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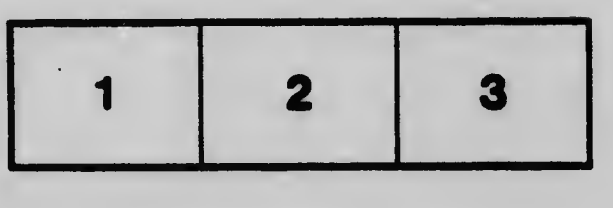

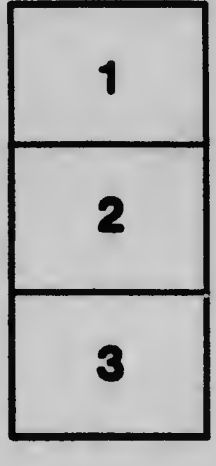

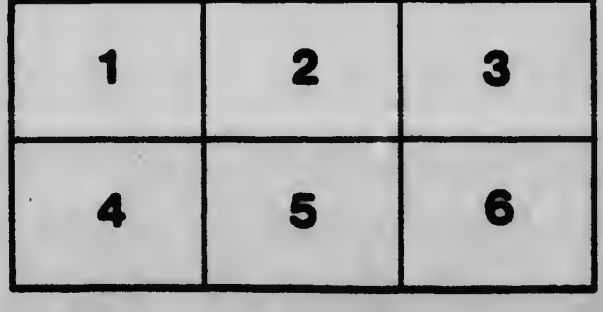

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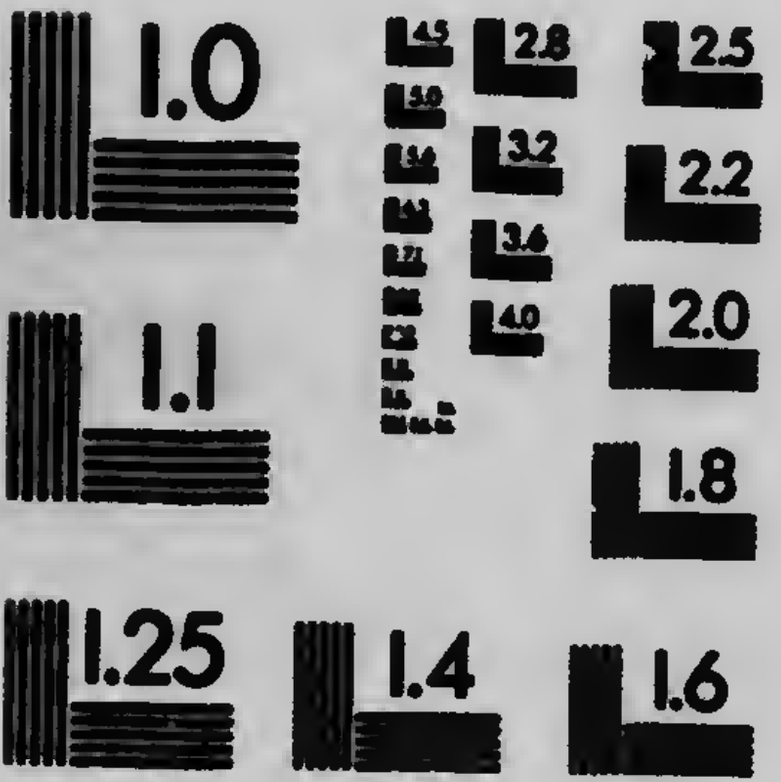

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THE DEVELOPMENT OF PERSONAL LIBERTY

IN GREAT BRITAIN, FRANCE AND THEIR COLONIES

AN HISTORICAL SKETCH

BY

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Reprinted from "The Canadian Law Review," March, 1905.

The Development of Personal Liberty

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I.

In the time of Aethelbert, A.D. 600, the lowest class were the theöws, slaves by birth, then came the wite-theöws, those reduced to slavery from inability to pay fines. The Esné was sometimes ranked as a slave, but seems to have been a hireling in a servile condition.

The Löets were of a class between servile and free and were of different ranks. The penalty for slaying a Löet of the highest class was 80 shillings, of the second class 60 shillings, and of the third 40 shillings.

Withräed King of the Kentish-men, at a convention held at Bergham-Styde, graced with the presence of Birhtwald, Archbishop,

of Britain, and Gybmund, Bishop of Rochester, decreed certain dooms much savoring of piety. The Esné who worked on Sunday, contrary to his lord's command, was to make a bot, or pay a fine of 80 shillings, and if such work was done of his own accord, then the bot was 6 shillings. Any theöw who offered sacrifice to devils was subject to a bot of 6 shillings.

Iné, King of the West Saxons, supported by Cenred, his father, and by his bishops, Heddé and Eorcenwald, also his ealdormen and the witan, or parliament of his people, made dooms of like character. It was ordered that God's servants rightly hold their lawful rule. Iné was a model Pœdo-Baptist and decreed that every child should be baptized within 30 days of its birth under penalty of 30 shillings, and if the babe die without the rite, then bot was to be made of all the parents' possessions.

The wite-theöw, who stole himself away was to be hanged. Any one who lent a sword, spear, or horse to an Esné was to be fined. Alfred, son of Athelwulf, came to the throne in A.D. 872, and compiled the laws then in force into a complete system or code commanding, as is stated in his proclamation, those to be written which seemed to be good, and rejecting many by the counsel of his witan.

He introduced much of the Mosaic Code, such as the provisions of "an eye for an eye" and "a tooth for a tooth." Yet this did not prevail throughout as the bot, or compensation, might still be made for injury or destruction of members. A nose was valued at 60s., a broken arm at 15s., a lost thumb at 30s., a great toe at 20s. The theöw whose eye was stricken out by his master was to be free.

The Christian theöw, who served six years, was, on the seventh, to be free without purchase, but if he chose to remain then the Judaic ceremony took place. He was to go with his lord to the door of the temple and have his ear bored through with an awl in token that he would be a theöw for ever. He was to use the words: "I will not from my lord, nor from my wife, nor from my child, nor from my goods."

Aethelstan, whose reign began in A.D. 925, extended responsibility for crime to the slave class in like manner as among freedman. The church now led the way. Wilfrith and other bishops emancipated their serfs.

Passing to the Great Charter granted by King John, we find it made in favor of "the freedmen of our Kingdom." It did not em-

brace the vast population of villains and serfs, the former theows and esnés nor even persons who worked at tra[illegible] and other manual labor.

"Personal slavery was recognized in England until the twelfth century. We have no means of knowing with any exactness the number of slaves but the recorded manumissions would alone suffice to prove that the number was large."

Slaves were bought and sold and a real slave trade was carried on from English ports. This abuse was increased with the evil times that set in with the Danish invasions. Slaves were exported from England much earlier. Selling a man beyond the seas occurs in the Kentish laws, as an alternative for capital punishment. Towards the end of the eleventh Century the slave trade from Bristol to Ireland where the Danes were then in power, called forth the righteous indignation of Wolfstan, Bishop of Worcester. An edict of William the conqueror put an end to the slave trade at this port.*

We only remark that this reference omits the servitude of African negroes of whom many were in bondage in England to the end of the eighteenth century and in her colonies to a later period.

It is interesting to note, that it was through the slave trade that St. Patrick was brought from Gaul to Ireland. Whether he was a native of France, Scotland or Ireland is a debated question, but when a lad of sixteen, he was captured near the present city of Boulogne A.D. 403 by invaders under Niall, ancestor of the tribe of Hy-Niall or O'Neill, one of the most famous pagan monarchs of Ireland. The young man became the slave of Milcho a farmer in Antrim whose swine he herded. He was exposed to frost and snow and his sufferings were great during six years of bondage. He escaped and after many adventures got back to France where he was educated for the priesthood. Guided by a remarkable dream, he returned in A.D. 431 on his religious mission, and the former slave became the patron saint.†

The name of Scotland's chieftain Sir William Wallace is connected with the removal of serfdom from Scotland. He was the

*History of English Law by Sir F. Pollock and Dr. F. W. Maitland, cap. 1. Cambridge, 1895. See also "Germs and Development of the Laws of England," John M. Stearns, New York. 1889. Green's History of the English people, pp. 89, 117.

†History of Ireland by Martin Haverty, Dublin, 1865, cap. vii.

first to sweep aside the technicalities of feudal law, and to assert freedom as a national birthright.*

It is clear there were negro slaves in England until 1797.

In the city of London, advertisements appeared the counterparts of those found in the United States and Canada, regarding negro chattels. The public Ledger of 31st Dec. 1761, had the following :

"FOR SALE. A healthy negro girl, aged about fifteen years, speaks good English, works at her needle, washes well, does household work and has had the smallpox."

The Gazetteer of 18th April 1769, had an advertisement, "Horses. Tim Wiskey and Black Boy. To be sold at the Bull and Gate Inn, Holborn, a very good Tim Wiskey, little the worse for wear, a chestnut gelding, a very good grey mare, and a well-made good-tempered black boy, he has lately had the smallpox, and will be sold to any gentleman."†

The same paper contains a description of "*Jeremiah* a negroe man," concluding thus, "Whoever delivers him to Capt. M. W.—— on board the *Elizabeth* at Princess Stairs, Rotherhithe, shall receive Thirty Guineas reward."

The Daily Advertiser of same date offers for sale a Creole Boy. (Anthony Benezet's Historical account of Guinea and the Slave trade 1772.)

An Act passed in 1775, recited that by the Statute Law of Scotland, as explained by the Courts of Law there, many colliers and coal bearers and salters, are in a state of slavery or bondage, bound to the collieries or salt works where they work for life, transferable with the collieries or salt works."

In an Act of 1799 it was declared that, notwithstanding the former Act, many colliers and coal-bearers still continue in a state of bondage.

Hugh Miller, in "My Schools and Schoolmasters" gives an account of them.

II.

In 1750 Attorney-General, afterwards Lord Hardwicke, and Solicitor-General, afterwards Lord Talbot, gave their opinion to certain merchants and planters that they might lawfully import and hold slaves as property in England. Twenty years passed and

*Greene's History of the English people, 211.

†The Tim Wiskey was a small carriage.

there had begun to grow some of the germs of that public feeling which was eventually to overthrow the slave systems in both continents. While domestic slaves were still held private property, as stated by Lord Stowell in the case of the *Slave Grace*, yet the importation of such property was guarded against and became unlawful. Such was the decision in the great action of *James Sommersett* decided in the Court of Queen's Bench, Lord Mansfield presiding, in 1772. This slave was put on board ship by Mr. Charles Steuart, a Virginian, and taken to England on his way to Jamaica, but there brought up on habeas corpus. The court was very slow in being convinced of the black man's rights. It was loath to decide in a way that would disturb the title to such valuable chattel property in England. "The setting 14,000 or 15,000 men at once loose by a solemn opinion is very disagreeable in the effects it threatens," said the Chief Justice, so the case was postponed in hopes of a settlement. But there was no compromise. The parties stood each for his right as by law ordained, and so they came again before the famous judge who reluctantly almost blurted out the judgment thus, "*fiat justitia ruat coelum.*" "Let justice be done whatever be the consequence." "£50 a head may not be a high price, then a loss follows to the proprietors of £700,000 sterling." His finding was that nothing could support a state of slavery but positive law, that Sommersett so voluntarily brought to England was not subject to such law, and "Whatever inconveniences therefore may follow from the decision, I cannot say that the case is allowed by the law of England, and therefore the black must be discharged."*

In 1778 the action of Joseph Knight, a negro, against John Wedderburn, his master, who had brought him from Jamaica to Scotland, was similarly decided.

Dr. Samuel Johnson prepared a written argument on behalf of this slave, which was submitted to the court, as related by Boswell. The judgments referred to, and the sentiments of eminent jurists so expressed, permeate all later decisions including that of the Dred Scott case.

How fast Negro Emancipation advanced under the Federal Government of the United States may be shown by reference to the record in the Dred Scott action. It was argued in 1856 by Caucasian lawyers before a bench of white men. The negro could not raise his voice in that, or any Southern tribunal. Thirty-four years

*English State Trials, vol. xx.

passed and, when the important Navassa case came before the Supreme Court, three of the defendants were Afro-Americans and their counsel were Messrs. Waring, Sterling and Davis, all learned colored men. American emancipation was begun as a war measure, and advanced on the rising tide of rebellion with little regard to historical precedents, mental capacity, or moral status of the millions so launched upon an unknown sea of freedom with no master to control and little knowledge to guide. But it is known that the Washington Government in 1862 sent Dr. Howe and others to inspect and report on the colored missions and settlements at Chatham, Buxton and elsewhere in Canada West. They found the former slaves, to the number of several thousands, doing fairly well as farmers, mechanics, and even municipal officers, and the report of these commissioners, which is amongst the public records of this time, had, it is alleged, much to do with the passing of the Thirteenth amendment to the U. S. constitution.

The decision of the Federal Supreme Court, as to Dred Scott and Harriet his wife, was made in view of the history and jurisprudence of the motherland, as they existed when the American Constitution was framed.

Some further brief reference to this and to the French and English cases referred to in the text, may not be uninstructive in consideration of their effect in the development of personal liberty.

It has been the boast of England that she led the way in the Crusade of liberty, but it must be admitted that the first steps were taken in France. In 1738 Jean Bouceaux, a negro Creole from St. Dominique, caused his claim to freedom to be brought forward in the Admiralty Court at Rochelle in much the same manner as Sommersett did in London thirty-three years later.

Bouceaux the property of Madame Verdelin, wife of the Sieur de Verdelin, chevalier of the order of St. Louis and a high official, was, with the written permission of the Governor of St. Dominique, registered at the Admiralty offices there and at Rochelle, brought to the latter place. Bouceaux was an excellent cook and served as such faithfully from 1728 to 1738. M. Verdelin then, suspecting him of an intention to abscond, had him thrown into prison. The master had omitted to lodge a personal declaration on his landing at Rochelle, as by law required, in order to secure his proprietary rights.

The slave, being advised, presented his petition to the Ad-

miralty Court in June in 1738, and M. Verdelin was ordered to answer, Bouceaux being, by the judges placed "under the keeping of the King and of justice," as the phrase went (*sous la sauvegarde du Roi et de la justice*). Bouceaux followed up his petition for freedom with others praying payment to him by his master and mistress of wages due for nine and a half years as cook, and to be removed from prison on bail. The case came before the Court of Admiralty for hearing with M. Mallet, advocate for the slave, and M. Pribard for Sieur and Madame Verdelin. M. Mallet relied on an edict of 1685 which prescribed the limits and conditions of slavery. He showed that this applied only to the Colonies as there were then no slaves in France. It had been permitted to enslave negroes there for the cultivation of the soil and utility of commerce, and when these motives were removed, it was argued that the right to hold slaves no longer existed. An edict of 1716 referred to the bringing of negroes to France from the Colonies, but only that they might be instructed in the Christian religion or taught some trade or useful craft. When slaves were brought to France without the observance of the formalities imposed, and for other objects than so prescribed, then they were entitled to claim freedom, and M. Mallet contended that the respondents in the action had, through neglect or violation of the regal edicts, lost all right to the slave. M. Pribard argued that the law's requirements had been sufficiently complied with by the registering of the Colonial Governor's licence, both at Cape Francis St. Dominique, and at Rochelle.

M. le Clerk du Billet, Procureur du Roi of the Court, summed up the arguments. The court decided as follows :

"We pronounce and declare that the client of M. Mallet is free in his person and goods from the time of his arriving in France; in consequence we order that he be set at liberty, and taken from prison, and the writ against him be erased and cancelled, that the recorder and gaoler see to the carrying out of this order."

"We order the clients of M. Pribard to carry out the order of the court, and the case is adjourned for eight days in order to obtain an equitable adjustment, with the aid of the Procureur du Roi, as to the amount of wages, damages and other claims made by the petitioner."

It was thus declared that the slave's freedom was assured on his touching the soil of France, except under circumstances of special compliance with the conditions stated. And this was in

the licentious reign of Louis XV. The Revolution of 1789 had its declaration of personal freedom as one of the inalienable rights of man. The Republic of 1848 finally abolished slavery throughout the dominions of France.

It is interesting to know that the decision in the case of Jean Bouceaux was a declaration and confirmation of an older principe of French law dating back to 1571. M. Etienne Pasquier, the famous jurist of that time and M. Antoine Loisel, author of the "Dialogue des Avocats," affirmed this.

Loisel, in that classical treatise, stated that "all persons are free in this kingdom, and as soon as a slave has crossed our boundaries and becomes baptized, he is enfranchised."

A profession of Christianity, as a precedent to the attainment of freedom, was a peculiarity of French and later Roman law, which did not obtain in British jurisprudence, though there is a tendency toward it in the doom of King Alfred referred to. The custom may be traced back to the time of Constantine. It reminds us of the words of Gregory the Great on seeing white slaves from Britain for sale in Rome, "*Non Anglised angeli, si Christianensi,*"*

But we have evidence that the principles discussed were affirmed and acted upon, by the banks of the St. Lawrence before either the Bouceaux or the Sommersett cases were enunciated. The Abbé Ferland relates that in the end of the summer of 1732, three Englishmen, provided with a passport from the Commandant at Albany, came to Montreal and asked that a black slave should be delivered to them, as he had fled from his master and taken refuge in Quebec. M. de Beauharnois answered them that the man was free to do so, but that the right of asylum was acquired by him from the moment he put his foot on the land of the King of France, and that he could not be compelled to return.†

It is to be noted that this was six years before the eloquent discourse of M. le Clerk at Rochelle and many years before Lord Mansfield's decision. Governor de Beauharnois was a man of high birth and fine intelligence, who ruled in the old regime for twenty years. He had no doubt sat at the feet of Loisel the French Gamaliel, and was able to put in practice the lessons learned from him.

The case of Sommersett had a marked effect in Lower Canada. It has indeed been quoted and used in argument in every judicial

*Biot. d'abolition de l'Esclav, p. 147.

†Ferland's Cours d'histoire du Canada, Quebec 1865, vol. ii, 446.

contest of the kind since, including those in Canada and the United States.

A sentence from the judgment of Lord Stowell in the case of the slave "Grace" is so like one of the dicta of the American chief justice in the *Dred Scott* case, that we venture to quote it, premising that these words were spoken only seven years before British Colonial Emancipation. "If she (the slave) cannot plead with truth that she was a free subject, there is no ground of complaint in her being treated as a slave, her rights are not violated and she has no injured rights to represent. It may be a misfortune that she was a slave, but being so, she, in the present constitution of society, had no right to be treated otherwise."

The decision of the English Court of Exchequer of date 1848, *Buron* v. *Denman*, 2 Exchequer Reports 167, may also be referred to as to the status of slaves under the law of nations. It shews that our courts cannot ignore the proprietary rights of slave-owners of countries where slavery has not been abolished.

III.

Where master and slave are of the same race, and especially of one color, the condition is not so clearly defined, and is generally less harsh, than where a different color and race are the basis and sanction of involuntary servitude. My further remarks will relate to the status so color-marked. That the African was considered *ipso facto a slave*, or at least an inferior being, can best be shown by reference to some well-known authors.

Indeed until brought to the front by the long and urgent pressure of the anti-slavery movement, the blackman appears, in England and English literature, only in the ante-room, and if he advances farther he is an interloper. It might have been argued that, in so treating him, highest wisdom was followed.

"I am black but comely, O ye daughters of Jerusalem" sang Solomon. (Cant. 1 : 5.)

In the greatest of our classics the renowned Prince of Morocco as he advances his suit before the fair Portia craves—

"Dislike me not for my complexion :
I tell thee lady, this aspect of mine
Hath feared the valiant, by my love

I swear, the best regarded virgins of our clime
Have loved it too.
I would not change this hue,
Except to steal your thoughts my gentle Queen."

(Merchant of Venice, Act II, Sc. i.)

And when the brave Othello had gained the heart of Desdemona and old Brabantio was pressed to accept the Moor as his son-in-law, how grudgingly does he yield to Cupid and the Duke.

Come hither, Moor,
I here do give thee that, with all my heart
Which, but thou hast already, with all my heart
I would keep from thee."

The Duke's last words to Brabantio are also suggestive :—

Good-night to every one, and noble seignior,
If virtue no delightful beauty lack
Your son-in-law is far more fair than black.*

(Othello, Act I, Sc. iii.)

So in Defoe's masterpiece we have, in the disposal of Xury, an insight into the position held by Africans under British masters in the latter part of the seventeenth Century.

Crusoe escapes from Africa and Moorish bondage along with a young Moresco. They are given refuge on a Portuguese ship and kindly carried to Brazil. Crusoe barters with the Captain, selling his boat and other articles, and almost as a matter of course, the black boy.

In Steele's story of *Inkle and Yarico*, a dusky damsel falls in love with a shipwrecked Englishman and they escape together, but his affection and gratitude did not save poor Yarico from being sold in the West Indies as a *chattel*. (The Spectator, No. 11. Date 1710.)

The saintly Baxter, in his *Christian's Directory*, found little fault with slavery, but reminded masters that they had but a limited dominion over beings with souls. While the doom was most severe on the sons of Ham, it was not confined to them. Any people whose skin was dark was liable to be enslaved without legal process by whites. Such were the Indian Slaves called Panis in British and American Territory.

*Neither the Prince nor Othello were African negroes. Shakespeare ardws no fine distinction when referring to men of dark complexion.

That modern poet, Rudyard Kippling, follows the same historic strain in his poem "Our Lady of the Snows."

"Neither with laughter nor weeping,
Fear or the child's amaze,
Soberly under the white man's law,
My white men go their ways."

We find Colonel William Johnson writing to Governor Clinton of New York that the "Six Nations complain that Indian children who had been captured were looked upon as slaves or negroes." *

The enslaving of Indians in Canada for the one hundred and fifty years preceding the last century, caused the creation of the French-Canadian word *Pani* by which these slaves were known. It is to be found in the 47th paragraph of the Montreal Capitulation of 1760 providing for the continuance of both negroes and panis in servitude after the peace. The word is also used in the treaty made by Sir W. Johnson with the Hurons in July 1760† and in many other public documents and records of the period.

The enslavement both of black and red men was not unfamiliar to even the Puritan Colonists. In 1675 Metacom, known as King Philip, sachem of the Wampanoags, waged his famous war. Many towns and villages in Massachussetts and Rhode Island were destroyed and there were few families who had not lost some of their members. When Philip had fallen and his country had been subjugated, the old Sachem Annawon, the chief Tipsaquin and other prisoners who had been active in war, were put to death. The remainder were sold as slaves. The son of Philip was among them. His only crime was his relationship to the great chief. This unfortunate young man, the last of a doomed race, was sent as a slave to Bermuda whence he never returned.‡

IV.

The legal status of slavery in Canada began with an edict of Louis XIV in 1688, authorizing the importation of negroes from the Guinea coast. There are some instances on record of slaves in the old Province of Quebec, even before the date mentioned. The

* New York Col. Documents, vol. vi, 546.
† New York Col. Documents, vol. vii, 560.
‡ As to slavery of Indians in the United States, see Kent's Commentaries, part vi, lecture 61; Bancroft's History, vol. i, 41 and 182; Chalmers' Political Annals, 291.

first Canadian census in which slaves were counted was that of 1784, when the blacks of both sexes amounted to 304, of whom 212 were in the district of Montreal.* Slavery in the old Quebec province was of a mild type controlled by the *Code noir* and various ordinances of the patriarchal Government of the Old Regime. The system was put an end to here by certain judgments which seem to have more the merit of humanity than of legal learning.

In February, 1798, "Charlotte," a colored slave, was claimed by her mistress and released on habeas corpus by Chief Justice Sir James Monk at Montreal. "Jude," another negress, was soon afterwards arrested as a runaway slave by order of the magistrate. The negroes in Montreal, knowing of the "Charlotte" case, became excited and threatened revolt but when the woman was brought before the Chief Justice, he released her also, and declared to the effect, that in his opinion slavery was ended. On the 18th February, 1800, the case of "Robin" came before the full court of King's Bench, Mr. James Fraser claiming him, when after argument, it is recorded that it was "ordered that the said 'Robin' alias Robert be discharged from his confinement." It seems clear that the Court was wrong in its judgment, and that slavery in law existed in Lower Canada until the Imperial Act of 1833 removed it from all the colonies. An effort was made in the Provincial Legislature to obtain an act to define the true position, but without success.

There were a considerable number of negroes in servitude in Nova Scotia and New Brunswick prior to 1800, but slavery in those provinces died a natural death without legislative aid.

Slaves were brought into Upper Canada by the United Empire Loyalists and other settlers prior to 1793. The newspapers of that time had occasional advertisements of slaves for sale and of rewards for recovery of runaways. The Messrs. Crooks of West Niagara state in the *Gazette* of October, 1797, that they wanted to purchase a negro girl of good disposition from 7 to 12 years of age. Mr. Charles Field in the *Herald* of 25th Aug., 1802, cautions all persons not to harbor his Indian slave Sall.

Here came the famous Colonel Brant or Thayendinageo the Mohawk chieftain, attended by his body servants, colored men called Ganseville and Patton. Here, too, he purchased other negroes or brought in those taken in his expeditions into the United States territory, and carried them to his reserve near Brantford, which

*Garneau's History, vol. iv, p. 90.

made him next to Colonel Matthew Elliott of Essex County, the largest slave owner in Canada. Colonel Elliott had settled at Amherstburg on the Detroit river, bringing some sixty slaves.

At the second session of the first parliament of Upper Canada, held in Newark, now Niagara, in 1793, an Act was passed prohibiting the importing of slaves, and making provision for the gradual extinction of the system in the province. It was provided, however, that those then slaves should remain in bondage for life unless voluntarily freed by masters. The development and natural result of the feeling, which had arisen in France and England, was exhibited in the passing of this enactment by the little legislature, meeting in their rude log hall by the great river. There was no further subsequent enactment in either province as to slaves, but the Imperial Emancipation Acts which came into force in these and other colonies on first of August 1834 found but few slaves inCanada.

V.

CASES IN CANADIAN COURTS.

A unique case of singular interest as to the status of emancipated slaves arose in Nova Scotia, shortly before emancipation by Lincoln. The matter came before a Parliamentary Committee at Halifax respecting the validity of an election where the sitting member owed his seat to the votes of some old freed-men who had been carried away in British ships of war from Chesapeake Bay, but had never been naturalized. Counsel for the sitting member, Mr. R. G. Haliburton, afterwards a Q. C. and distinguished in literature, argued in a manner that proved effective with the committee as Haliburton himself informed the writer, that, according to the strict letter of the law, a man who was not a native of a country, could only become a citizen of it for a clear reason, that it is assumed that nature makes a man true to his mother and to the land of his birth and if he desire to change his country, only an oath can divest him of his loyalty to his native land and transfer his fealty to the land of his adoption. Can we assume that a slave has an *innate loyalty* to the land of his servitude ? The very reverse ! He only owes it a debt of hatred. What a mockery to ask a slave that he will be faithful to the country that has freed him. What is the *native land* of a slave, who has been carried away and emancipated by a belligerent ? A cow owes no allegiance because she is a mere chattel, a slave is also as much a chattel. But, when he stands on

the deck of a British ship of war, he ceases to be a chattel and is *born a man*. The flag above him is more than his country's flag ! It is his all. It is his father, his mother, his saviour, his Creator. The deck he stands on is the place of his birth. Thenceforth he is a British subject and entitled to all the immunities of a British citizen. Lord Stowell lays it down, continued the learned counsel, that a slave cannot be a chattel real for a curious reason, "because a slave cannot live forever." Thank God it is so, that nature is more merciful to humanity than human laws, that there is a time of universal equality, of universal freedom, a time when the monarch must lie down in the same dust in which the wearied serf is sleeping, a time when the shackles must fall from the slave and when his spirit, freed from the hand of the oppressor, must return in endless liberty back to the God that gave it ! Thank God the slave cannot live forever !*

In early times Canada became a place of refuge for fugitives from the South who were accused of carrying intelligence to the French.

By an Act of the Province of New York of 1705 it was recited that such was the case and enacted, that every negro slave, belonging to any inhabitant of the City and Country of Albany, who should be found travelling forty miles above the said City of Albany at or above a certain place called Sarachtoge, unless in company of his master or mistress or such employed by them, and be thereof convicted by two or more credible witnesses before the Court of Sessions should suffer the pains of death, as in case of felony." This act was revived and continued in force by the Albany Legislature on July 25, 1715. (N.Y. Colonial Documents, Vol. V, 418).

In 1747 Ensign de Malbronne on board a French vessel claimed a colored servant whom the English declined to surrender. In 1750 a negro in possession of the Sieur de la Corne St. Luc (a historic name in the early history of Quebec) was refused to his former master, following the last case as a precedent. The carrying away of fugitive slaves from the Atlantic coast by British vessels in 1783 caused much irritation and by the Treaty of Ghent of 24th Dec. 1814 it was provided that "all territory &c., shall be restored—and without causing any destruction or carrying away any artillery, or any slaves or other private property." The matter of damages sustained was submitted to arbitration and in 1826, Great Britain agreed to

*The Queen's County Case, 1860. The Parliamentary Committee decided in favor of the emancipated slaves' right to vote as British subjects without nya *Act of Naturalisation*. Mr. John Campbell was the sitting member.

pay $1,205,000 as compensation to the United States for losses so sustained. As slavery became practically extinct in Canada, colored fugitives found themselves generally secure there. This gave rise to complaints and proceedings in Congress. In 1826 Mr. Henry Clay, then Secretary of State, proposed to the Court at St. James a convention for the mutual surrender of all persons held to service from one country to the other. The proposal was not entertained either then or afterwards when repeated.

In 1841 Mr. Woodbridge introduced a resolution into the Senate to consider the expediency of providing for such extradition but no definite action was taken until the Webster-Ashburton treaty was made. *

Under a Provincial Act of 1833, the Governor was empowered to extradite persons charged with murder, forgery, larceny or other crime, committed without the jurisdiction, which crimes if committed within the Province would, by the laws of Upper Canada, be punishable by death, corporal punishment, by pillory or whipping or by confinement at hard labor. The provisions of this Statute were not sufficiently guarded. A man might be accused of larceny, who had escaped from a plantation with but the clothes on his back, on the ground that all he had, was in law his master's. The treaty, arranged between Mr. Webster and Lord Ashburton in August 1842, and ratified the following October, omitted larceny from extraditable offences, and covered only the crimes of murder, assault with intent to murder, piracy, arson, robbery, forgery and utterance of forged paper. A Canadian Statute, to carry its provisions into effect, provided the mode in which arrest and preliminary trial should take place, and that, if the judge, before whom the person charged were brought, should find the evidence sufficient, then he should commit the prisoner to await the action of the Executive. The Moseley case came up under the first mentioned and less guarded act.

Solomon Moseley an escaped Kentucky slave was charged by his master with stealing a horse on which he had fled away. The Governor, Sir F. B. Head, and his advisers were satisfied apparently with the evidence and Moseley was committed to await extradition. He was confined in the old jail at Niagara on the Lake, the building now called the Western Home and used by Miss Rye as a shelter

*"Pay House Monograph No. 3, Fugitive Slaves." By Mrs. M. G. McDougall. Boston, 1891. Ginn & Co. 8 & 11.

for orphan children. The sheriff being directed to deliver the prisoner to the United States authorities sought means for his removal. He applied to Capt. Richardson, whose vessel plied between Niagara and the New York shore, but the Captain with words more pointed than polite, refused the use of his vessel for the return of a fellow being to slavery.

The colored people were held to their duty by Herbert Holmes, a worthy teacher and exhorter of their own race. A party of more than two hundred gathered in the little town, surrounded the jail and kept watch for a fortnight. The white inhabitants mostly sympathized with Moseley, but took no part, except in supplying food to the blockading army.

At last an attempt was made to remove the prisoner. A spirited team of bays, drawing an open wagon, was driven up. A force of armed constables surrounding it was sustained by two soldiers who sat by the driver. It was commanded by Deputy Sheriff McLeod, the same person who became a few months later renowned in the affair of the "Caroline," the American vessel set fire to, and sent over the Falls of Niagara. Moseley was hurried from the jail and placed bound in the wagon by his guards, but the dusky watchmen were on hand. With brave and anxious faces they crowded around and blocked the gate of exit from the jail yard. Colored women in the background, also held the road over which the carriage would necessarily pass. Here they vented their feeling in religious hymns, whose sweet words were heard over all the tumult. But the order to advance was given, the struggling horses were seized as they passed the gateway by the brave Herbert Holmes and other colored men pressed forward.

McLeod read the Riot Act and threatened, but with no effect; the colored women advanced and distinguished themselves in the fray. They prevailed upon their husbands, brothers and lovers, to use no firearms, and to do no illegal violence, but to lose their lives rather than see their comrade taken by force across the line. One woman seized the Deputy-Sheriff and held him pinioned in her arms, another, on one of the armed guards presenting his piece, and threatening her if she blocked the way, with one hand knocked up the gun, and collaring him with the other, held him so as to prevent his firing. Unfortunately McLeod still had the use of his tongue, and on his order, one of the soldiers fired in the air, but the other shot Herbert Holmes as he was struggling with the horses. A colored man,

called Green, had secured a fence rail, which he thrust between the spokes of the hind wheels of the wagon. Green fell also, shot dead by one of the sheriff's posse.

Meantime Moseley jumped out among his compatriots, hid in a field of growing corn, got rid of his shackles and escaped. A number of the colored men were lodged in jail, charged with riot and unlawful interference, but public sentiment was generally with them, and when rebellion broke out a few months later, these men were formed into a military company, and did duty for a while at Chippewa and elsewhere in the neighborhood. The affair was remarkable for the singleness of aim and endurance of the colored people. The respect they felt for British law was sorely tried. It was a test case. They knew that, if Moseley were removed to a slave state, many of them might expect to be also soon threatened with loss of liberty. Pretences would not be lacking if the doors were not closed in the face of the man-stealer. The humble heroes, Holmes and Green, as truly sacrificed their lives to save their fellow men from a miserable fate, as did the Roman Curtius.

Mrs. Jameson, the talented authoress, being soon after this in Niagara, visited a mulatto woman, who had been foremost in the contest, and whose intelligence and influence had mainly contributed to the success of her people. She was a fine creature, with a kindly animated countenance, but the feeling of exasperation had not yet subsided. She had been a slave in Virginia, but on the death of her master, ran away to escape being sold to a stranger. "'I liked my mistress,' she said, 'but I did not like to be sold.' I asked her if she was happy here in Canada. She hesitated a moment, and then replied, on my repeating the question. 'Yes, that is, I was happy here,—but now—I don't know,—I thought we were safe here—I thought nothing could touch us here, on your British ground, but it seems I was mistaken, and if so, I won't stay here—I won't, I won't! I'll go and find some country where they cannot reach us! I'll go to the end of the world, I will.' And," says Mrs. Jameson, who was in Upper Canada the wife of the first Equity Judge, but known the world over as a graceful writer and noble woman, "as she spoke, her black eyes flashing, she extended her arms and folded them across her bosom with an attitude and expression of resolute dignity, which a painter might have studied,

and truly the fairest white face I ever looked on never beamed with more soul and high resolve than hers at that moment."*

The case of John Anderson came before the Court of Queen's Bench at Osgoode Hall, Toronto in 1800, after the passage of an Act to carry out the Ashburton Treaty. Anderson, a fugitive slave, when passing over the farm of Mr. Seneca Diggs in Howard County, Missouri, was seen and suspected. Diggs questioned him. Anderson gave an evasive answer and passed on. Being pursued by Diggs, he turned, slew him with a knife and escaped to Canada where he lived unmolested for some time. He was arrested on a charge of murder and demanded by the United States. The legality of his arrest was disputed. The warrant had been granted by Mr. Matthews, a Brantford magistrate, who heard the evidence and committed him for extradition. He was brought before the Queen's Bench on habeas corpus and that Court confirmed the magistrate's decision. A defect was however found in the warrant of committal. Anderson's counsel, taking advantage of this, obtained another habeas corpus from the Common Pleas, and he was discharged from custody because of the defect referred to. Anderson was not long in finding his way to England where he told his story to Lady Shaftesbury and in Exeter Hall. The case caused much interest in the Province and while it was pending the contagion spread to England and New England. Mr. Edwin James, Q.C., applied before the Court of Queen's Bench at Westminster Hall at the instance of the Anti-slavery Society, and that Court, headed by Chief Justice Cockburn, granted a writ of habeas corpus to bring Anderson before them. This writ was actually sent out to the sheriff at Toronto, who shewed it as a curiosity, but before it arrived the prison doors had been opened by order of the Common Pleas and Anderson was on the blue sea. An Act (25 & 26 Vic. Cap 20) was passed by the Imperial Parliament in 1862 providing that no such writ should again be issued out of any English Court to any colony where there were established courts of proper jurisdiction. Anderson's Case was the last attempt of slave owners to recover escaped chattels from Canadian soil. Public sentiment was against them, Every such effort was vigilantly watched, especially by the colored people, whose feeling was triumphantly expressed in one of their songs :

* Winter Studies and Summer Rambles in Canada. By Anne Jameson. London, 1833. Vol. ii, 42.

We are indebted to Miss J. Carnochan, of Niagara, for some of the particulars of the Mosely Case.

"I'm under British Law
Safe beside the lion's paw,
And he'll growl if you come near the shore."

There is too an old legal maxim which has generally, in the end at least, alike on British, Colonial and American soil, asserted itself in relation to the oppressed :

"Lex Angliae est lex misericordiae."

Behind all these movements affecting civil rights, there was the moral power. It arose, as we have seen, with the advancement of education, the translation of the Bible into the vulgar tongue and the opening of the eyes of the serfs, who at last discovered that their lords were of the same blood as themselves. When the followers of Wat. Tyler elected John Ball, Chaplain at Maidstone in 1381, he preached a sermon taking for text the old rhyme :

"When Adam delved and Eve span
Who was then the gentleman ?"

The spirit which animated them did not slumber. But for it, the serfs would have remained chattels appurtenant to the land they tilled and the mines they worked ; Bouceaux would not have found sympathisers or enlisted the advocacy of le Clerk at Rochelle ; Sommersett and Knight would have been relegated to slavery in the Antilles ; Moseley and Anderson would have been returned to Southern bondage. The conflict for liberty in France was fierce and bloody. In England, since the days of the Stewarts, it has been mainly parliamentary. Canada inherited the spirit from her mother-lands, but had its uprising in 1837, followed by the Acts abolishing feudal tenure in Lower Canada and primogeniture in Upper Canada, and enactments extending the suffrage in both provinces.

In the United States the storm broke on the reefs of Southern interests and the inflexibility of the written constitution.

Happy is the land where the dread resort to civil strife is warded off by the wisdom of those who teach, including the clergy, the press, the legislature and the courts.

Toronto

J. Cleland Hamilton.