



Slaves, Judge Woodward, and the Supreme Court of the Michigan Territory

By Edward J. Littlejohn

On July 30, 1805, Congress adopted a governmental plan for the new Michigan Territory. Detroit was designated the territory's seat of government, and its governing body was comprised of five officials appointed by President Thomas Jefferson: Revolutionary War veteran Gen. William Hull as governor, Stanley Griswold as secretary, and three territorial judges—Frederick Bates, John Griffin, and Augustus Elias Brevoort Woodward.

The judge: A brilliant “Dickensian” character

Woodward, a friend of Jefferson's, frequently quarreled with the governor and other legislators.¹ However,

he became a dominant force. “There was but one such man in all the United States, and for nearly twenty years he was a central figure at Detroit.”² Woodward literally changed the physical and judicial landscape of Detroit and the territory. Among his numerous accomplishments were his draft of the original plan for Detroit following its destruction by fire in 1805, the naming of the city of Ypsilanti, and, in 1817, the drafting of a grandiose act that embodied his plans for Michigan's first university.

On July 24, 1805, the territorial legislature created the Supreme Court of the territory. Its first session was held on July 29, 1805, and Woodward was appointed the court's first chief judge. Bates resigned in 1806, and

James Witherell replaced him in 1808. From 1808 until 1824, Woodward, Griffin, and Witherell were the territory's judges.

Early descriptions of the court were sometimes humorous and portray a loosely organized, often whimsical bench that was given to gross favoritism and met at irregular hours, "sometimes in the council house and sometimes at the clerk's office; sometimes at a tavern and sometimes on a woodpile."³ As to the tavern, the *Detroit Gazette* wrote:

In September, 1820, the court frequently held its sessions from 2 p.m. till 12, 1, and 3 o'clock in the morning of the next day; and cases were disposed of in the absence of both clients and counsel. During these night sittings, suppers of meat and bottles of whiskey were brought into court, and a noisy and merry banquet was partaken at the bar by some, while others were addressing the court in solemn argument, and others presenting to the judges on the bench, meat, bread, and whiskey, and inviting them to partake.⁴

Given his considerable talents and energy and his unique, aggressive, and often overbearing personality, Woodward became the court's central figure. He was indeed unusual. He was described as a learned, scholarly, but eccentric genius; a bizarre character of the first rank, one "that only Dickens could properly portray."⁵ His personal habits and hygiene were also described as rank. He reportedly rarely bathed, but was known to do so while sitting in a chair outdoors during a rain. His "slovenliness [was] so extreme, as to almost defy description."⁶ Tall, angular, lean, and sallow, Woodward was a bachelor who "was extremely fond of the society of ladies."⁷ He also enjoyed airing an astonishing vocabulary. "Words of six syllables suited his purpose much better than words of one syllable."⁸ On the bench, he quarreled frequently with Witherell and was once characterized as a pedantic, "a wild theorist, fit only to extract sunbeams from cucumbers."⁹ This view of Woodward seems one-sided or only partially correct. If he was an implacable sesquipedalian, he was undoubtedly also a visionary in a frontier community where neither his visions nor his cultured erudition were appreciated or understood. His works have been described as "well written and intelligent manuscripts" and, apparently, he was responsible for all the written opinions of the Territorial Court during his tenure as well as the code of laws for the territory, known as the Woodward Code.¹⁰

Slaves in the Territorial Court

Woodward decided two important slave cases. The first, *Denison v Tucker*,¹¹ came before the court on a writ

of habeas corpus and was heard on September 26, 1807. The petitioners were a family of slave siblings—Lisette, James, Scipio, and Peter Denison Jr. All with the exception of Peter Jr. were born before 1793. Their parents had been purchased in 1784 by an Englishman, William Tucker. The respondent, Catherine Tucker, William's widow, was a British citizen residing in the territory.

The *Denison* decision was complicated legally because of the petitioners' dates of birth and their owner's British citizenship. Woodward had to determine the legality of slavery in the territory in 1807 as affected by the 1763 Treaty of Paris, the Northwest Ordinance of 1787, the 1793 statute of the province of Upper Canada, the 1794 Jay Treaty, and the United States Constitution.

Mrs. Tucker argued that her detention of the Denisons was lawful under the Jay Treaty, notwithstanding the antislavery provision of the Northwest Ordinance of 1787. Woodward agreed. Apparently, his agreement was legal, not personal, as early in his lengthy opinion he expressed a strong aversion to slavery:

The Slave trade is unquestionably the greatest of the enormities which have been perpetrated by the human race. The existence at this day of an absolute & unqualified Slavery of the human Species in the United States of America is universally and justly considered their greatest and deepest reproach.¹²

Fast Facts

Judge Augustus Woodward, a brilliant and eccentric sesquipedalian, was also a slovenly, bizarre character of the first rank—one "that only Dickens could properly portray."

Richard Pattinson, a Canadian, sued for the return of his "escaped" property: the bodies of Jane, a 20-year-old mulatto woman; and Joseph, an 18-year-old boy.

The *Pattinson* decision and the Northwest Ordinance assured that slavery would end in Michigan.

After discussing the abolition of slavery in England, Woodward carefully traced the history of slavery in Michigan during the French, British, and American regimes. He noted that slavery under the French lasted until 1763 and was continued by the British until 1796 when the United States asserted its sovereignty over Michigan through the Jay Treaty. Accordingly, he concluded that the 1793 statute enacted by the province of Upper Canada, which gradually abolished slavery, was entitled to full recognition because the Jay Treaty protected the rights of British settlers. Such property, Woodward acknowledged, included “human species.” Further, Woodward held the federal constitution required that provisions in a duly ratified treaty prevailed over any contrary local laws such as the Northwest Ordinance of 1787.

The end result of Woodward’s legal analyses was a recognition of the three mandates in the 1793 British law: slaves who were living on May 31, 1793, and in possession of British settlers in the territory on July 11, 1796, remained slaves for life; those born after May 31, 1793, and before “the establishment of american (sic) System of jurisprudence” remained slaves until age 25; and the children of slave mothers in the second category were free from birth pursuant to the Ordinance of 1787 unless they were fugitive slaves from another state.¹³ Since none of the Denisons had protected status under the 1793 Upper Canada law, Woodward ordered that they be returned to Catherine Tucker.

On October 23, 1807, less than a month after the *Denison* decision, *In re Richard Pattinson* came before Woodward. With different case facts, he had a fresh opportunity to address the continuation of slavery in the territory and the legal bases for his *Denison* opinion.

The petitioner, Richard Pattinson, sought a warrant to apprehend his claimed lawful property, namely, “the bodies of Jane, a Mulatto Woman, of about twenty years of age, and Joseph [Quinn], a boy of about eighteen years...”¹⁴ Unlike the British settler and slave owner in *Denison* who resided in the territory, Pattinson, a wealthy merchant, lived in the Canadian town of Sandwich. His “property” had escaped to Detroit and refused to return to his service.

The petitioner argued that both the law of nations and the common law recognized alien ownership rights in personal property and, accordingly, both required the return of such property to its lawful owner. Further, Pattinson claimed that since both the United States and Great Britain recognized slaves in North America as property, the Jay Treaty protected British subjects in the full use and enjoyment of their property. Woodward rejected each of the petitioner’s arguments and gave several legal bases for his decision. First, under the law of nations, property of foreign citizens *should be* restored, but there

was no legal obligation to do so when the property was *persons*. Thus, the matter was governed instead by principles of comity. Second, the common law did not control property rights in human beings and since such rights derogated the laws of nature, they had to be statutory. Last, Woodward held that because the Ordinance of 1787 forbade slavery in the territory, no right of property existed in humans. Exceptions were made, however, for slaves held by British settlers in the territory on July 11, 1796 (under the Jay Treaty) and those who were fugitive slaves from other American states or territories. In support of the principle “that a right of property cannot exist in the human Species,” Woodward, as he did in *Denison*, cited with approval Lord Mansfield’s decision in *Somerset v Stewart*.¹⁵ Noting that safe harbors must exist, Woodward offered the following invocation:

A human being escaping from chains and tyranny
Could find no place in the whole earth to rest. Go where
he would the power and the arm of the tyrant would
Still reach him. Man, the monarch of the earth, would
be able to find no place upon its Surface Where he
Could breath the air of freedom.¹⁶

It was also imperative that the remedy sought by the petitioner be distinguished from the national fugitive slave laws, which compelled the return of slaves to their owners even when captured in free states. Woodward concluded that the right of such return among nations, unlike domestic jurisdictions, depended on reciprocal international agreements. Finding no such reciprocity with Canada, Woodward decided against the petitioner.

Toward slavery’s end

Pattinson finally settled the vexing slave problem that had festered between Canada and the Michigan Territory. Woodward obviously thought his *Pattinson* opinion was of national importance. He sent a copy of it to the postmaster of New York City, and on January 12, 1808, received a reply advising him that it had been printed in both the *American Citizen* and the *Republican Watchtower* and that it “very generally meets the approbation of our bar.”¹⁷

Pattinson had immediate, local, and far-reaching ramifications. It helped solidify the abolition movement in Detroit and beyond. It “was widely acclaimed throughout the northern states and was popular in Detroit.”¹⁸

Appropriately, one example of the decision’s local impact involved the Denison family, the unsuccessful petitioners in *Denison v Tucker*. Since the lack of reciprocity prevented the return of runaway slaves, the Denisons fled into Canada and claimed sanctuary. With no legal means to force their return, they lived free in Canada.

Later, they returned to Detroit and were reported to have “lived unmolested for the rest of their lives....”¹⁹

An ironic slave anecdote involved Woodward. Apparently, he owned a slave until the time he left the territory in 1824. “One of the last slaves in Detroit was an aged Pawnee servant belonging to Judge Woodward, who enjoyed full liberty for several years before his death.”²⁰ If Woodward’s ownership of a slave was inconsistent with his eloquent indictments of slavery in the *Denison* and *Pattinson* opinions, it was, on the other hand, a certain confirmation of his irascible and arrogant character. Catlin reported a slave working in Detroit as late as 1830, “a husky African slave” named Hector, owned by Gen. John R. Williams.²¹

The antislavery feelings evident in Michigan in 1807 endured and grew. The *Pattinson* decision was a final assurance that slavery in Michigan would soon disappear. The time limits set by the 1793 Canadian statute were soon to expire, and no prospect for new slaveholding was forthcoming. The Northwest Ordinance, which Cooley described as “a great and notable event...a precedent for putting the government distinctly on the side of freedom,”²² was taking effect. New settlers to the territory, including many from New York and other New England states, understood that Michigan was to be free of slaves. Therefore, those owning or wanting slaves didn’t come.

Following voluntary manumissions and escapes to Canada, only 17 slaves were reported in Detroit and a total of 24 slaves in the Michigan Territory in the 1810 census.²³ Only one slave was believed to have been in Michigan at the time of the 1830 census.²⁴ In 1835, when Michigan adopted its first constitution and formally abolished slavery, three slaves were reported in the state—two in Monroe County and one in Cass County.²⁵

No longer slaves, not yet citizens

Detroit was to become a major terminus for the Underground Railroad. It became the passageway across the Detroit River into Canada and freedom for thousands of black slaves escaping the American South.

Coterminous with the end of slavery in Michigan was a nascent struggle by blacks for equality. Although a majority of whites in Michigan opposed slavery and fugitive slave laws, most did not equate black freedom with equality. As later laws and events showed, black residents in Michigan were denied the basic civil rights accorded whites, particularly the right to vote. Michigan’s constitutions of 1835 and 1850 barred blacks the franchise. In 1850, a ballot to approve the new state constitution contained an amendment that would have granted civil rights to Michigan’s free blacks. While the constitution itself was readily approved, the amendment lost by

a three-to-one margin. It was not until 1870, after ratification of the Fifteenth Amendment to the Federal Constitution, that blacks voted in Michigan.²⁶ ■

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ENDNOTES

1. See Farmer, *History of Detroit and Wayne County and Early Michigan* (3d ed) (S. Farmer & Co, 1890); Catlin, *The Story of Detroit* (Detroit: The Detroit News, 1923), pp 1–13.
2. *History of Detroit*, p 181.
3. *Id.* at 179.
4. *Id.* From Farmer’s account, it appears the story was published on January 3, 1823.
5. *Id.* at 181.
6. *Id.*
7. *Id.* at 182.
8. *The Story of Detroit*, pp 121 and 223.
9. Cooley, *Michigan* (Boston, 1885), pp 149–150.
10. Witherell, *The Territorial and State Judges*, 4 Michigan Reports 9 (1857).
11. *In re Elizabeth Denison*, 1 St Ct Terr Mich 63 (1807). For a discussion of the case facts, see Woodford, *Mr. Jefferson’s Disciple: A Life of Justice Woodward* (East Lansing: Michigan State University Press, 1953), pp 86–87.
12. Blume, ed, *Transactions of the Supreme Court of the Territory of Michigan—1805–1814* (Ann Arbor: The University of Michigan Press, 1938), p 386.
13. *Id.* at 395.
14. *Transactions of the Supreme Court*, p 414.
15. *Somerset v Stewart*, 98 Eng Rep 499 (1772).
16. *Transactions of the Supreme Court*, p 416; see also Higginbotham Jr., *In the Matter of Color: Race and the American Legal Process: The Colonial Period* (New York: Oxford University Press, 1978), pp 333–368.
17. *Transactions of the Supreme Court*, p 99, citing the Mich Pioneer & Hist Coll, XII (1887), p 655.
18. Dunbar, *Michigan: A History of the Wolverine State* (Grand Rapids: Eerdmans Publishing Co, 1965), p 200.
19. *Mr. Jefferson’s Disciple*, p 91.
20. Ross & Catlin, *Landmarks of Detroit: A History of the City* (Detroit: The Evening News Assoc, 1898), p 416.
21. *The Story of Detroit*, p 288.
22. Cooley, *Michigan: A History of Governments* (Boston, 1885), p 333.
23. See Katzman, *Black Slavery in Michigan*, XI Midcontinent Am Stud J 62, n 14 (Fall 1983), and census data references contained therein.
24. *Id.*
25. *Id.*
26. See generally McCargo, *Emancipation in Michigan: A Slice of Legislative History*, 64 Mich B J (June 1985).