

The order to arrest was to the following effect, "Let a writ of *capias ad respondendum* issue, to hold the defendant to bail, for the sum of £58."

*Macdonell* applied to His Honor for a summons calling on the plaintiff (*inter alia*) to shew cause why the order directing the *capias* to issue, should not be set aside, (and subsequent proceedings) on the ground that a certain time should have been mentioned in the order to arrest, within which the writ was to issue, pursuant to the 2nd sec. of the above Act.

*Macdonell* contended that the word in the said section, "that it shall be lawful for such party or plaintiff, within the time which shall be expressed in such order, but not afterwards, to sue out a writ of *capias*," rendered it necessary that a time should be mentioned in the order, within which the writ should issue.

*N. G. Ham, contra.*

His Honor decided that from the language of the Act, it was not absolutely necessary to mention a certain time in the order, but was merely discretionary, and that when no time is mentioned in the order, the writ is to be issued within a reasonable time.

Summons discharged.

### IN SUPREME COURT OF MISSOURI, U. S.

(Held at St. Louis, October Term, 1857.)

MARY CHARLOTTE V. GABRIEL S. CHOUTEAU, ET AL.

(From the Lower Canada Jurist.)

Opinion of Supreme Court, by RICHARDSON, Judge:—

The plaintiff asserts her right to freedom on the ground that her mother, a negress was born in Montreal, in Lower Canada, about the year 1768, and that her mother was not born a slave, because slavery did not exist in Canada at the time of her birth.

On the trial the plaintiff gave parol evidence tending to prove that her mother was born in Montreal about the year 1768, and that slavery did not actually exist and was not tolerated by law at that time in Canada.

The defendant, on his part gave parol evidence tending to prove the actual existence of slavery in Canada in the year 1768, that slaves were recognized as property, and that Rose, the plaintiff's mother, was held and sold as a slave in Canada.

The defendant\* also gave the following documentary evidence.

*First.* The articles of capitulation of the surrender of Montreal by the French to the English forces, signed on the 8th September, 1760, by Lord Amherst, Commander-in-Chief of the British forces in North America, and the Marquis de Vaudreuil, Governor and Lieutenant General for the King of the French in Canada.

The 27th article secured to the Canadians the free exercise of the Roman Catholic religion.

The 47th article is as follows: "The negroes and panis of both sexes shall remain in their quality of slaves, 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."

"Granted, except those who shall be made prisoners."

*Second.* The definitive treaty of peace concluded between the Kings of Great Britain and France the 10th day of February, 1763, by which the French ceded and transferred to the Crown of Great Britain, Canada with all its dependencies. The King of Great Britain agreed to grant the liberty of the Catholic religion to the inhabitants of Canada, and that he would give the most effectual orders that his new Roman Catholic subjects might profess the worship of their religion according to the rites of the Romish Church, so far as the laws of Great Britain permitted; and that the French inhabitants or others who had been the subjects of France in Canada, might retire with all safety and freedom wheresoever they should think proper, and might sell their estates to British subjects, or take away their property without restraint. But the treaty is, in every respect, silent in reference to the persons or property of the Canadians.

*Third.* The proclamation of George III., dated 7th October, 1763. It begins by reciting that extensive and valuable acquisitions in America had been secured to the Crown by the treaty concluded at Paris on the 10th February, 1763, and being desirous that his subjects, as well of his kingdoms, as of his colonies in America, might avail themselves of the great benefits which would accrue to them from their commerce, &c., he had thought fit to issue his proclamation and thereby, to publish and declare to his subjects that he had granted letters patent to erect within the countries and islands ceded and confirmed by said treaty four distinct governments called by the names of Quebec (Canada) East Florida, West Florida and Grenada.

It then designates the extent and boundaries of said Governments, and declares as follows: "And whereas, it will greatly contribute to the speedy settling our said now Governments, that our loving subjects should be informed of our paternal care for the security of the liberty and properties of those who are and shall become inhabitants; we have thought fit to publish and declare by this our Proclamation, that we have in the letters patent, under our great seal of Great Britain, by which the said governments are constituted, given express power and directions to our Governors of our said colonies, respectively, that so soon as the state and circumstances of our said colonies will admit thereof, they shall, with the advice and consent of the members of our Council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate government; and we have also given power to the said Governors, with the consent of our said Councils, and the representatives of the people, so to be summoned as aforesaid, to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other Colonies; and in the meantime, and until such assemblies can be called as aforesaid, all persons inhabiting or resorting to our said colonies may confide in our royal protection for the enjoyment of the benefits of the laws of our realm of England, for which purpose we have given power, under our great seal, to the Governors of the said colonies respectively, to erect and constitute with the advice of our said Councils, respectively, courts of judicature and public justice within our said colonies, for the hearing and determining of all causes as well criminal as civil, according to law and equity, and, as near as may be agreeable to the laws of England."

There is nothing else in the Proclamation that relates to this subject.

*Fourth.* The act of the British Parliament of 1774, 14 George III., chap. 83, entitled "An act for making more effectual provision for the government of the Province of Quebec in North America." (30 British Stat. at large, 549) There is nothing in this act that bears on the subject but the two following sections:

"Sec. 4. And, whereas, the provisions made by the said proclamation in respect to the civil government of said province of Quebec, and the powers and authorities given to the Governor and other civil officers of the said Province, by the grants and commissions issued in consequence thereof, have been found upon experience to be inapplicable to the state and circumstances of the said Province, the inhabitants whereof amounted at the conquest to above sixty-five thousands persons professing the religion of the Church of Rome, and enjoying an established form of constitution and system of laws, by which their persons and property had been protected, governed and ordered for a long series of years from the first establishment of the Province of Canada; be it therefore, further enacted by the authority aforesaid, that the said proclamation, so far as the same relates to the said Province of Quebec, and the commission under the authority whereof the government of the said Province is at present administered, and all and every the ordinances and ordinances, made by the Governor and Council of Quebec, for the time being, relative to the civil government and administration of justice in the said Province, and all commissions to Judges and other officers thereof, be and the same are hereby revoked, annulled and made void, from and after the first day of May, one thousand seven hundred and seventy-five."

\* An error: the first three documents referred to were adduced by the plaintiff.