# AN EARLY FUGITIVE SLAVE CASE WEST OF THE MISSISSIPPI RIVER

The far reaching tract of land west of the Mississippi River that came to the United States in 1803 through the exigencies of Napoleonic politics and the adaptability of Jeffersonian Democracy, proved to be a territory of marvelous resources and unlimited possibilities. Yet it came to the nation as a legacy of strife—a land of dispute whose transcendant importance in the events preceding the Civil War no student of historic facts and tendencies can overlook. The struggle between the States was not primarily a struggle over the existence of slavery. It was a struggle over the extension of slavery. It was a question territorial, geographic, and dynamic, not institutional and static. It was a phase of the great movement of the American people westward, a question that moved as the frontier moved and whose essence was a competitive struggle for that frontier.

At the opening of the nineteenth century the frontier had reached the Mississippi Valley. In the succeeding half-century it pushed across the virgin prairies of the Purchase; and Louisiana, vast and inviting, became the bone of contention over which opposing factions fought for final mastery.

In the fugitive slave case with which this paper is concerned, matters were complicated by the application to the Louisiana Purchase of a second jurisdiction—namely, the jurisdiction of the Ordinance of 1787 through the inclusion of part of the Purchase in the Territories of Michigan and Wisconsin.

After the admission of the State of Missouri, following

the Act of 1820, the portion of the Louisiana Purchase north and west of the newly formed State was left without local government and without legal settlements, the lands still being occupied by the Indians. This condition existed for a number of years. Indeed, it is doubtful if, even as late as the year 1833, there was in the entire Louisiana Purchase a community legally settled and locally governed where slavery did not exist. In 1833, after the cession of the Black Hawk Purchase to the United States, settlers in great numbers entered the lands north of the State of Missouri and immediately west of the Mississippi River. In the following year, for the purposes of government, the territory comprising the present States of Iowa and Minnesota and the eastern part of what is now the Dakotas was attached to the Territory of Michigan, and the laws of Michigan made of equal application there.[1] Thus the provisions of the Ordinance of 1787, including the sixth article prohibiting slavery, were applied to the northern portion of the Purchase. The same condition existed when, in 1836, the Territory of Wisconsin was organized including the tract of land west of the Mississippi River which had been attached to the Territory of Michigan.[2]

In 1838, Congress provided for the organization of the Territory of Iowa, destined to become, eight years later, "the first free State in the Louisiana Purchase" and "the only free child of the Missouri Compromise."[3] The Supreme Court of this new Territory met for the first time in July, 1839, and the first and only case reported from this

[1] *United States Statutes at Large,* Vol. IV, p. 701.

[2] *United States Statutes at Large,* Vol. V, p. 10.

[3] The first quotation is taken from the title of Rev. William Salter's book dealing with early Iowa history—*Iowa: The First Free State in the Louisiana Purchase.* The second quotation is from the inaugural address of Governor James W. Grimes of Iowa, delivered December 9, 1854.—See Shambaugh's *Messages and Proclamations of the Governors of Iowa,* Vol. II, p. 14.

session is entitled *In the matter of Ralph (a colored man) on Habeas Corpus.*[4]

The circumstances of the case were these:—In the year 1834 a slave-owner named Montgomery, living in Missouri, entered into a written agreement with a slave, one Ralph, to the effect that upon payment by Ralph of five hundred fifty dollars with interest from January 1, 1835, he was to become free. In order that he might earn this purchase money, Ralph left Missouri and migrated to the settlement of Dubuque on the west bank of the Mississippi, in what is now the State of Iowa. Here he found employment in the lead mines.[5]

Five years passed, but the black miner was unable to save from his meagre earnings enough to make any payments upon the price of his freedom. During this time Dubuque passed successively under the jurisdiction of the Territory of Michigan, the Territory of Wisconsin, and the Territory of Iowa. In 1839, two kidnappers from Virginia appeared in the young mining town, learned the state of affairs as to Ralph, and wrote to Montgomery in Missouri, offering to return the Negro to him for a consideration of one hundred dollars. Their offer was accepted.

[4] The original report of this case is found in a very rare volume entitled *Reports of the Decisions of the Supreme Court of Iowa, from the Organization of the Territory in July, 1838, to December, 1839, inclusive,* by Wm. J. A. Bradford, Reporter to the Supreme Court. It was printed in Galena, Illinois, in 1840. The case is also reported in Morris's *Reports,* Vol. I, published in 1847. The report by Morris is not, however, a reprint of that of Bradford. The decision of the Court is, of course, the same in both reports, but Morris outlines at greater length the brief of the counsel for the claimant, while Bradford gives facts in the statement of the case that are not reported by Morris. It is possible that Morris did not have access to the reports of Bradford for in his preface he makes no reference to any previously published reports, but tenders his thanks to Chief Justice Mason "for reports, corrections, and memorandums, of all cases decided prior to January term 1843". Bradford, in addition to the volume above noted, published reports for the July term of 1840 and the July term of 1841.

[5] Bradford's *Reports* (1838-1839), p. 3.

The act of Congress then in force concerning fugitive slaves was the one enacted in 1793.[6] There was also, in the Missouri Compromise of 1820, a provision for the rendition of fugitives from service, and it was on the grounds of this clause in particular that Montgomery based his claim to Ralph.[7] Moreover, there was at this time (1839) already on the statute books of the Territory of Iowa "An Act to regulate Blacks and Mulattoes", passed in January of the same year by the First Legislative Assembly.[8] It prohibited any black or mulatto from settling or residing in the Territory without a certificate of freedom, and contained also a provision in furtherance of the national legislation for the return of fugitives. It provided that any person claiming a black or mulatto should make satisfactory proof before a Judge of the District Court, or Justice of the Peace, that the person claimed was his property, and, thereupon, the Judge or Justice should, by his precept, order the Sheriff or Constable to arrest the fugitive and deliver him to the claimant.

It appears, therefore, that the kidnappers at once made affidavit before a Justice of the Peace in Dubuque to the fact that Ralph was the property of Montgomery of Missouri, and the Sheriff was ordered by the Justice of the Peace to deliver to them the Negro. Ralph was working at this time on a mineral lot a little west of the town of Dubuque. Here he was seized by the Sheriff and given into the custody of the Virginians who loaded him into a wagon, and, avoiding the town of Dubuque for fear of interference, took their captive to Bellevue, a little town further down the river, intending to convey him thence by steamboat to Missouri. But it chanced that, in a lot near the one in which the seizure was made, a man named Alex. Butterworth was plowing. He, forthwith, proceeded to the resi-

[6] *United States Statutes at Large*, Vol. I, p. 302.

[7] *United States Statutes at Large*, Vol. II, p. 548.

[8] *Laws of the Territory of Iowa*, 1838-1839, p. 65.

dence of Judge Thomas S. Wilson of Dubuque, an Associate Judge of the Supreme Court of the Territory and also Judge of the District Court of the district in which Dubuque was located, and procured a writ of habeas corpus. Acting upon this writ, the Sheriff overtook the kidnappers at Bellevue, and returned them with the Negro to the District Court at Dubuque. At the suggestion of Judge Wilson, the case was, because of its importance, transferred to the Supreme Court of the Territory of Iowa.[9]

In the July term of the Supreme Court, the case was tried. The counsel for Ralph, David Rorer,[10] contended that since the Negro had been a resident of the Territory at the time of the passage and taking effect of the Organic Act of the Territory of Wisconsin, of which Dubuque became a part, therefore by the sixth article of the Ordinance of 1787, thus applied to the Territory, he became free since slavery was thereby forever prohibited; that, independent of this, he became free as soon as he became an inhabitant, by consent of his master, of territory which in the Missouri Compromise was declared free; that he could not be considered as violating the law of the Territory of Iowa against the settling of free blacks without evidence of freedom, for the reason that he was there at the time of the first extension of civil government over the country by the act in 1834 attaching it to the Territory of Michigan; that he could not be taken to his former owner under the laws providing for the

[9] In 1890, over half a century after the trial of this case, Judge Thomas S. Wilson delivered an address before a reunion of the Pioneer Law-Makers Association of Iowa. In the course of his address he gave many facts concerning the arrest of Ralph and the ensuing trial with which he was so intimately concerned. A number of the facts related above are taken from this source. See *Pioneer Law-Makers Association of Iowa* (Reunions of 1886 and 1890), pp. 87, 88.

[10] David Rorer was for many years a prominent attorney of Burlington, Iowa. In 1850 he was again involved in a fugitive slave case, that of *Ruel Daggs* v. *Elihu Frazier*. In this case, however, he was retained by the slave owner.

rendition of fugitive slaves since it was in evidence that he came to the Territory, not as a fugitive, but by consent of the owner and present claimant; and finally, that the act of his owner in consenting to his removal to territory where slavery was prohibited, was virtually a manumission, and that the very fact of contract with him presupposed a state of freedom.[11]

The counsel for the claimant contended that Ralph, not having complied with the agreement for the payment of the price of his freedom, was to be regarded as being in the Territory without permission, and consequently as having escaped into the Territory and subject to recovery under the fugitive slave clause in the Missouri Compromise.[12]

Montgomery's counsel further insisted that slavery was not prohibited in the Territory, maintaining that the Act of 1820 containing a prohibition of slavery north of 36° 30, was not intended to take effect without further legislative action, but merely meant to direct the local legislatures to pass laws within the prescribed limits, and that the Act of Congress, moreover, contained no sanction and, therefore, had no binding effect.[13]

Furthermore, it was urged that even if the Act were intended to operate without further legislation, it did not work a forfeiture of slave property, and in this case would go no further than to require the claimant to remove his property out of the Territory.[14]

The decision was given by Charles Mason, Chief Justice of the Supreme Court. It covers about two pages of the *Reports* and consists largely of a discussion of the two main contentions of the counsel for Montgomery.[15] Mason held

[11] Bradford's *Reports* (1838-1839), pp. 3, 4.

[12] 1 Morris 4, 5.

[13] Bradford's *Reports* (1838-1839), p. 5; 1 Morris 4.

[14] 1 Morris 4.

[15] Bradford's *Reports* (1838-1839), p. 5.

that, inasmuch as the Negro had come to the Territory with the free consent of his master, he could not be regarded as a fugitive; and that his failure to pay could not render his removal by consent an escape. He recognized the obligation of Ralph for the debt, saying: "It is a debt which he ought to pay, but for the non-payment of which no man in this Territory can be reduced to slavery."

The holding of Chief Justice Mason is particularly interesting in answer to the claim that the prohibition of slavery by the Missouri Compromise was simply a naked declaration requiring further legislation to put it into effect. In part he said: "This position, we think, cannot be maintained. Congress possesses the supreme power of legislation in relation to the Territories, and its right to prohibit slavery—at least in relation to slaves subsequently introduced—is doubtless legitimate. Has that right been exercised in relation to this Territory? The language of the Act of 1820, in relation to the district of country in which this Territory is embraced, is, that slavery therein 'shall be, and is hereby, for ever prohibited.'—This seems to us an entire and final prohibition, not looking to future legislative action to render it effectual."

Finally he answered the contention of the claimant that the Act of 1820 did not declare a forfeiture of slave property, by holding that the Act declared that slave property should not thereafter exist, and that the master who, subsequent to the passage of that Act, permitted his slave to become a resident there, could not afterwards exercise any ownership over him within the Territory. Ralph was therefore discharged from custody and given his freedom.

There are several points in connection with the decision of Justice Mason that invite comment. In the first place he asserted that the case did not come before the Court in any of the ordinary methods of application to an appellate

court, and hence it was perhaps not strictly regular for the Court to entertain jurisdiction. However, the Court heard the case and handed down the decision because of the importance of the question and its liability of becoming before long, if unsettled, an exciting issue. One is reminded here of the course pursued by Chief Justice Taney of the United States Supreme Court in giving, for the quieting of public discussion, a decision upon the Dred Scott case immediately after declaring the lack of jurisdiction.

It is noticeable that the decision of Chief Justice Mason took no account of the influence of the application of the sixth article of the Ordinance of 1787 to the case through the Territories of Michigan and Wisconsin, evidently considering that the other arguments advanced were of such conclusiveness as to obviate the necessity of any further grounds for judgment.

The distinct avowal, in this Court, of the power of Congress to legislate fully concerning the Territories, even to the prohibition of slave property, is worthy of note. Finally we have in the argument of the counsel for Montgomery an early promulgation of the doctrine that the slavery prohibition of the Compromise of 1820 was simply a declaration directing further legislative action and ineffectual without such action; whereas we find in the decision of the Court an emphatic denial of the doctrine by a tribunal which would be most vitally interested in such an interpretation.

Such was the outcome of this early western fugitive slave case. The Negro Ralph went back to the mines of Dubuque a free man. Of his later career, Judge Thomas S. Wilson, before whom the case was first brought, tells us two facts: first, that he struck a rich vein of ore, and second that he died a victim of the small-pox.

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