pleas and asked for Anderson's discharge by that Court. The Court, Chief Justice Draper, Mr. Justice Richards (afterward Sir William Buell Richards, Chief Justice of Canada), and Mr. Justice Hagarty (afterwards Sir John Hawkins Hagarty, Chief Justice of Ontario) were unanimously of the opinion that the warrant of commitment by the Brant County magistrates was insufficient and that they could not amend it, nor had they any power to remand the prisoner so that the warrant could be amended or a new one made out by the magistrates. Anderson was discharged