The Court Archive:
Slavery and the Illinois Supreme Court

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August 2020

A greater awareness of our collective past with slavery and racism has resulted in thinking differently about symbols, statues, portraits, and even language. An example of the latter is the Massachusetts Appeals Court, which will no longer use the term "grandfather clause." The clause has its origins in the nineteenth century when some states enacted laws to prevent African Americans from voting based on the voting status of their ancestors.

The Illinois Supreme Court, in its first decades of existence, consisted of men who held racist views by our modern standards. At worst, some owned and profited off of the enslavement of African Americans. Joseph Philips, the first Illinois Chief Justice, returned to Tennessee in 1822 after losing the gubernatorial election and owned more than 50 slaves at his death in 1854. John Reynolds, one of the first Supreme Court justices and later Governor of Illinois, offered a $50 reward for an escaped slave. Sidney Breese, long-tenured justice two separate times under three Constitutions, owned an African American indentured servant and petitioned a court to punish him for disobedience. Stephen Douglas, famed U.S. Senator, profited off of his wife's inherited plantation in Mississippi by taking 20% of its profits.

As a unit, however, the Illinois Supreme Court recognized that Illinois was a free state despite slavery inherited from its earlier French period and de facto slavery in the form of indentured servitude. The body of cases in the first decades of statehood trended toward freedom for African Americans. In an 1828 case, *Phoebe v. Jay*, 1 Ill. 268 (1828), the Court upheld a pre-statehood indenture but agreed that indentures were "slavery for a period of years" and that the Illinois Constitution would forbid indentures created after statehood.

Under the "presumption of freedom," first espoused in *Kinney v. Cook*, 4 Ill. 231 (1841), the Court presumed that an indentured African American was free unless definitively proven otherwise. The Court reaffirmed this precedent in *Bailey v. Cromwell*, 4 Ill. 70 (1841) and in *Hone v. Ammons*, 14 Ill. 28 (1852). In the latter case, Justice John Caton wrote that the presumption of freedom had been so often and uniformly held to be the decision of the court, that there was no need to discuss it further.

When Illinois was under French control, slavery was legal and remained so through the Northwest, Indiana, and Illinois territorial periods, despite the Northwest Ordinance's specific prohibition against it. The Indiana Territory (which included Illinois at that time) passed a law in 1807 that slavery was allowed by creating an indenture, and many Illinoisans adopted this practice. In *Choisser v. Hargrave*, 2 Ill. 317 (1836), the Court found that the Indiana law was in violation of the Northwest Ordinance in declaring the servant Hargrave to be free. At the same term, *Boon v. Juliet*, 2 Ill. 257 (1836) held that children of legal indentured servants were free and not bound to servitude because of the status of the parent. The new Illinois Constitution in 1818 recognized the past condition of servitude for French slaves even after the new state entered the Union. *Jarrot v. Jarrot*, 7 Ill. 1 (1845) agreed with the precedent set in *Boon* and settled the issue that descendants of French slaves were not slaves by relying on the presumption of freedom.

In *Willard v. People*, 5 Ill. 461 (1843), the Court upheld the right of slave transit into Illinois in affirming the conviction of Willard for harboring an escaped slave. Later in the same term, the Court found similarly in *Eells v. People*, 5 Ill. 498 (1843). The *Eells* case was appealed to the U.S. Supreme Court, 55 U.S. 13 (1852), which affirmed Eells's conviction for harboring a slave.

The *Willard* precedent and the issue of comity did not last long. In a circuit court case, two Illinois Supreme Court justices, while riding the circuit, heard the case *In Re Jane*, 5 West Law Journal 202 (1847), regarding a Kentucky slave family brought to Illinois to work seasonally on a Coles County farm. The slaves remained in Illinois for two years, escaped, and sued for their freedom with a writ of habeas corpus. The two justices found Jane and her family to be free because Illinois was a free state, and the Kentucky owner "forfeited all claim to their services" upon entry into Illinois. This was confirmed in *Rodney v. Illinois Central Railroad*, 19 Ill. 42 (1857), in which a Missouri slave owner sued the railroad for aiding the escape of a slave. The Court affirmed the lower court judgment for the railroad. Justice Onias Skinner held that the slave law of Missouri had no binding force in Illinois, disregarding the precedent set in *Willard*. He added that the Illinois Constitution prohibited slavery, therefore, "negroes within our jurisdiction are presumed to be free."

While the Court mostly ruled for the freedom of African Americans who entered or already lived in Illinois, the white citizenry did not want African American to settle permanently in the state. Beginning with the first General Assembly, the state passed Black Codes to restrict African Americans from moving to Illinois. These Black Codes were prominent in many northern states that opposed slavery but also did not want African Americans to live nearby. In 1853, the Illinois legislature passed one of the harshest Black Codes that would result in a misdemeanor and fines for African Americans settling in the state. The act stated that it was adopted "for the protection of the inhabitants of the State against a class of persons supposed to be injurious to the community." The Supreme Court upheld this law in *Nelson v. People*, 33 Ill. 393 (1864), relying both on the *Eells* case and that it was in the purview of the legislature to create the laws, and as long as this law was not passed improperly, the Court would sustain it.

The last slavery related case was *Roundtree v. Baker*, 52 Ill. 241 (1869), four years after the abolition of slavery. This was an estate case in which one of the promissory notes to be collected was an 1833 note made in Kentucky for the sale of a slave girl. The Illinois Supreme Court

upheld the validity of the promissory note because it was legally made in Kentucky, a slave state at a time when slavery existed.

The Court's historical record regarding African Americans in early Illinois statehood is mixed. Illinois courts progressively eliminated slavery and indentured servitude over the course of its first 40 years, but recognized slavery's existence in other states and upheld negative public attitudes toward African Americans permanently settling in the state.

For deeper discussion of the cases, see Newton N. Newborn, "Judicial Making and the End of Slavery in Illinois," *Journal of the Illinois State Historical Society* Vol. 98 (Spring-Summer 2005), pp. 7-33; for deeper discussion of African Americans in early Illinois and Black Codes, see James W. Hilliard, "'Freedom' for African Americans in Antebellum Illinois," *Illinois Bar Journal* Vol. 106 (August 2018), pp. 30-33, 48.