

THE PALIMPSEST

EDITED BY JOHN ELY BRIGGS

VOL. VII

ISSUED IN FEBRUARY 1926

NO. 2

COPYRIGHT 1926 BY THE STATE HISTORICAL SOCIETY OF IOWA

The Case of Ralph

Slavery is one of the oldest of human institutions. Among the ancient Assyrians, Persians, and Hebrews slaves were more numerous than free men, while in Greece and Rome property in man was regarded as essential to social welfare. In America, negro slaves were introduced at Jamestown before the arrival of the Mayflower at Plymouth, and during the colonial period the importation of slaves from Africa constituted an important part of foreign commerce. By the dawn of the nineteenth century, civilization in its westward course had reached the banks of the Mississippi and negro slavery was about to be extended into the vast expanse of the Louisiana Purchase. Thus the region that is Iowa became involved in the issues of slavery. It is indeed significant that the first case decided by the Iowa Territorial Supreme Court should have dealt with human freedom.

In the year of 1834 a slave owner named Montgomery living in Missouri made a written contract with his slave, Ralph, in which he agreed that Ralph should become free in consideration of the payment of five hundred and fifty dollars. That he might be able to earn the purchase money, Ralph obtained permission to leave Missouri and to seek employment in a more remunerative region. He had heard that a fortune awaited anyone with a strong back and a willing spirit in the lead mines of Dubuque, Iowa. It was reported that the ore yielded "about 80 per cent of lead", and if a miner were so fortunate as to discover a productive vein, accessible from a hillside, he could form a drift and very conveniently convey the ore out in wheelbarrows at a trifling expense. This, Ralph thought, was his opportunity, and accordingly he made his way to Dubuque, where he worked industriously at mining for nearly five years. But in all that time he neither discovered "a productive vein" nor accumulated any money or other resources with which to pay Montgomery for his freedom.

Dubuque was "a typical mining town" in the thirties. The population included a heterogeneous group of Spanish, French, Irish, Germans, and a few negroes. Almost without exception they were miners, and men of the roughest sort. Their amusements consisted chiefly of gambling and in drinking "the most villainous whisky". It was not uncommon for a miner to work only until he had accumu-

lated sufficient funds for a "spree" and then, "until cleaned out at keeno" or some other game, to alternate between being "drunk enough to howl and fight" and "too drunk to do either". Acts of extreme violence were rare because a semblance of government enforced certain rules with "inflexible impartiality", but lesser crimes, including robbing and even kidnapping, were not uncommon.

Among the rogues who came to Dubuque during these early years were two Virginians, who learned of Ralph's contract with Montgomery and resolved to capitalize upon the young negro's unfortunate situation. They wrote to Montgomery offering to capture Ralph and return him to Missouri for one hundred dollars. Although Montgomery probably had not previously intended to interfere with Ralph's freedom, he seems to have welcomed this offer and contracted for Ralph's recovery.

Meanwhile the Territory of Iowa had been organized. The rules of conduct which had been only rudely enforced by the miners themselves had been superseded by more formal law, and regular courts had been established. Prominent among the statutes enacted by the First Legislative Assembly of Iowa was an "Act to regulate Blacks and Mulattoes" passed in January, 1839. This law provided that if any person claiming a negro as a slave should make satisfactory proof before a judge of the district court or justice of the peace that the person claimed was his property, the magistrate should

thereupon order the sheriff or constable to arrest the fugitive and deliver him to the claimant. Moreover, the provisions in various acts of Congress relating to the rendition of fugitive slaves were applicable in Iowa and enforceable in the Territorial courts.

Relying upon these laws the kidnappers proceeded to make affidavit before a magistrate in Dubuque, alleging that Ralph was the property of Montgomery of Missouri, and the sheriff, George W. Cummins, was ordered to deliver the negro to them. Ralph was found working on a mineral lot west of town. He was arrested and given into the custody of the Virginians who loaded him into a wagon. Avoiding the town of Dubuque for fear of interference, they took their captive to Bellevue, a little farther down the river, intending to convey him thence by steamboat to Missouri.

Fortunately for Ralph, however, the seizure was observed by Alexander Butterworth, who chanced to be plowing in an adjoining field. Butterworth immediately went to the residence of Thomas S. Wilson, judge of the Territorial district court and also one of the Associate Justices of the Supreme Court of the Territory and procured from him a writ of habeas corpus for the benefit of the captive. Acting upon the authority of this writ the sheriff pursued the kidnappers, overtook them at Bellevue and returned with them and the negro to the district court at Dubuque.

When the case came before Judge Wilson, he recognized the importance of the question involved and suggested that the suit be transferred to the Supreme Court of the Territory, which had not yet begun to function as a judicial organ. Accordingly, the Ralph case was the first to be presented and came before that tribunal for adjudication at the July term in 1839.

The rights of Ralph were presented by David Rorer of Burlington, one of the most popular and able attorneys in the Territory. Mr. Rorer contended that Ralph, being a resident of the Territory of Wisconsin prior to the organization of the Territory of Iowa and also a resident of Iowa Territory at the time of the passage of the act of Congress creating the Territory, became free by the operation of that law. He asserted that the Organic Act was especially designed to cover such cases in that it expressly extended to the inhabitants of Iowa the benefits of the Ordinance of 1787 under which the Iowa country had previously been governed. Thus the inhabitants of the Old Northwest Territory, and by application the residents of the Iowa country, were guaranteed the rights of habeas corpus and trial by jury, while slavery was forever excluded.

Irrespective of the provisions of the Organic Act or the Ordinance of 1787, Mr. Rorer argued, Ralph had become free as soon as he had come to live in Iowa with the consent of his master, by virtue of the provisions of the Missouri Compromise, which pro-

hibited slavery in the territory north of the parallel of $36^{\circ} 30'$, except in the State of Missouri. In support of this proposition, the attorney cited an English case in which the court decided that a slave owner had no right to take a former slave, free by virtue of having lived in a free country, to any region where by the aid of human law he might be reduced again to slavery. Such action was held to be repugnant to reason and the principles of natural law.

Even if it had been admitted that Ralph was a fugitive slave, the arguments of his attorney were calculated to convince the court that he could not legally be returned to his former master. But Mr. Rorer claimed that Ralph was not a fugitive — that he could not be considered as either coming into or remaining in the Territory in violation of the law. He had come to Iowa not as a fugitive from service but by the voluntary consent of his former owner. Montgomery by permitting his slave to go to a territory where slavery was prohibited “virtually manumitted such slave”. The very act of his contracting presupposed a state of freedom on the part of the slave. If Montgomery had any right of action, it was for the collection of the money Ralph had agreed to pay.

On behalf of Montgomery the case was argued by John V. Berry of Dubuque and another attorney. They contended that Ralph, having failed to perform his part of the contract by paying the price of his freedom, was to be regarded as still in slavery, hence

a fugitive slave and subject to the provisions of the fugitive slave law. They denied that slavery was prohibited in the Territory of Iowa, because the Missouri Compromise was not intended to take direct effect but should be construed as authorizing the local legislatures to pass laws prohibiting slavery within the described limits. But even if the Missouri Compromise were intended to operate without further legislation, they argued, it did not work a forfeiture of slave property and would in this case do no more than require Montgomery to remove his property out of the Territory.

It might be pointed out that although the Missouri Compromise did not, in express terms, declare a forfeiture of slave property, it did, in effect, declare that such property could not exist in certain places. In the words of Justice Charles Mason, "Property, in the slave, cannot exist without the existence of slavery: the prohibition of the latter annihilates the former, and, this being destroyed, he becomes free."

The presentation of the case by both sides was accompanied with ingenious arguments, cunningly devised to captivate the interest and secure the sympathy of the newly organized court. Judge Mason in rendering the decision prefaced his remarks with a frank acknowledgment that the case had not come before the tribunal in the ordinary way, and that it was, "perhaps, not strictly regular" for the court to entertain jurisdiction at all. He realized, however, that the case involved an important question, "which

may ere long, if unsettled, become an exciting one". Accordingly, he said, "we concluded to listen to the argument, and make a decision in the case without intending it as a precedent for future practice in this Court."

After reviewing the facts and circumstances of the case, the judge stated the unanimous opinion of the court that Montgomery, in granting Ralph the privilege of entering a free Territory, thereby gave him freedom and could not again take him into a slave State. Slavery did not and could not exist in Iowa, and if a slave with his master's consent became a resident of a free State or Territory he could not be regarded thereafter as a fugitive slave, nor could the master under such circumstances exercise any right of ownership over him. When the master applied to the courts for the purpose of controlling as property that which the laws declared should not be property, the Judge thought it was incumbent upon the court to refuse coöperation. Ralph was therefore discharged and allowed to go free.

In rendering its first decision the Supreme Court of the Territory of Iowa established an enviable reputation for dealing judiciously with a fundamental issue. Few cases since have involved more important matters or presented more clearly the question of human rights. Moreover, the Ralph case is of particular interest because of its striking similarity with the famous Dred Scott case decided by the Supreme Court of the United States in 1856.

Dred Scott like Ralph had been a slave in Missouri. He had been taken by John Emerson, his master, to places in Illinois where slavery was prohibited by the Ordinance of 1787 and by the State Constitution, and to a place in Minnesota where slavery was excluded by the Missouri Compromise. Scott returned with his master to Missouri without protest, but after several years brought suit for his freedom in the State courts against his master's widow on the ground of former residence in free territory. In 1852 the Supreme Court of Missouri decided against Scott. The case was then taken into the Federal courts and was eventually carried to the Supreme Court of the United States. Chief Justice Roger B. Taney expressed the view that no negro could possibly be a citizen in the constitutional sense, whatever action a State might take with regard to him, for the Constitution was not intended to apply to any but the white race. The negroes, he said, were considered at the time of the adoption of the Constitution "so far inferior, that they had no rights which the white man was bound to respect". Hence Dred Scott could not sue in the United States courts as a citizen of Missouri.

Having denied Scott's right to sue, the Chief Justice was bound in logic to dismiss the case, but instead of doing so he took up the question of the slave's freedom, as affected by his residence in Minnesota and Illinois, and rendered an opinion in which he declared that Scott was not entitled to free-

dom. Justice John McLean and Justice Benjamin R. Curtis each rendered dissenting opinions, but despite the able argument of these men the ideas of the Chief Justice prevailed and Scott was denied his freedom.

Throughout the two cases of Scott and Ralph there are striking parallels and contrasts. Except that Scott was actually taken back into slavery after having lived in a free State while Ralph denied the right of his former master to take him back into a slave State, the facts are much the same. The personnel of the two courts also presents striking similarities as well as radical differences. Chief Justice Taney was a Jacksonian Democrat, an advocate of State rights, and a pro-slavery man, while the judges in the Ralph case, likewise all members of the Democratic party, were, in contrast with Judge Taney, opposed to slavery on principle. The points of law presented to these two groups of judges were almost identical yet the Ralph case does not seem to have been considered in the Dred Scott decision which was directly contradictory. Scott died before the final settlement of his case, but had he lived he would have remained a slave.

Although the Dred Scott case presented one of the outstanding issues of the slavery period, its decision has been criticized as political rather than judicial. The Ralph case, on the contrary, ranks high as a judicial decision, and the decisive recognition of fundamental human rights is a tribute to the wisdom

and foresight of the Justices of the Iowa court. For two decades before the Civil War the decision in the Ralph case pointed the way to justice and freedom. No longer a mooted question, the decision now stands in the archives of Iowa history as a bright page in the struggle against slavery.

Having obtained his freedom, Ralph continued to reside at Dubuque and work in the lead mines. Eventually, it is reported, his labors were rewarded by the discovery of "a rich lode". This would have enabled him to fulfill the terms of his contract with Montgomery, but being free from this obligation he found other ways of using his wealth. Too long in the environment of the mining camp to resist the temptation to gamble, he lost his mine in a game of chance. Though he died in poverty and the location of his grave is unknown, Ralph could not have wished for a monument more enduring than the first decision of the Supreme Court of Iowa.

J. A. SWISHER