Fugitive Slave Case.

Hiram McElroy, Claimant, vs. Frederick Clements, a Negro.

This case, which came up before S. A. Corneau, Esq., U. S. Commissioner, on yesterday, arose under the Fugitive Slave Law. The defendant was arrested by the U. S. Marshal, as a fugitive from service, having escaped from his master in Kentucky. Messrs. McClernand and E B. Herndon, appeared for claimant, and Herndon and Rosette, for fugitive.

Mr. W. H. Herndon asked to see the authority under which the negro was demanded as a fugitive from labor.

Mr. Elliot Herndon protested against the admission of counsel for the negro. Nobody, he said, in the world has a right to contest the owner's claim to the negro. The court may admit counsel as advisory to itself, but not as attorneys for the alleged slave.

Wm. H. Herndon. Nobody desires to take away any right from the claimant. I hope this land is yet free enough for counsel to appear for the negro, with an equal right, as for the plaintiff. I only desire to have full justice. I only want the claimant to pursue the provisions of the law. He appeals to the law, and let him follow it. The law enacts that the person making the arrest shall have a power of attorney from a proper court, and if he has it let him produce it. Mr. Herndon read from the fugitive slave law, which points out the proper course to be pursued. He must get his power of attorney, and then he can act. The presumption, when a negro is arrested in a free State, is that he is free, and the arresting agent must show his authority. Mr. Herndon presumed that he had as much right to appear in this court for the negro, as his opponent had for claimant. What have I done, he said, that I cannot appear in this court. Are white men to be put down and divested of their rights as well as negroes? Such an insinuation is rather insulting to the court.

Elliot Herndon. The gentleman appeals to his rights as a free citizen. He has such rights, but in regard to any right to appear here as the attorney for the negro, we deny it. Nobody has a right to appear for that negro. This is a proceeding under the fugitive slave law of the United States, and that law no where says, any man has any right to appear before the court, except the claimant; still, we do not insist upon excluding the attorneys, if the court desires them as advisors. We desire only that the claimant shall have back again his property. I am not on the high fallutin side and consequently must address myself to common sense. If I was a in slave State, it would be different. We have a power of attorney, but the attorney shall not have the privilege of seeing it. The court can see it at the proper time. He said, the right of the owner to take his slave is independent of the constitution; but besides this, the constitution guaraties that right, and he has it by the common law and by the law of Congress. We are here for the purpose of establishing our proof and taking this slave. We defy any person or any State authority to contest our right, when we have the record.

W. H. Herndon followed, in a lengthy speech, showing that a man has no right to arrest a slave at common law. There is no authority for it, except what the constitution gives him, and the claimant must strictly follow the law made in pursuance thereof.

The Commissioner decided: 1st. As to the right of attorneys to appear in this court; he was desirous of giving to every party a full and fair hearing, and he would not exclude the attorney for the negro. 2d. The court was fully satisfied of the existence of a power of attorney when the warrant for the arrest was issued. The attorney for the defendant, however, cannot see it until it is produced in court.

The case then proceeded and the following testimony was given:

THE TESTIMONY.

Hiram McElroy, jr., sworn: Reside in Union county Ky.; am the son of Hiram McElroy; live with my father; he owns slaves in Ky.; was the owner, within the last year of a slave by the name of Frederick; purchased him in 1850 or '51 and he has been in his possession since that time. Frederick is forty five or fifty years old; is five feet nine or ten inches high; his color is black. That negro is now present in court, and I recognize him to be the person described by me. He was in Ky. in June last, and has not been there since. Since he left, my father has been hunting for him; as his continued absence from Ky gave the impression that he had escaped. His absence was longer than usual. I left Ky. on the 19th of July. I came here to claim the negro, Frederick.—Found him seven miles from Atlanta, Ils., and he was taken there. The negro escaped into Logan county contrary to my father's consent.

Cross-examined: Union county Ky. lies immediately on the Ohio river; am the son of Hiram McElroy, the gentleman who executed the power of attorney. My father purchased and paid for him; bought him for life from his father-in-law named Clements. Was in Logan county, in company with Mr Markham, and Mr. Piper, of Springfield; made no statement about the length of time my father owned the negro; gave an order to take a horse from the negro; do not know of any deed having passed for the slave; have known the negro all my life; know a man by the name of J. M. Buckman; he is no relative of mine; he was my fathers overseer in 1856 but not now; know his handwriting; think the signatures of two papers produced in Court, are the handwriting of Mr. Buckman. Have no personal interest in the negro except as the son of my father; the legal title is in my father; from the time that my father first purchased him, he has frequently let him come into Illinois; he was married to a free negro woman living in Illinois, and my father gave him passes several times a year to come over and see his family; the overseer where he has authorty, gives passes to the negroes. Do not know, if my father ever gave the overseer any authority to give passes. My father, I think, gave them himself. The last time my father allowed this negro to come to Illinois was last fall, when his wife resided a few miles back of Shawneetown. In the present case, so far as my knowledge extends, the negro had no authority to come to Illinois. After the negro's family left Shawneetown, my father never intended to let him come over into Illinois again.

Thomas Markham sworn: Live in Morganfield, Union county, Ky. Have resided there since March, 1849; have known Hiram McElroy for more than 20 years; he is betwen 58 and 60; the witness previously examined is McElroy's son; McElroy is a lawyer and a farmer. Have not known the negro Frederick for more than three years, during which time McElroy has claimed to own him, and has his service; have frequently seen Frederick in McElroy's service; was regarded generally as a slave; never heard he was not a slave until he came to Illinois; Frederick is five feet eight or nine inches high; is very black; the negro is now in court, and I identify him as the slave claimed by McElroy; have seen him laboring on McElroy's farm for thelast the last three years; found the negro at Atlanta, after his escape from Ky.; recognize the power of attor-ney to arrest the slave; it was given by Mr. McElroy.

Cross-examined: Have heard the negro deny that he was a slave, since he was arrested; do not know that Frederick was a slaveof my own knowledge; but he was in McElroy's possession as a slave; the power of attorney was my authoity for taking him up, and I have none but that. It was given to me by Mr. McElroy, who told me that it had been executed by him; do not know his handwriting.

Hiram McElroy recalled: When I found Frederick he was working in a harvest field in Logan county; the signature to the power of attorney is my father's handwriting.

Several passes to the negro Frederick were offered in evidence by the defendant's counsel, given by the overseer J. M. Buckman in 1855-6 allowing the negro to come to Illinois.

A power of attorney was offered by the claimant's attorney, executed by Hiram McElroy to Thomas Markham, giving him authority to arrest and take possesion of the negro Frederick as his slave.

A long argument ensued upon the sufficiency of the power of attorney, the consul for the defense insisting that it did not follow the provisions of the constitution and the fugitive slave law, designating the negro as "a slave" instead of "a fugitive from labor;" and further that no proof was before the court that Kentucky was a slave State. The counsel on the other hand for the claiment contended that such description and averment were unnecessary. The Commissioner decided that the power of Attorney was sufficiently explicit and descriptive.

The case was then argued on its merits by Messrs. Rosette and Herndon for the prisoner, and E. B. Herndon for the claimant.

The Commissioner will give his decision at 10 o'clock this morning.