

A sensational trial at the Loudoun Courthouse in December 1846 posed some of the most difficult questions regarding the legal rights of free blacks and the enslaved. The case concerned a formerly enslaved man, Nelson “Talbot” Gant, who had tried to buy his enslaved wife Maria from her mistress, but that failing, abducted and took her to Washington, DC, where they were soon arrested. The prosecution argued the accused’s effort to reunite with his spouse was illegal because she “could not be considered the lawful wife of the prisoner, because she was a slave, and the law regards slaves not as persons, but as property.”

The defense team led by noted anti-slavery attorney John Janney countered that the marriage was valid -- they had received permission from her mistress to be married by a minister of the Gospel -- and that God’s law superseded any law of man that did not recognize the marriage of enslaved people. As Robert P. Swann, one of Gant’s attorneys, put it in the courtroom, “Although his skin wears a different hue from ours, we cannot doubt that the feelings of his heart are the same. Their vows have been registered in the chancery of heaven and shall we attempt to set the laws of man above the Divine law by separating those whom God has joined?” Further, the defense contended, since they were lawfully married, Maria -- the only eyewitness whom the prosecution was able to produce -- could not be compelled to testify against her husband, who was facing time in the penitentiary if convicted.

Remarkably, the court dismissed the charges and released the prisoner. Soon after the trial, Talbot was able to buy his wife’s freedom. They left Loudoun in 1850 and eventually settled in Ohio, where they became respected members of the community. The trials of Leonard Grimes (1840, above) and Nelson Talbot Gant (1846) were the basis for the National Park Service’s designation of the Loudoun Courthouse in 2003 as part of its Underground Railroad Network To Freedom Program.

TRIAL FOR WIFE STEALING (1846)*

*[Transcription of trial at Leesburg Courthouse by Bronwen Souders: From the Baltimore Visitor [sic], reproduced from *The Emancipator and Republican* (published as *The Emancipator*) from Boston, issue 41, volume XI, February 3, 1847. Thanks to Dr. Sheri Ann Huerta for bringing this document to our attention.]

The Loudoun County, (Va.) “Chronicle,” contains a report of a trial before the court of that county, during its recent term, whose features are at once so novel and indicative, that we are induced to transfer the details to the Visitor [sic].

“Talbot,” a slave liberated by the will of the late John Nixon of Loudoun County, was charged with aiding the escape of his wife, Maria who is the property [of] Miss Jane Russell, a resident of Leesburg. It seems that the prisoner, after his liberation, being by the law of Virginia compelled to leave the State, desired to purchase his wife of her mistress, but could not pay the amount demanded. He then went to Ohio, and after some months returned, and made another effort to purchase. Failing in this attempt also he again left the State, and his wife disappeared about the same time. The prisoner and his wife were taken in Washington city, and confined in jail, whence the woman was taken by order of her mistress, and brought home, and the prisoner was claimed by the Governor of Virginia, and taken to Leesburg for trial.

The Commonwealth's attorney being absent, the prosecution was conducted by his son, Matthew Harrison Esq, and the defence [sic] by John Janney, Robert P. Swann and James S. Carper, Esqrs.

The "*information*" being read, the prisoner pleaded "not guilty", and the prosecuting attorney opened the case. He stated that the person was charged with felony, in abducting and carrying away out of the State, Maria, the slave of Mrs. Jane Russell, of this county, and he read the laws applicable to such cases. He contended that it was right and just that these cases should be brought under notice of the law; otherwise there would be no security for slave property. Every individual owning slaves was interested in the punishment of such offences [sic] and justice was demanded by the Commonwealth.

R. P Swann Esq., then addressed the Court, in substance as follows:

"I need not inform your worships of the extreme irritability of the public feeling under an apprehension of improper meddling with this species of property, either at home or abroad; nor of the morbid sensibility existing at such times. Neither do I propose to counsel you, but merely to remind you that it is necessary you should divest yourself of such feelings, if any should exist, in a case like this, involving as it does, the administration of laws that are in themselves abhorrent to the best feelings of our nature. This man has been united in holy wedlock to a woman for whom he has evinced the strongest feelings of attachment.

"Although his skin wears a different hue from ours, we cannot doubt that the feelings of his heart are the same. Their vows have been registered in the chancery of heaven and shall we attempt to set the laws of man above the Divine law by separating those whom God has joined? "The Ethiopian may not change his skin nor the leopard his spots," but if it were possible for the prisoner at the bar to step forth in the complexion and lineaments of the Anglo-Saxon race, there is not a man on that bench, nor in this assembly, who would not applaud the deed for which he now stands arraigned as a felon!

"In stating these views, I would not be understood to desire the Court to depart from the duty which devolves upon them as judges in this case; but as the prosecuting attorney has made a claim at your hands for justice toward the Commonwealth, we also have a claim for justice not toward a soulless body like the Commonwealth but toward that poor creature, who has a heart beating within his body, and a soul that is capable of the tenderest emotions!

"This is a grave and important case,—a case which interests the whole human family. It must be within the recollection of some now present, that the State of South Carolina was arraigned at the bar of public opinion for condemning a free man to be hung for attempting to carry off a slave woman, to whom he was betrothed. The conduct of the judge, in that case, and the character of the law, was denounced by Lord Brougham, in the British Parliament, and the proud Star of South Carolina had to employ in her defence [sic] the talents of her ablest sons."

A motion was here made by the prosecuting attorney to have the trial postponed to the next court, in order to secure the attendance of certain witnesses from Washington city. He stated that these

witnesses could not be compelled to attend, as they were beyond the limits of the State, and the compensation allowed in such cases being insufficient, it would be necessary to raise funds for the purpose, and he supposed they were persons in the community who would be willing to contribute. He said it behooved everyone interested in this species of property to see that the lines are enforced, otherwise there would be no security against the continual abduction of slaves.

This motion was resisted by Mr. Janney, of counsel for the prisoner. He thought the grounds on which the motion was based were not sufficient to sustain it. Here is a man, says he, whose trial has already been delayed since last court, on the same plea. We were then promised that efforts would be made to have all the evidence ready at this term; and now what do we hear? A proposition for further delay, in order that a pony-purse may be raised to procure the attendance of witnesses. Yes, in order to take the purse and say to those witnesses, here is gold to pay for your services! Would the Court receive the evidence of witnesses who could be suborned to appear against the prisoner by such means? Would it be consistent with the law, which expressly forbids any interference of this kind?

This motion being rejected by the Court the trial proceeded, and the witnesses were called. It was here discovered that two other witnesses were absent, and the Commonwealth's attorney moved for a postponement on that ground. Mr. Janney objected that it was too late. The Commonwealth's attorney said that if Mr. Janney would affirm that that was his real and bona fide opinion of the law, he would say no more on that point. Mr. Janney said that it was his opinion. The Court overruled the motion.

The first witness sworn was Maria, the prisoner's wife. She was sworn in chief. [sic]

Question by Mr. Janney. Maria have you been married to Talbott, the prisoner at the bar?

Yes, Sir.

How long?

About three years, Sir.

Where were you married?

At my mistress's house.

Did she consent to your marriage?

Yes, Sir.

Were you married by a minister of the Gospel?

Yes, Sir, by the Reverend Mr. ___[blank in newspaper].

The attorney for the Commonwealth then asked Maria where she had got that paper? (presenting a paper purporting to be a certificate of her freedom.) She answered,

I got it from a gentleman.

This was immediately objected to by the prisoner's counsel, and J. S. Carper Esq. addressed the court in an able argument in opposition to her testimony being received. He stated that it was a point well settled in law, that the testimony of husband and wife cannot be taken either for or against each other, because the law regards them as so identified in feeling and interest that their evidence cannot be relied upon. In this case, he thought, the objections to receiving her testimony were unusually strong.

She not only stands related to the prisoner at the bar as his wife, but she is a slave under the power and control of her mistress. Suppose that mistress should say to her, if you do not give evidence to convict your husband, I will sell you to the traders, and you will be carried to the Southern States. I do not say the mistress would use such a threat, but we know it is in her power, and we know too how great is the dread these people have of being sold to the Southern traders. Taking these considerations into view, I trust the Court will not allow her evidence to be taken.

The prosecuting attorney objected to these views, and insisted that Maria was a good and competent witness against the prisoner. He thought the objection was too late, after the witness was sworn in chief [sic]. He read the law which declares that negroes [sic] and mulattoes, whether bound or free, although not competent witnesses against a white person, may give evidence against a person of their own color. He said that it was a matter of every day's practice to admit the evidence of negro [sic] women slaves against those they termed their husbands.

Mr. Janney denied that it was, and said that in the whole course of his practice he had never known an instance.

Mr. Hanson [sic—Harrison] then pointed to a case just a year ago, in which Mr. Janney was counsel for the prisoner, and the regular attorney for the Commonwealth was present.

Mr. Janney said that the point was not raised in that case.

Mr. Hanson [sic—Harrison] said the witness could not be considered the lawful wife of the prisoner, because she was a slave, and the law regards slaves not as persons, but as property. It would, he said, be manifestly absurd to recognize a relation of this kind, which interferes with the legal rights of the master, and sets at naught all the provisions which are made for the security of his property. He took the position that there is no lawful marriage for slaves and that they can make no contract that their owners may not annul, and referred to a case in *S.COWEN*, 396.

His argument on this last point was ably answered by Mr. Janney, who took the ground that Maria was the lawful wife of the prisoner, married with the consent of her mistress, at her mistress's

house, and with the implied consent of the prisoner's master--united in the bands [sic] of matrimony by a minister of the Gospel, and he would repeat what had been said by his colleague in the opening of this case, that their marriage was registered in the chancery of heaven. The opinion expressed by our opponent, that slaves cannot be married according to law, would tend to the general corruption of morals and the most enormous abuse. Can it be possible that the whole colored population of Virginia are living in a state of concubinage?

No, it is the intention of the law to promote public morals and not to degrade them. It is intended to throw a shield around innocence and to punish only the perpetrators of crime. Maria is the lawful wife of the prisoner, and it is a point well established that in a case like this the testimony of a wife cannot be taken either for or against her husband. The reason is obvious – it would present so great an inducement to perjury that no court would be justifiable and subjecting a human being to so strong a temptation.

The court decided to reject the witness, and she left the stand evidently much delighted.

The next witness called to the stand was Eden Fouche.

Question by counsel for the Commonwealth.

Mr. Fouche, can you inform the Court whether the prisoner was taken in Washington city, in company with Maria, who claims to be his wife?

I can only say that I saw them both in jail. I did not see them apprehended.

Have you any knowledge of this document, purporting to be the free papers of Maria?

Yes, it [sic] was given to me in Washington, by the jailor.

Did Maria acknowledge or admit that she received it from the prisoner?

This question was objected to by the counsel for the prisoner, on the ground that it would be only "hear-say" evidence.

The prosecuting attorney contended that, as the testimony of Maria had been rejected on account of her being identified in interest and feeling with her husband, it would certainly be proper to take her admissions before the trial, made in the presence of a white witness. He said it was important to show that these forged free-papers have been furnished by the prisoner, and brought with him from Ohio. The number of the paper was the same as that of his own freedom papers and the Clerk's name being spelled wrong was strong presumptive evidence that they have not been copied in the county of Loudoun where everybody knows how to spell "Eskridge."

He was answered briefly by Mr. Janney, who showed that the evidence of Maria, when on oath before the Court, had been rejected, and therefore it would be highly improper to take the “hear-say” evidence of another as to what she said when not under oath.

The court determined that such evidence could not be admitted and the witness was released.

The next witness called was a jet-black Negro who appeared in some trepidation at the prospect before him.

Question by the prosecuting attorney. Will you tell us what you know about this case?

Yes, Massa. As George Jones and me was gwyen long de road one mornen-- it was bery early just daylight—we was gwyen out to chop wood—George say, do you know Talbott and Maria gone way? I say Yes.

Counsel for the prisoner. Stop, we don't want to hear anything about your talk with George Jones. What did you see?

I see a man dat mornen; and I say to George—

We have nothing to do with what you said to George. Tell us what you saw.

Well, Massa, if you don't let me tell what George say I can't tell nothen. I see a man comen into de road as we was gwyen long the road. I speak to him and he no speak to me.

Who was the man? Was he Talbott?

I say to George I think it was Talbott but when he no speak to me I don't know whether he was Talbott or not. Bein airy in the morning, not fairly light, I could not tell whether it was a black man or a yellow man. Dat's all I know about it.

The witness was discharged and Mr. _____ was called up.

Question. What do you know of this case?

I know nothing about it.

Did you not see the prisoner in Leesburg the morning that Maria was missing?

I saw some person in the dark of the morning that I thought was he, but I am not certain who it was.

[The owner was here introduced to negative consent] sic

No other witness being offered on the part of the prosecution, the counsel for the prisoner stated that, as there was no evidence against him, they deemed it unnecessary to bring forward any witnesses in his favor and they submitted the case to the Court without further argument.

The Court, after a short consultation, *discharged the prisoner* which appeared to give general satisfaction.

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