Zebina Eastman. "Black Code of Illinois
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BLACK CODE OF ILLINOIS.

by
Zebina Eastman

AT the portal of the State of Illinois, as if engraved on a column of brass, stands this inscription, from the Ordinance for its Government:

"There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in punishment of crime whereof the party shall have been duly convicted."

Why there should have been any occasion for this restriction is one of the most marvelous eccentricities of modern Christian civilization. Had the inscription over the gateway been "Murder shall not enter here," it would not have been more strange. There is a history to this transaction which will invite the attention of us all, but which can not be comprised in one chapter, and it serves our purpose to introduce it simply as the first great fact, which must be before our sight, as the monumental tablet from which we take our departure.

The interest in this great fact will be intensified when we trace up future history, and find that the consecration of the Northwest Territory, of which Illinois is a part, to freedom forever, by the patriots founding this Nation, became the pivotal Act by which slavery was not only excluded from this section, but through which the Nation itself was finally delivered from that curse; for it was on this consecrated soil that the moral battle was fought, and that preceded the war of emancipation. Here, in this State, was the first contest waged against slavery, which became a conquest.

This conquest was the defeat, by the votes of the people of Illinois in 1823–4, of the attempt to legalize slavery in the State in violation of the Ordinance, in nullifying the Call for a Convention to alter the constitution for that purpose. Here a Lovejoy gave his blood in martyrdom, and in the sphere of its Territory did a Giddings, Chase, Samuel Lewis, a second Lovejoy, a Codding, a Collins, and an "Uncle Tom's Cabin," work out their mission to this end. In this State were trained for their great work, a Grant and a Washburne, and for the completion of it all was raised up ABRAHAM LINCOLN, to become the emancipator of the four million slaves that, by the powers of evil, had been nursed in the bosom of this Republic. Had there been no Northwest in this moral sense, and no Northwestern Ordinance for its Government, how vastly different would have been the fate of this Nation, with its fearful slide into apostasy, in its moral, political, and governmental condition! This Ordinance bore date July 13, 1787.*

The enabling Act of Congress, by which the people of the State might vote to put off their minority, and enter into the indissoluble bonds of the National Union, required strict conformity to this condition of perpetual freedom.

CONSTITUTIONAL PROVISIONS.

The Constitution of the State, made in 1818, makes this harmonious declaration: "Neither slavery nor involuntary servitude shall hereafter be introduced into this State otherwise than for the punishment of crimes where the party shall have been duly convicted,"—indorsing and using the words of the Ordinance.

One would think the Temple of Liberty sufficiently guarded, bulwarked by these two firm buttresses, on which stand the pillars at its portal. But there is something more in this State Constitution, with only a break of a semicolon.

* Virginia made her cession March 1, 1784.

It is this: "Nor shall any male person arrived at the age of 21 years, nor any female person arrived at the age of 18 years, be held to serve any person as a servant under any indenture hereafter made, unless such person shall enter into such indenture while in a state of perfect freedom, and on a condition of a *bona-fide* consideration received or to be received for their services. Nor shall any indenture of any negro or mulatto hereafter made and executed out of this State, or if made in this State, whose term of service exceeds one year, be of the least validity, except those given in cases of apprenticeship."

There seems to be a strange muddle of conditions in this language. Involuntary servitude is prohibited, yet there are certain conditions that remind us that permission is granted under prohibition. Under the Constitution, no person shall *hereafter* be bound as a servant unless he shall enter into a contract with perfect freedom; is there here a constitutional inference that under the old law there was constraint, and they were forced to be servants as they had been forced to be slaves? Again, there shall be no validity to a contract with a negro for more than one year's service, except in case of apprenticeship. What else could *apprenticeship* mean to a negro but that same condition he was in before regulated by this Constitution?

The Constitutional provisions are continued in other sections: "No person bound to labor in any other state shall be hired to labor in this State, except within the tract reserved for the salt-works near Shawneetown, nor even in that place for a longer period than one year at any one time, nor shall it be allowed there after the year 1825. Any violation of this article shall effect the emancipation of such person from his obligation to service." Permission again under prohibition. There is something about this salt-work business worthy of attention. It was one of the rat-holes through which slavery crept into the Terri-

tory. Saline springs or bogs were discovered which gave to the early settlers the much-needed article of salt, if properly improved. To bring over a slave from Kentucky to make salt enough to salt his porridge served the legal purpose of his introduction, and many a farm was fenced and worked in the southern portion of the State by slaves working in the salt-works; and that process of saving slavery with salt continued till 1825.*

Another section provides as follows: "Each and every person who has been bound to service by contract or indenture in virtue of the laws of Illinois Territory heretofore existing, and in conformity to the provisions of the same, without fraud or collusion, shall be held to a specific performance of their contracts or indenture: and such negroes or mulattoes as have been registered in conformity with the aforesaid laws shall serve out the time appointed by said laws; provided, however, that the children hereafter born of such persons, negroes or mulattoes, shall become

* A saline, or water strong enough to make salt, was found in a district of country about ten or twelve miles northwest of Shawneetown, on the Ohio River. The salines were reserved from sale by the United States. The General Government leased these salines to individuals, and afterward to the State of Illinois, allowing slaves to be brought into the Territory for the purpose of working them. Under the Territorial law, hundreds and thousands of slaves were introduced into the southern part of the Territory, chiefly from the states of Kentucky and Tennessee.

For all practical purposes, this part of the Territory was as much a slave-state as any of the states south of the Ohio River. To roll a barrel of salt once a year, or put salt into a salt-cellar, was sufficient excuse for any man to hire a slave, and raise a field of corn. Slaves were not only worked at the saline, they were waiters in taverns, draymen, and used in all manner of work on the north side of the Ohio River. As villages and settlements extended farther, the disease was carried with them. A black man or a black woman was found in many families, in defiance of law, up to the confines of our Settlement, sixty miles north, and in one instance in it. In some, but not many, cases, they were held defiantly; in others, evasively.—*English Settlement in Edwards County.* By Geo. Flower. Chicago Historical Society's Collection. Vol. I. Chicago, 1882.

free—the males at the age of 21 years, and the female at the age of 18 years. Each and every child born of indentured parents shall be entered with the clerk of the county in which they reside, by the owners, within six months from the birth of said child." It seems by this that children of indentured persons were constitutionally owned by their masters. By reference to the law, which will be soon quoted, it will be seen that perpetual slavery was possible under this clause of the Constitution, for none of the children were emancipated till they were of legal age; but propagation may come much earlier than legal majority.

Such were the Constitutional provisions of the first Constitution of the State, looking fair on their face; but on close scrutiny it is seen to attempt to provide for a muddled condition of things, which that old muddle of muddles, the slave system ever brought to the community and muddled the heads of our good fathers. They would prohibit it, but were required to make provisions for its continuance. The fathers of our Constitution, like Gov. Edwards and Nathanial Pope, were among the best of our early men. It was the hardest fate ever brought upon a nation, to face this perpetuated evil of centuries with the necessity that it must be ended; and it is not strange that it took the greatest war of modern times to cut that intricate knot with the sword.*

Wm. H. Brown, Esq., in a lecture before the Chicago

* At the meeting of the Convention for forming the Constitution of Illinois, in August, 1818, a decided majority of the delegates were in favor of admitting slavery, in the face of the Northwestern Ordinance, and the Act of Congress authorizing the Call of the Convention, to the contrary notwithstanding. We were so informed by Col. Stephenson, a member for Madison County, who said it was entirely owing to the efforts and influence of three men, who were not members, that the unrestricted admission of slavery into the State was not allowed by the Constitution. These men were Ninian Edwards, Nathaniel Pope, and Daniel P. Cook. As this fact was known to the disappointed slavocrats, they conceived the design of trying the question again at a future period.—*Hooper Warren.*

Lyceum, December 8, 1840,* states that "the sixth article of the Constitution, declaring that slavery or involuntary servitude should not hereafter be introduced into the State, was the subject of warm debate, and the only exciting topic during the session." He then gives a sketch of the slave laws of the Territory, which will be given here in the proper place, and continues: "Thus it will be perceived that the subject of slavery, in all its varieties, as it then existed, was calculated to excite a deep interest when it was supposed that, by Acts of the Convention, it was to be upheld or wholly swept away. Its advocates were anxious to insert into the Constitution a saving clause, by which their supposed rights would be confirmed, while the ultras of the opposite party were ready to overturn the whole fabric. The Convention took a middle course, leaving the right to the French slaves and their descendants, to be adjudicated by the Courts of the country; and declaring that those who had been bound to service by indenture or contract, in conformity with the Territorial Law, without *fraud* or *collusion*, should be held to a specific performance of their contracts, and also that those who had been registered should serve out the time appointed by law. The anti-slavery men were contented with the saving clause in the words, "without fraud or collusion," as they contended that in all cases of indentured servants there was both the one and the other. To a great extent, they were no doubt correct; for cases were not uncommon where the unfortunate servant, before going to the clerk's office, was whipped into a proper state of mind, '*freely* and *voluntarily*' to enter into contract with his master. But in all cases it was understood that if his consent were not given, the slave would be immediately removed to a slave-holding state, to remain in bondage in the hands of some one perhaps less kind than his present possessor;"

* Fergus' Historical Series, No. 4.

and the master had sixty days in which to make the removal.

FRENCH SLAVES.

We must now go back a century or more to find facts which will help to solve this muddle of the Constitution.

Notwithstanding Illinois was a part of the Northwest Territory, and under the restriction of this Ordinance and one of the States formed under it, it was nevertheless one of the old slave-colonies. Slavery was introduced into Illinois in 1720, when it was a part of the French possessions of the Northwest. Philip Francis Renault formed a company in France for working mines in upper Louisiana, which was a part of Illinois; and he started from his country ostensibly in the mining business, with two hundred mechanics and laborers, and on his way at San Domingo, he purchased five hundred slaves, and brought them with him to Illinois. A portion of these, or their descendants, were afterward removed to the other French possessions, on the west of the Mississippi, and helped to swell the aggregate of Louisiana slavery. Those that remained were the progenitors of the class known in our State from old time as the "French slaves," and fell in later as a part of the report of the census of slaves in Illinois; and the Frenchman Renault must be set down as the first Illinois slave-holder.*

These French slave-holders have been described as being

* I find mention made of this important character in E. G. Mason's "Kaskaskia and its Parish Records" (FERGUS' HISTORICAL SERIES, No. 12), under date of May, 1721. He appears at the register of the baptism of the son of a Pawnee slave, as le Sieur Philippe de la Renaudière, *directeur des mines pour la Compagnie d' Occident.* Mr. Mason says, "He was a great man in the new colony," and he appears next in the entry of the baptism of a son born of the marriage of himself (this Renaudière) with the lady Perrine Pivet. The baptism of the son of this great man, of a little place, was a state affair, involving the signatures of all the other great characters of the community.

of rather high-class men, and kind and paternal to their slaves. We know that the French, on their possession of the Northwest, found little difficulty in affiliating with the aborigines, and doubtless they could look upon the black person as not altogether uncompanionable. As indicative of the French relations both to the Indians and the Negroes, we find such entries as these from Mr. Mason's transcript of the Parish Records of Kaskaskia. The first entry, in an early volume, is the record of the baptism of a son of one of Hennepin's voyageurs, intermarried with a daughter of the chief of the Kaskaskias. Entries of the baptisms of children by intermarriages with the Indians are very common. There is an entry of the baptism of the daughter of a slave woman, which bears an Indian name. Records are made of the baptisms of slaves, men and women; and also of the marriage of slaves with each other. We know that the Catholics (of which religion these French settlers were) regard marriage as a holy sacrament, and baptism a sort of saving ordinance. These ceremonies, performed with the slaves Renault bought in St. Domingo, show that in the estimation of the good fathers the property relation could not step in to bar them from their spiritual privileges; whereas we know that in our enlightened period of American christian bondage, marriages were never *solemnized* with the slaves, except in mockery, and with the union limited to circumstances and the will of the owner to separate the twain; and baptism seldom, and then often in this form: "Cæsar, the *property* of Napoleon Bonaparte Smith, I baptise thee in the name of —— ——," etc. We are glad to record that any sunshine of humanity could any where have penetrated into that dark cloud.

This importation of blacks made a distinct class and the occasion of a distinct order of slaveholders about Kaskaskia and the American Bottoms, and where now descendants of both masters and slaves reside in a common Illinois citi-

zenship.* At that time slavery was legalized in all Christian countries—that is, if regulating a system which the law did not create be legalizing it. If there is any law that created American slavery, I have not yet found it. These slaves that Renault brought to Illinois were under French jurisdiction at that time and for nearly half a century, till the Northwest was ceded to Great Britain in the treaty of 1763. They then came under the English law of bondage (if there was any such); and when the Territory was captured by George Rogers Clark, in 1778, which was done in the name of the sovereignty of Virginia, if they continued slaves under any law, it must have been under the slave code of Virginia. When that State ceded the territory to the Nation, these slaves must have been perpetuated in bondage under United States law; and yet the United States had no such law. From the cession of Virginia to the Nation in 1784, till 1790, when Gov. St. Clair organized the county which took his name, the people who resided in this Territory had no legislative or judicial supervision,

* The Settlement of Kaskaskia, Prairie-du-Rocher, Fort Chartres, Prairie-du-Pont, and Cahokia, in the "American Bottom," now included in the counties of Randolph, Monroe, and St. Clair, were made by Frenchmen about one hundred years previously to the passage of the Ordinance of 1787. These French settlers were principally Indian traders, the owners of a considerable number of slaves, which they continued to hold in defiance of that Ordinance; and by the time the Territory and State began to be settled by Americans, they had become very wealthy. They, or their descendants, by means of intermarriage with American immigrants, have wielded an influence which has continued to rule the political destiny of the State. Among those Americans who thus made their fortunes by marrying the daughters or granddaughters of the old French settlers, are some of the numerous family of the Morrisons, Elias K. Kane, Col. Thomas Jefferson, Vance Owen, late Dr. Betts of Chicago, Judge Breese, (Judge Thomas,) John Reynolds, and Adam W. Snyder. —*H. Warren in Genius of Liberty.*

Of the French descendants direct, there were those who had the same influence in the line of their inherited perquisite, as, for instance, Pierre Menard and Nicholas Jarrott. And as politicians, and they have been prominent as such in the State, they were ever true to their inherited interests.

and were a law unto themselves, holding the slaves with the grip which they had previously obtained. But the Ordinance for the secession declared that "there shall be neither slavery nor involuntary servitude in the said Territory." Why this Ordinance was inoperative in this essential point, to the slavery then in existence, is something similar in character to the later Dred Scott decision—virtually that not to have slavery was unconstitutional. But the action of the Ordinance of 1787 was said to be prospective, and the courts so decided. It was not until 1845 that the supreme court of this State settled this question of "vested rights," deciding that the slave descendants of Renault's importation of 125 years previous were free; and the Constitution of this State, of 1848, put an end to involuntary servitude of every form in Illinois.* In 1800, there was probably a population in the section that became Illinois of about three thousand persons. At that time there were reported in the census, including Indiana as well, 133 slaves. These must have been in the main in Illinois, and the descendants of the "French slaves." In 1810, Illinois had 168 slaves; in 1820, 917—a vast increase in the course of twenty years, showing that the increase must have come, if genuine slaves, from smuggling in from the border slave States, and held under the inherited vested rights, or laborers in the salt-works, or from the "indentured-servants system," which was a dodge upon the restrictive clause of the Ordinance. In 1820, the population of the State was 48,919 whites, 1,476 blacks, 917 of which were slaves; total, 50,395.

ATTEMPTS TO ABROGATE THE ORDINANCE OF '87.

There came, in time, the practise of disregarding this prohibition in bringing slaves into many parts of the

* Western Annals.

Territory, and even reporting them in the census. This was done in Wisconsin as late as 1840, the marshal reporting a number of slaves in the said Territory. Dr. E. G. Dyer, of Burlington, Wis., father of the United States judge, C. E. Dyer, of Racine, attacked the marshal for this illegal report, and disclosed the fact that these reported slaves were held generally by persons in official positions in the United States government.* Such were some of the early assumptions of the doctrine of squatter sovereignty, that a man had the inalienable right to take his slave with him into any territory into which he chose to remove. These facts are a little ahead of the logical events of history. But it suits the symmetry of the subject to bring them in here. It is best, however, to state here that the prohibition of slavery in the Northwest Territory was a bid, like "free Kansas," for its settlement by a hardy and industrious class who thrived by the labor of their own hands, and for its settlement by a class of men from the South who were conscientiously opposed to slaveholding. It was emphasized as a free country, and free men felt invited to make here their homes. The early population of the Northwest was composed of men of this mingled character; and those who believed that prosperity came from one man having the power to compel some other man to work for him for nothing, *viz.:* those who would own slaves.†

There came, then, from this condition the incipient conflict of ideas of the past generation. The anti-slavery sen-

* See Appendix—Slavery in Wisconsin.

† During the consideration of the Ordinance of '87 in Congress, Rev. Manassah Cutler, representing a company of capitalists from New England, was negotiating with Congress for the purchase of four millions of acres of land in the Northwest, on which to settle colonies from the East, which he declared would be "of the most robust and industrious people in America, which would instantly advance the price of Federal lands," etc. The anti-slavery sentiment of Virginia and the period of the Revolution, seconded by the desire of free laborers to possess the land, determined the policy of the Ordinance.

timent of the Revolution was then pervading as a live principle. There was dissatisfaction by interested persons on the other side at the restriction in the Ordinance. The first petition on the subject to Congress came in 1796, from four persons in Kaskaskia, in this State, the seat of this inherited French slavery, asking that slavery might be tolerated there. It seems that they felt they were holding their chattels on a feeble tenure. At that time we were all in one common Northwest Territory. Ohio became a State in 1800; then all the territory west and north of the Ohio River, from the mouth of the Kentucky, became the Territory of Indiana, with William Henry Harrison governor. In 1804, a Convention was held at Vincennes, of which Gov. Harrison was president, to deliberate on territorial interests, and from this Convention went up a memorial to Congress, which was referred to a committee, which reported, recommending the suspension of the sixth article of the Ordinance of 1787, "in a qualified manner for ten years, so as to permit the introduction of slaves born in the United States." This report was not adopted, and neither the previous prayer of the Kaskaskians heeded.

At the session of the Indiana Territorial Legislature in 1806-7, a series of resolutions were adopted and reported to Congress by the delegate, requesting the suspension of this restrictive article of the Ordinance. We were then a part of that Territory. Jesse B. Thomas was speaker of the house, and Pierre Menard, president of the council; both citizens of Illinois, the latter a French slaveholder, and the former intermarried with such. This report was lost in Congress also. These early efforts to establish slavery aroused the people, and an issue was made similiar to that which was made afterward in our State called the "convention question." Jonathan Jennings, an anti-slavery man, was elected Delegate to Congress, which position he held till Indiana was admitted as a State. It is known that

Gen. Harrison was in favor of introducing slavery into the Northwest Territory.*

These facts prepare us for the introduction of "The Black Code of Illinois." Some of the people, if they could not have slavery legitimately, would have it illegitimately; for the infamy which fell upon us was conceived in sin and brought forth in iniquity, a half-parented progeny.

TERRITORIAL LEGISLATION.

The Indiana Territorial Legislature passed an Act, dated Sept. 17, 1807, which is the embryo of our Black Code, with this title: "An Act concerning the introduction of Negroes and Mulattoes into this Territory."

As statute enactments are rather dull reading, I will summarise the thirteen sections of this act of 1807, which is the nucleus of our Black Code, into a few sentences.

The Act permits the *owner* of any negro or mulatto,

* There are facts as well as admissions that prove the views entertained by Gen. Harrison. See Henry Wilson's History of the Slave Power, also Harrison's Speech at Vincennes, during the presidential canvass of 1840.

"When this provision (excluding slavery from the Territory of Illinois) was under consideration, Gen. Harrison, then a member of the House of Representatives from Ohio, declared in debate that this prohibitary clause could have no effect after the State was duly organized and admitted to the Union. [This seems to be primary squatter sovereignty.] He contended that his own State, Ohio, had the right, notwithstanding the Ordinance and the Act of Congress, at any time to alter her Constitution so as to admit slavery."—*Hooper Warren in Genius of Liberty*, July 17, 1841.

And not only was he in favor of legalizing slavery in the Northwest Territory, but it appears that he was actually a slaveholder under the Ordinance of '87. We now give some facts from a rare and reliable source, Lundy's *Genius of Universal Emancipation*. The article was published in 1822, in the *Genius* and in a Cincinnati paper, where the scene occurred:

"A circumstance transpired about seven years ago in this city which shows clearly the tyrannical disposition of this self-styled ardent friend of human liberty. The story is related by the family who witnessed the scene, as follows: About the time above stated, Gen. Harrison entered the house of Mr. Jacob Hoops, on Sixth Street, in search of a black woman named Betty, whose service he claimed. He found her at her work in the kitchen, and immediately

above the age of 15, to bring him into the Territory—and within 30 days to register him with the clerk, and there make an agreement, which is to be recorded.

Sec. 1. Authorizes the *owner* of any negro or mulatto of and above the age of 15 years, and owing service and labor as a slave, in any State or Territory in the United States, to bring said slaves into this Territory.

Sec. 2. Provides that the owner of such negro, etc., might within 30 days go with the same before the Clerk of the Court of Common Pleas, in the county where the parties reside, and agree with the negro or mulatto upon the number of years he or she should serve the master, to be recorded by the Clerk.

Sec. 3. Allows the master, in case of the refusal of the slave to make such contract, to remove him within 60 days into any State or Territory. If the slave should stand on his new dignity and refuse, the master could

ordered her to get her clothes and follow him. The woman started to go up stairs, which were at that time in an unfinished state, and as she was old and clumsy, and probably withal a good deal agitated, she found it difficult to ascend. Whereupon the general fell to beating her with his cane, in a most unmerciful manner, and actually broke it by the violence of the blows. Notwithstanding he was William H. Harrison, late a general in the army, he received a severe reprimand from a young lady, the daughter of Mr. Hoops, which, if it did not shame him very much, astonished him. Mr. Hoops, hearing a disturbance in the house, went in and inquired the cause; whereupon the humane, noble-hearted general, seeing a *man* in the house, immediately retired. Shortly after, he had the woman arrested according to law, took her before a magistrate, and substantiated his claim to her.

Now came on the second act of the heart-rending scene. The woman (as might be expected from the treatment she had received) utterly refused to go with the general. She said he had agreed to set her free at a certain time, on condition she would come with him from Vincennes to this State; that she had left her husband and came on that condition; and that the time appointed had expired. But her entreaties were of no avail; this friend of human freedom had her dragged in a most shocking, brutal manner across the common to his boat on the river!" What strange combinations of legal assumptions could have made Gen. Harrison believe he had any title to this woman, to take her from one free state to another! or to hold her anywhere!

remove him in 60 days. Property could be acquired in these registered slaves, till males were 35, females 32—and children born of such should be *owned* by their master till 30 and 28.

Sec. 5. Provides that any person removing into the Territory with, or should any person acquire, a property in such slaves, they might hold such slaves to service, males to the age of 35, females to 32.

Sec. 6. Made it the duty of the master to register with the Clerk their names and ages, and they were styled registered or indentured servants.

Sec. 13. Provided that *children* born of such indentured parents, should serve their masters (*owners*), males until the age of 30, females 28.

This continued to be the law of the Territory, of which Illinois was a part; in 1809, Illinois became a Territory of herself, and re-enacted the former territorial laws, making the Act above quoted the law of the Illinois Territory. It is this law that is referred to in the Constitution quoted, and therein somewhat modified. This Territorial Black Code, with the Constitutional modifications, became the law by adoption of the State of Illinois, until she remodeled and enlarged it in 1819.

But the iniquity of the thing was not yet wholly matured. Under the State law, it was simplified and worked up into a system. The laws were revised, and what had gone before with that which seemed best to have added, were codiciled, so to speak, or made into our code. The revision took place in 1833. It is in this revision, with the act of 1829, where the special elements of slavery come in, by which we may characterize it as a Slave, as well as a Black Code.

STATE LEGISLATION.

Act approved March 30, 1819.

Sec. 1. Prohibits any black or mulatto person settling or residing in the State without producing a certificate of freedom, etc. This section was amended and will be referred to again. It was the first blow at free negroes. It follows the precedent of slave-state legislation, that gives no place for a negro on our broad domain unless he be a slave; in this case, that this State shall not be an asylum for those who ran away from oppression.

There are 25 sections to this act, and if it were not for the variety of the matter, would be very dull reading. I have carefully summarised them all. It would weary you beyond measure, if I were to give these sections entire. But you may be assured they will read very well by the side of the Blue Laws; Black and Blue together.

Sec. 2. Makes it the duty of all free negroes having families and having a certificate, as before provided, to register their families, with a description of each name, age, etc.

Sec. 3. Prohibits any person from bringing any slave into this State for the purpose of emancipating such slave, making it a condition for those who do so, to give bond in the penal sum of one thousand dollars, condition that such slave shall not become a county charge; neglecting so to do, subjected the offender to a fine of $200 for each one so emancipated. [The law was in operation, and upon Gov. Coles, for emancipating his Virginia slaves, at Edwardsville, in 1819.]* It was amended in 1833, so as to

* Edward Coles, afterward governor, was born in Virginia, and was an anti-slavery man of the old school of Jefferson, Franklin, etc. He removed to this State for permanent residence in 1819. He brought with him a family of slaves, whom he had inherited. On a flatboat on the Ohio River he formerly gave them their freedom. On the 4th of July, 1819, he legally emancipated them, giving them deeds of emancipation. This was in violation of the law of March 19, which had been passed the previous spring, and which, at that time, was not generally known, not having been published. These deeds of emancipation were the basis of much persecution, and a long and

allow the emancipator release, on giving bonds that the slave should not become a county charge.

Sec. 4. Requires every black or mulatto (except slaves or persons held to service) to register his name and his family, with their description and the evidences of freedom, which shall be recorded by the clerk, which certificate of record should be sufficient evidence of freedom, except as against the claim of a slave-owner. This was a law altogether to hit the free negro.

Sec. 5. Forbids any person, under a penalty of one dollar and fifty cents a-day, from hiring or employing such negroes, without a certificate of freedom, keeping the said free negro out of employment. This was amended.

Sec. 10. Makes it the duty of masters to provide servants with sufficient food, clothing, etc.,—a law found necessary in slavery—but it is no where found necessary to require an owner to give his horse sufficient hay and grain, unless on common grounds of cruelty to animals.

Sec. 11. Makes these contracts for services assignable to other persons, with consent of servants, such assignments to administrators, assigns, etc. Thus the property relation is recognized. It was a common thing to sell these servants.

Sec. 12. Provides that any servant being lazy, disorderly, guilty of misbehavior, may be whipped, upon an order of a justice; or refusing to work, be compelled by a like process, and forfeiting two days to the end of his service for every one in which he so refuses and is whipped

bitter lawsuit. Suit was instituted against him in 1824, while he was governor of the State, by a worthless fellow set on for the purpose, with the title, The County of Madison *versus* Edward Coles. John Reynolds was the judge, and the case went over to another term, and judgment rendered against defendant for $2000. The Legislature, in 1825, passed an Act releasing all penalties under this Act. But the case was still kept in court by appeals and devices of annoyance, until finally the emancipator was let off from the penalty of this philanthropic deed, by the payment of heavy costs.

up to it, and all expenses, including whipping, be paid by him in labor, which would finally have to be whipped out of him.

Sec. 13. Provides that for the failure of the master's duties, or if he is guilty of injuring his servant, it must be redressed in the Circuit Court—a pretty hard court for a flogged slave to get access to.

Sec. 14. Makes all contracts between masters and servants, during the time of service, void.

Sec. 15. Makes it the duty of the Circuit Court at all times to hear complaints of servants, being citizens, (here is a difference) against masters, for immoderate correction, or on complaints of masters against servants for desertion, etc. There was a slave law in slave States that absolved a master from punishment if the slave died under moderate correction.

There seems to be some protection to the negro in these sections, but we shall see that in the Act concerning Practise in the Courts, in R. Laws, page 536, it provides that a person having one-fourth negro-blood, shall *in no case* be a witness against a white person.

Sec. 16. Provides that if any servant shall lawfully acquire property during the time of service, such property shall be for his own use; and the master is compelled to care for him when sick and lame, until his term expires, under penalty of $30, for use of the county. [Mercy here again some what strained.]

Sec. 17. Forbids any negro or Indian from purchasing any servant other than of their own color, and makes such contract void. [If this law had extended to white persons it might have put a new face on servant hire.]

Sec. 18. Forbids any person to hire or to buy, sell, receive of, to, or from any servant or slave, any coin, or commodity, without consent of the master, under a forfeiture of four times the value of the article sold or given.

[A dollar given in good-will on Christmas would involve a forfeiture of four dollars.] It also provides that at the expiration of the term, the clerk shall give a certificate, which shall indemnify any person for thereafter hiring.

Sec. 19. Provides that in all cases of penal acts, where *free* persons are punishable by fine, *servants* shall be punished by *whipping*, and the rate given (twenty lashes for every eight dollars, the rate of the currency being forty cents a lash), unless the offender procures another person to pay his fine.

[We see from the above, with all power of contract gone, and buying and selling prohibited, what little chance the person has of lawfully acquiring property, or what chance he may have of paying off a penalty, for which the white loafer pays eight dollars, while the black must settle it at the rate of twenty lashes for every eight dollars. We can see no reasonableness in this, except that, like the skinning of eels, they did n't mind it, because they were used to it.]

Sec. 20. Provides that at the expiration of his service, every servant may have his *freedom* recorded, etc.

Sec. 21. Provides that if any *slave* or servant shall be found at a distance of ten miles from the tenement of his master without a *pass*, it shall be lawful for *any person* to apprehend and carry him or her before a justice, by whose order he or *she* may be whipped, not exceeding thirty-five lashes. [How much thirty-five lashes means there is no way to tell, unless some one tries it, having them well laid on.]

Sec. 22. Provides that if any *slave* or servant shall *presume* to come and be upon the plantation, or at the dwelling of any person whatever, without leave of his or her *owner*, not being sent on lawful business, [it is pretty hard to tell just here, in this muddle of law, what is lawful business for a slave] the owner of such plantation or dwelling may give such servant or slave *ten lashes on the bare back*.

Sec. 23. Provides that riots, routs, unlawful assemblies, trespasses, and seditious *speeches* by any slave or slaves, servant or servants, may be punished, *at the discretion of a justice;* and *whoever will*, MAY apprehend such persons and bring them before the justice. [This Mr. Whoever Will becomes a constable. There may be a black crowd, perhaps of one more than three jolly persons, and at the lead of one white villain they may be brought before a justice, and he the only witness of their evil plotting or riotous conduct, (negroes will sometimes laugh boisterously,) and not one of them can say a word of defence or explanation, or affirm that they were not engaged in their spiritual devotions, but they must bare their backs to whatever flagelation the justice may discretionarily inflict.]

We have a vague notion that the Ordinance of '87 had something to say to the effect that slaves should not be on this soil to tempt the lash of the justice; also that the Constitution has something to say in regard to offences, trial by jury, and about unreasonable arrests; and that punishments should be in proportion to offences, and not according to the amount of whisky that had been imbibed.

Sec. 24. Imposes a fine of $20 upon any person who suffers or permits slaves or servants of color, to the number of more than three, to assemble in any house, yard, or shed, (pasture and wood-lot ought to have been added) for the purpose of *reveling*, night or day. [Fun, as well as mischief, is here discouraged by the righteous law. This is a law for white men, and they come in for some share of the penalty, in giving any countenance to the effervescent demonstrations of the colored person's right to be a man.]

Sec. 25. Makes it the duty of all coroners, sheriffs, judges, and justices, who see or know of any such assemblage, immediately to commit such persons to jail; and on proof have them whipped, (whipped for having a jolly time,) not exceeding—exceeding how much?—*thirty-nine*

lashes on the bare back, the very next day, unless it should be Sunday, then the whipping was to come off Monday. [Swift and pious justice! Every black crowd of more than three, for having a jolly night of it, might be tolerably sure of a thirty-nine lash flogging the very next day, unless it was done on the slave's favorite night for a good time, Saturday night, then they might be sure of the Sabbath's rest and contemplation in jail of what should come on Monday, which might be called a red-day. One is perplexed which to admire most, the philanthropy of this law or its piety, as is indicated by its reverence for the Lord's Holy Day.]

These several last sections seem like a transcript of the slave codes of Louisiana or South Carolina. The people of those days in Illinois must have lived in mortal fear of an insurrection of their numerous slaves. Possibly there may have been an awakening of conscience to have made cowards of them all.

THE SLAVE PARTY.

Thus far, as to the legislation of the State, soon after Illinois became one of the Union, perhaps indicating the civilization of the times. The Act of which the foregoing is a summary, was approved March 30, 1819. Shadrack Bond was then our first Governor. It was evidently in accordance with the sentiments of the Governor, and the personal party which supported him. Political party lines were not then drawn. But there was then already a nucleus of a party forming; HOOPER WARREN, the editor of the only anti-slavery paper in the State, or indeed then in the Nation, called it the SLAVE PARTY. The promoters of the slave system in our legislature—but not the people at large—had shown thus much their greed for the slavery that was monopolized in the section known as the slave States. That system was wisely excluded by the Ordi-

nance of '87, and they took the next best substitute they could for it; indentured and registered servants, and slavery to a limited extent, in a thin disguise, and in the monopoly of the salt business. The population at the extreme section of the State was made up largely from emigrants over the line in Kentucky, and the neighboring State of Tennessee, and they thought it a political blunder that slavery had been excluded from this Territory. Among the population there was a class of men from the South who were conscientiously opposed to slavery; and also in the northern section, a population from the Free-States, who had never had the curse of slavery upon them, and desired to be ever free from it. This class abounded in the northern counties, which had rapidly become more populous; but at the same time, by the apportionment of representatives in districts, the slave party, as Mr. Warren called it, had a preponderating influence in the legislature. The legislature for many years in the beginning of our career as a State, was in favor of the slave policy, and the people against it.

LEGALIZATION OF SLAVERY.

Therefore, four years after the passage of this law, of which I have given a synopsis, the legislature, through some crookedness, passed an Act, to authorize the people to vote on a call for a convention to alter the constitution, by a two-thirds vote, for the ostensible purpose of legislating slavery, genuine Kentucky slavery, into the State of Illinois. This was that important epoch in our State history known as the Convention Question, and not much known at the present time either. The people voted it down by a respectable majority. With this object, voted for at that election on the same ticket, "For the Convention," which meant for slavery, were the following propositions:

"For exclusion of negroes and mulattoes. No right of suffrage or office to negroes or mulattoes."

"For laws excluding negroes and mulattoes from coming into and voting in this State."

I never have been able to find the Act which authorized the people to vote on the Convention, but I infer that the vote was on these propositions as well, and was voted down with the call, for I find them on a ticket, as given in the lately-published life of Gov. Edward Coles, by Hon. E. B. Washburne. This Convention Question forms a chapter of its own. It has been an overlooked episode in our history. Almost all that has been published about it, consecutively, has come from the auspices of the Historical Society, in Mr. Brown's Lecture,* and in Mr. Washburne's Life of Coles. It is remarkable as being the only triumph made by the people over a direct issue for slavery, national or otherwise, made by the machinations of the slave power, from the passage of the Ordinance of '87 till the defeat of the slave power in its rebellion. It was a political conflict, immediately succeeding the Missouri Compromise, in which the slave power won, and which partook of the nature of the prolongation of that contest, transferred to a free State.

It is worthy of note, how much the people in the early period of our State were misrepresented by the legislature. The people were soundly opposed to the slavery policy, from the earliest time, so that, as we have seen, the combined Territory of Indiana elected Jonathan Jennings, an anti-slavery man, delegate, and kept him in office till Indiana became a State; then, in the Territory of Illinois, Nathaniel Pope, an anti-slavery man, was elected and was a delegate when Illinois became a State; and Ninan Edwards, the Territorial Governor, was known as an anti-slavery man, though, as one of our first Senators, he voted

* Fergus' Historical Series, No. 4.

for the admission of Missouri with slavery. The people were known to be opposed to the Missouri Compromise, yet the legislature elected Senators who supported it, while the people elected Daniel P. Cook to Congress, who had voted against it; the legislature refused to censure or instruct their Senators, while the people reëlected Cook by a large majority; the legislature voted for a convention, and the people largely voted it down; the people continued to reëlect Mr. Cook, the anti-slavery Representative to Congress, while the legislature made Senators successively of the candidates, John McLean, and E. K. Kane, who were beaten by Mr. Cook in the election with the people.

The legislature having failed to get a recognition from the people for the Convention, and for the expulsion of free negroes, and general slave policy in that vote of 1824, proceeded to do what they could, in their own way, to carry out this policy, apparently independent of their constituents. The legislature was then so constituted, as partly explained before, that a minority of the voters could elect a majority of the State Representatives and Senators.

It is to be observed that this Act of 1819, which I have abridged, related mainly to the introduction of negroes as servants. It need not be inferred there were no negroes, free or otherwise, in the State, or that they were indifferent as to their treatment and fate, or that they laid down supinely under the burden of oppression laid upon them, or that they had no friends to advocate their rights. They had such friends as Gov. Coles, Hooper Warren, John M. Peck, Morris Birkbeck, and George Flower. Persons styling themselves free persons of color, had the audacity to petition the Legislature of 1822–3, in which they very humbly asked a redress from their grievances under the law cited, and for the right of suffrage. The petition starts

forth with this premise: "Notwithstanding the Father of Mercies moved the hearts of the citizens of this State, and actuated them to throw off the shackles of slavery from our sable race, yet, awful to relate, (and in a free country, too,) we are the objects of rapine, plunder, and devastation to free-booters." One would think so from the law which I have given in synopsis. This petition deserves a place in full in this history. The style of the production shows that it was of the colored people's own concoction.*

The promoters of the slave party had failed to get from the people any authority for special legislation against free blacks. If their policy is to be pursued, some amendments or additions to the existing *code* will be required; and the *coming emergency*, in the growing civilization, or uncivilization, which contact with the growing love for slavery aggression demanded, must be regarded with or without constitutional authority. The process of amendment did not mend, but marred, as alterations in the commandments consists in breaking them in other spots.

LEGISLATION INTENSIFIED.

So in 1829, five years after the rebuff on the Convention Question, and the several disapprovals by the people of the policy of the slave party, the Black or Slave Code was amended by additions, and the animus of the times vented upon the negro as a negro, in the Act of January 7, (1829) which will now come up for review.

This Act will be seen to be largely a transcript of the genuine slave code of the Southern Slave States, applied to territory where slavery was forever prohibited. Hitherto the negro had in a measure been left to himself, if he did not happen to belong to the enslaved class; and there did not seem to be any call to legislate to keep the negro in the bonds which had been laid upon him in the other

* See Appendix.

states. So this act becomes a voluntary offering to the slave system that was locked up in the Nation. This, and the previous one of 1819, was further sanctified by being taken in bodily into the Revised Laws of 1833. We will now proceed with a synopsis of the Act of January 7, 1829—passed ten years after the previous Act.

Sec. 1. Prohibits any black or mulatto person, not being a citizen of the United States, from coming and residing in this State, until such person shall produce to the County Commissioners' Court where he or she shall settle, a certificate of freedom, duly authenticated; and also give bond in the penal sum of one thousand dollars, with sufficient security, conditioned that such person shall never become a charge to any county in this State as a poor person; and at all times to demean himself or herself in strict conformity with the laws that now are, or hereafter shall be, enacted. It also imposes a fine of *five hundred dollars* (one-half to the county and the other to the prosecutor) upon all persons who shall harbor, hire, or in *any way give sustenance*, to any negro or mulatto who has not such bond.

[Now in all conscience, what has come over the face of the earth, especially Illinois, these last ten years, that should so have affected the negro, the morals, the religion, the education, culture, and civilization of the people of this State, up to the momentous epoch of 1829, that such an act, bearing upon the negro, should have been passed, as indicated by this first section? What sticklers for the observance of law the people have at once become, or the legislature, that they put one class of people under bond to obey the law which another class have enacted, or may hereafter enact! And have the people such regard for it, that before they give a hungry man a dinner, before they send him down into the pasture to drive up the cows, before they let a poor colored woman wash their shirts,

before they pull certain persons out of the water for fear they will be drowned, they will search in their pockets to see if they have given a bond for freedom!]

We will observe the apparent sincerity with which the first clause opens, in recognizing the rights of citizens of any one of the other States. This was suggested from a clause in the Missouri-Compromise Act, that while the said act permitted slavery, it prohibited the State from excluding from her citizenship any person who was a citizen of another State; which meant free negroes from States where there was no restriction on account of color. New York was then an instance of this kind. This was supposed to be a bitter pill for Missouri; but she took it with her slavery with a right good relish, and she honorably stood by it to the last; and a free 'nigger' of New York was always a free 'nigger' in Missouri. Illinois imitated her slave-holding honor in that regard, in this clause of the section quoted. But as the apostacy towards slavery came on, this right in Illinois was regarded less sacred, and this clause was repealed, as we shall see, and a colored citizen of New York was no longer permitted to settle in Illinois, and thus the State sunk itself below the slave-holding honor of Missouri.

Sec. 2. Declares that any black or mulatto person who shall be found in this State, not having such a certificate (as required in section one), shall be deemed a run-away slave or servant, and may be taken by any inhabitant in this State before a justice, and if unable to produce a certificate, the justice shall commit him or her to the custody of the sheriff, who shall keep such person, and in three days advertise him upon the court-house door, and in the nearest newspaper, giving a description of such supposed run-away; and if within six weeks the person so committed shall not produce a certificate or other evidence of freedom, (the citizen of New York could produce neither

master or certificate of freedom, and other evidence might not be available, and no claim could be made for him except by a kidnapper) the sheriff shall hire out such person for the best price, after five days' notice, from month to month, for one year; and if during the year no owner shall appear and substantiate a claim to such person, the sheriff shall give a certificate of the *facts;* whereupon such person shall be *deemed* free, unless thereafter lawfully claimed by a proper owner. Should such owner appear, he is required to pay to the taker-up ten dollars, to the justice two dollars, and to the sheriff reasonable fees and expenses. [We see that the object of this section is to make a blood-hound of the State for southern slave-holders; and that the "any inhabitant" who plays the part of the blood-hound is well paid, and that justice at two dollars is cheap.]

Sec. 3. Forbids, under penalty of fine, whipping, and imprisonment, any marriage of all persons of color with a white person, male or female; and makes such marriage null. And fine is threatened to any person who shall license, or perform the marriage ceremony. [This is a consummation not devoutly to be wished by the newly-married couple, the whipping-post. It is a prohibition against legal amalgamation; illegitimate amalgamation is not even discouraged by this Act, and the prohibition of the testimony of a colored person, male or female, against a white person, opens wide the flood-gates of sin.]

Sec. 4. Provides that if any negro or mulatto, the *property* of any citizen of the United States, shall come into the State for the purpose of hiring out, and shall institute proceedings for his freedom, his case shall be dismissed from the court. And then the sheriff shall take possession of the negro and confine him in jail, and notify the owner, and keep him till the owner comes. [A short way to dispose of a case in court! How happy it would

be for some of us *impecunious* fellows if, when we are sued for a debt, the case is thrown out of court, and the creditor seized and put in jail. That would have been an old-fashioned stay-law, with an amendment.]

Such is an abstract of the Act of 1829, which was also incorporated into the Revised Laws of 1833. But this Act had to be amended, but not mended. For in 1831, the law was made to declare that *no* black or mulatto person should be permitted to reside in the State, thus cutting down the right of citizenship of citizens of other States, which Missouri never assumed to do up to the advent of the rebellion. The same *dis*mendment also fines any person *one hundred dollars* for bringing any slave into the State for the purpose of freeing him, and fines all persons who assist him in so doing. [This was passed before the under-ground railroads did a flourishing business.]

These, the Act of 1819 and the Act of 1829, were the two main pillars of the Black Code. But there were other laws that had other phases, in which they touched the black man; indeed, the animus of white pride, after this is intensified. What an awful inference used to come from this idea of color! The devil is made black; in Africa, the devil is white.

I quote now from the Criminal Code, approved February 16, 1833. All that has gone before we understand, the fines, and the whippings, and the imprisonments, were *civil;* now we are to see what was criminal in our treatment of the black man. And we have it in laws that apply primarily to white people; these, white people are to obey; whereas before it was only black persons who were to obey—who could not go on to a neighbor's farm without permission, who could not gather together in numbers more than three, and who could not have a jolly time on Saturday without being flogged on Monday.

THE CRIMINAL CODE.

Sec. 149. Enacts that if any person (the law does not say in this Act, "if any *black* or mulatto person") shall harbor or secrete any negro or person of color, the same being a slave or servant, owing service to any person residing in this State, *or any other State or Territory of the United States*, (what a care it has for the citizens of other States!) or shall in any way *hinder* or prevent the lawful owner from retaking such slave or servant in a lawful manner, he shall be deemed guilty of a misdemeanor, and fined, not exceeding *five hundred dollars*, or *imprisoned*, not exceeding six months.

Now we know what crime is. This law was passed nearly twenty years before the national fugitive-slave law. It virtually made Illinois the blood-hound of the whole slave region, including any supposed territory, which only the future could curse with slavery. Other States followed this example with similar enactments. It is very possible that Judge Douglas, in his zeal for the good cause, may have given to his friend, Senator Mason, of Virginia, a copy of this Act, as a model for the National Fugitive-Slave Law of 1850. To Illinois belongs the dishonor of having been the first to make a law which made it a crime to feed the hungry, to clothe the naked, and to shelter the stranger, or protect the fugitive from oppression. "Beray not him that wandereth," is a command to humanity that has come ringing down through all the ages of the past. She opened wide the gate of destruction, as revealed by the Saviour of Men, in the picture of the scene of the Last Judgment.

Sec. 150. Actually forbids any person who holds to service any servant under the laws of the Territory of Indiana or Illinois, from taking them out of the State for sale (otherwise kidnapping them), under the fearful penalty

of forfeiting his right to them, and of a fine, not exceeding five hundred dollars, one-half to the benefit of the kidnapped. The penalty of kidnapping is just the same in fine as feeding and comforting the same person in distress, with the imprisonment left out.

TRUTH ON THE COLOR LINE.

Section 16 and section 3 in other Acts declare that the testimony of no black or mulatto person, or Indian, shall be received in evidence against a white person. One-fourth negro blood defines a mulatto, or makes a black man. These Acts apply to civil and criminal proceedings. Observe that I introduced certain sections, with the premise that no black or mulatto person should do so and so. Now we know actually what a black person is—he may be the offspring of an African, or be the child of a person purely of European extraction, with another European whose father or mother was an African. Thus the celebrated French author, Dumas, could not have given testimony against Patrick O'Flanagan in a court of justice in Illinois.

The Act of 1827 denies the right of *habeas corpus* to the black man in a trial for his liberty.

The law for the establishment of free schools, after eulogizing education as the means of perpetuating the liberties of the people, limits the benefits of the school system to *white* children. No black or mulatto person, the son of the greatest of the black's, Tousaint L'Overture, intermarried with the sister of the greatest of the whites, Napoleon Bonaparte, (an alliance which, if made, he need not have been so much ashamed of, as he might have been of some of his family alliances,) could not have been legally taught to read God's Word in the public schools of Illinois.

OTHER LEGISLATION.

In an act for taxation, passed as late as 1839, are classed along with stud horses, asses, jennies, mules, and cattle, *slaves and servants* of color for assessment for taxes, with other kinds of personal property. Thus were men, because colored, bought and sold as property, advertised in newspapers as runaways, bequeathed in wills, and settled in estates,—and now classed with jackasses, as property for taxation, under the laws of this State.

As population increased and civilization advanced in the State, it is but to be presumed that amendments and alterations of our laws would be required. Here seemed to be a broad sphere of amendment in the proper sense. So we find, as in 1833, that in 1845 our laws required revision, and condensation into the practical form for administration, so we have the statute book of 1845. Immediately following the intense agitation for the repeal of these laws, and the various attempts at prosecution, such as the Lovejoy trial, we find in this new book of the law all this code affecting the negro, which I have reviewed, properly compiled, and made available in the courts of justice for effective use. The Black Code is there perhaps rehashed, but certainly boiled down and intensified, parting with none of its peculiar ancient animus, but as ever weighted down with all the malignity that patriotism demanded should be aimed at the unfortunate negro.

A HIGH MISDEMEANOR.

We come along down now a few years further, till two or three years after the enactment of the National Fugitive-Slave Law, (the Nation therein showed the big N,) and we find still another law on this irrepressible subject, that of February 12, 1853. What immediate occasion there was for it it is hard to tell; it is only an emphasis, like the traditional sentence of the judge on the culprit of