

The Garner Fugitive Slave Case

BY JULIUS YANUCK

By far the most shocking of all fugitive slave cases was that of Margaret Garner who killed her own daughter to keep her from being returned to slavery. The frightful act precipitated a controversy between the national government and the state of Ohio in which the highest officers of both, Governor Salmon P. Chase and President Franklin Pierce, took part. The constitutional issues were grave, if not dangerously close to insoluble, but the Garner case had yet other meanings for the nation. It demonstrated forcefully the deep personal tragedy of slavery. The way Margaret Garner's little girl died embarrassed the South and disturbed the North more than a hundred arguments of antislavery philosophers.

All the other aspects of the fugitive slave problem seemed perfectly suited to arouse resentment on both sides, and the state of the law on the subject equally lent itself to irritations. Escaped slaves would seek refuge in states which forbade slavery, so that almost invariably the states which were most hostile to the slaveholder's claim were the scene of his effort to recover runaway property. The owner had a legal right to seize his fugitive slave and take him back home without any formal proceeding whatever,¹ and if he found the runaway in a slaveholding state this was easily accomplished. However, in a free state the master could not always count on the friendly understanding of the population, nor upon the cooperation of the police authorities in securing the return of the slave. In this event it was advantageous to obtain a certificate under the Fugitive Slave Law.² Such a certificate barred all interference with the transportation of the slave, by any court or other officer.³ If the master feared that the slave might be forcibly res-

¹ *Prigg v. Pennsylvania*, 16 Peters 539, 613 (1842).

² *The Public Statutes at Large of the United States of America*, 43 vols. (Washington, 1845-1925), I, 302; *ibid.*, IX, 462.

³ *Ibid.*, IX, 462, sec. 6.

cued from him, he could make affidavit to this effect after the certificate had been granted, and it thereupon became the duty of the United States Marshal of the district to engage, at the expense of the national treasury, forces sufficient to deliver the slave safely to the master in the state from which the slave had fled.⁴

Besides the question of identity of the alleged fugitive, the important issue at the hearing under the Fugitive Slave Law was whether he owed service or labor under the law of the state from which he had escaped. Although the legal action to obtain a certificate took place in a free state, no law of the free state could serve to emancipate the fugitive,⁵ and the law of the slave state determined the outcome of the hearing. In many cases free and slave states disagreed as to the status of an individual claimed as a slave. Free states usually followed the principle that when a master took his slave into a free state, even without the intention to remain permanently, the slave could refuse to return. The master could not invoke the Fugitive Slave Law because the slave had not come into the free state as a fugitive.⁶ Sometimes such a slave returned voluntarily to the slave state, and the question then arose as to whether he had thereby reverted to his former slave status. The United States Supreme Court held that in such a case the person's status depended upon the law of the slave state in which he found himself;⁷ the slave states uniformly regarded such persons as slaves.⁸

In some free states the Fugitive Slave Law was attacked as unconstitutional because no provision was made for trial by jury of the status of the alleged fugitive.⁹ The argument was also frequently advanced that the commissioners who were appointed by United States circuit courts, and who were empowered under the Fugitive Slave Law of 1850 to issue certificates for the rendition of fugitive slaves, were exercising judicial functions. Thus, it was claimed, they should be appointed by the president with the con-

⁴ *Ibid.*, sec. 9.

⁵ United States Constitution, Art. IV, sec. 2, cl. 3.

⁶ *Commonwealth v. Aves*, 18 Pickering (Mass.) 193 (1836). See also *Butler v. Hopper*, 4 Federal Cases 904 (1806), and *Ex parte Simmons*, 22 Federal Cases 151 (1823).

⁷ *Strader v. Graham*, 10 Howard 82 (1850).

⁸ John C. Hurd, *The Law of Freedom and Bondage in the United States*, 2 vols. (Boston, 1858, 1862), II, 773.

⁹ For a discussion upholding the constitutionality of the law, see Allen Johnson, "The Constitutionality of the Fugitive Slave Acts," *Yale Law Journal* (New Haven), XXXI (December, 1921), 161-82.

sent of the Senate, and receive a fixed salary rather than the fees set by the Fugitive Slave Law. It was not until 1859, in the famous Booth case, that the Supreme Court upheld the constitutionality of the law of 1850, and even then did not discuss it at length.¹⁰ In the meantime, courts in free states sometimes endeavored to prevent return of a fugitive slave by holding the federal law unconstitutional, or by asserting that the person was free under the law of the free state although a slave in contemplation of the law of the jurisdiction from which he fled.

The claimant of a fugitive usually enlisted the aid of federal authorities in seizing the runaway, and a hearing was held before a United States Commissioner. Efforts by a state court to set a prisoner free could thus lead directly to conflict with the United States over possession of the slave. Although the United States Supreme Court had held that federal courts were powerless to release a prisoner of a state, except for the purpose of testimony at a federal judicial proceeding,¹¹ free state courts rejected the idea that they were correspondently disabled. They asserted their right to inquire into the lawfulness of detention even when a person was in the custody of United States officers.¹²

The Garner arrest, almost the last of the great fugitive cases of the 1850's, seemed to overshadow all those which had gone before. Even the case of Sherman Booth of Wisconsin, which was then making its way to the Supreme Court for decision, did not create such feeling. The nation was as much aroused as it had been over the return of Anthony Burns to slavery in 1854,¹³ when it had required the assistance of a battalion of troops to take him out of Boston.¹⁴ Resentment in Ohio was the deeper for the attempt, less than a year before the Garner case, to get a United States Commissioner to send a Negro named Rosetta Armstead back to the South. Her master took her to Cincinnati, and she refused to return to slavery. When the United States Marshal arrested her under the Commissioner's warrant even though a state court had declared her

¹⁰ *Ableman v. Booth*, 21 Howard 506 (1859).

¹¹ *In re Dorr*, 3 Howard 103 (1845).

¹² Rollin C. Hurd, *A Treatise on the Right of Personal Liberty and on the Writ of Habeas Corpus* (Albany, 1858), 166.

¹³ Alexander Johnston, "Fugitive Slave Laws," John J. Lalor (ed.), *Cyclopaedia of Political Science*, 3 vols. (Chicago, 1883), II, 317.

¹⁴ Henry S. Commager, *Theodore Parker* (Boston, 1936), 232-42.

free, the state sought to punish the Marshal for contempt. A writ of habeas corpus issued by Justice John McLean saved him from imprisonment.¹⁵ The Garner case appeared to be an even clearer attempt to disregard Ohio law.

It was not that Cincinnati itself was friendly to fugitive slaves. In southern Ohio there was a marked antipathy towards abolition. Antislavery sentiment triumphed at the polls in the Ohio election of 1855, and Salmon P. Chase was elected governor, but in Hamilton County of which Cincinnati was part, Chase received only 4,518 out of 23,280 votes cast. He observed that "the rest — divided between the Democratic and Know-Nothing candidates — represented hostility to my political and especially to my anti-slavery opinions and principles."¹⁶ But in spite of its strongly antiabolition electorate, Cincinnati's geographical location and its efficient abolitionist organization made it a main starting point on the Underground Railroad. It was Cincinnati that the Garners hoped to reach when they set out, on that cold night in January, 1856.

A typical dispatch, relating the first events of the story, was telegraphed to the New York *Daily Times* by its Cincinnati correspondent on January 28, 1856. The message advised briefly: "A stampede of slaves from the border counties of Kentucky took place last night. . . . One slave woman, finding escape impossible, cut the throats of her children, killing one instantly, and severely wounding two others. Six of the fugitives were apprehended, but eight are said to have escaped."¹⁷

Old Simon Garner, his wife Mary, and Simon, Jr., were the slaves of James Marshall of Richwood Station, Boone County, Kentucky. Margaret Garner, the wife of Simon, Jr., and their four children belonged to Archibald K. Gaines, owner of a near-by plantation. Late in the night, Sunday, January 27, 1856, the Garners fled,¹⁸ taking with them nine slave friends from other plantations.

¹⁵ *Ex parte Robinson*, 20 Federal Cases 969 (1855).

¹⁶ Salmon P. Chase to J. T. Trowbridge, March 13, 1864, J. W. Schuckers, *Life and Public Services of Salmon Portland Chase* (New York, 1876), 172.

¹⁷ *New York Daily Times*, January 29, 1856. It will be seen that this dispatch was in some details inaccurate.

¹⁸ It is likely that their determination to escape was strengthened by two English ladies who were at that time guests in the home of Archibald K. Gaines. Soon after the slaves fled the ladies were accused of encouraging them by pointing out the possibilities of escape. They hastily terminated their visit because of threats to their lives. *Ibid.*, February 16, 1856.

All crowded into a large horse-drawn sleigh and sped over ice-covered roads to the Ohio River about sixteen miles away. The road was well known to the slaves; the Garners had been in Cincinnati before.

The winter of 1855-1856 was particularly cold, and the river which usually constituted a barrier to runaways was now frozen into a convenient footbridge from slavery to freedom. They abandoned their carriage and, as fast as Margaret Garner's pregnant condition would allow, hurried across to Ohio's free ground. By this time it was daylight. Realizing that seventeen Negroes walking together through the streets of Cincinnati would be very conspicuous, they separated into two groups. One little band of nine reached friends in the Underground Railroad; ultimately the North Star led them to Canada. The other eight persons were the Garner family.¹⁹

After making several inquiries, the Garners found the home of their kinsman, Elijah Kite. He spent but a moment of precious time in greeting, then hastened to the shop at Sixth and Elm streets, belonging to Levi Coffin, "President" of the Underground Railroad. Kite reported the new arrivals and received instructions on forwarding them to the next station of the Underground. He hurried home to comply with orders, but barely had he returned when an arresting party surrounded his house and demanded the peaceable surrender of the fugitives. Someone of whom the Garners asked directions had betrayed them.²⁰

The slaveowners had lost no time in taking up the pursuit. Archibald K. Gaines, accompanied by the son of James Marshall, the other slaveholder, arrived in Cincinnati at seven the morning after the escape. They quickly obtained a warrant for the arrest of the slaves pursuant to the Fugitive Slave Law.²¹ With some friends and a force of deputy United States marshals, they sought the Garner family and found them at the home of Elijah Kite.²²

¹⁹ Cincinnati *Daily Gazette*, January 29, February 4, 7, 1856; Covington (Ky.) *Journal*, February 2, 1856; New York *Daily Times*, February 16, 1856; Frankfort (Ky.) *Commonwealth*, February 5, 1856. There were a number of escapes that winter. *Reminiscences of Levi Coffin* (Cincinnati, 1876), 557-58; J. Winston Coleman, Jr., *Slavery Times in Kentucky* (Chapel Hill, 1940), 208 n.

²⁰ *Reminiscences of Levi Coffin*, 558-59.

²¹ *Statutes at Large*, IX, 462, sec. 6.

²² Cincinnati *Daily Gazette*, January 29, 1856; Frankfort *Commonwealth*, February 5, 1856.

Inside the cabin the frightened slaves hastily barred the doors and windows, but they realized that they were lost. Simon Garner, Jr., fired two rounds from a revolver and this kept the arresting party off for a while, but it was hopelessly clear that nothing could save the Garners from capture. Suddenly, Margaret Garner seized a butcher knife and turned upon her three-year-old daughter. With swift and terrible force she hacked at the child's throat. Again and again she struck until the little girl was almost decapitated. The two Garner men began to scream. Unable to bear the horror they ran wildly about the cabin. Now Margaret Garner turned toward one of her little boys who pleaded piteously with his mother not to kill him. She called to old Mary Garner, "Mother, help me to kill the children."²³ The old woman began to wail and wring her hands. Her eyes could not endure the murder of her grandchildren and she ran for refuge under a bed. Finally, Elijah Kite's wife managed to disarm Margaret Garner who all the while sobbed that she would rather kill every one of her children than have them taken back across the river.²⁴

The arresting party cautiously approached the house. One deputy marshal forced a window and jumped into the cabin, but Simon, Jr., leveled his pistol at him. The Marshal attempted to wrest the weapon from the fugitive and in the struggle the pistol was discharged. Two fingers were shot away from the Marshal's hand; then the ball ricocheted, struck him in the lip, and dislocated several teeth. He withdrew from the cabin.²⁵ The arresting party next brought up a heavy timber, battered down the front door, and the little house was carried. Margaret Garner fought wildly, but was at last overpowered. When Gaines and the marshals were able to look about the cabin their eyes met the almost lifeless body of the little girl. Two other children were bleeding profusely, and a fourth, an infant of less than a year, was badly bruised. One of Gaines's party took the dying girl into his arms, but the crowd which had gathered would not let her be taken along with the other slaves. A moment later the child was dead.²⁶

²³ Cincinnati *Commercial*, January 30, 1856, quoted in *New York Daily Times*, February 2, 1856.

²⁴ *Ibid.*

²⁵ Cincinnati *Times*, quoted in *New York Daily Times*, February 2, 1856.

²⁶ *Reminiscences of Levi Coffin*, 559; *Covington Journal*, February 2, 1856; Cincinnati *Times*, January 29, 1856, quoted in *New York Daily Times*, February 2, 1856.

As quickly as horse-drawn omnibuses could carry them, the Garners were brought to the federal courthouse in Cincinnati. Here Gaines made application to John L. Pendery, a United States commissioner for the Southern District of Ohio, for a certificate to transport his slaves back to Kentucky. James Marshall's son had neglected to bring a power of attorney, so he could not act to reclaim the slaves. Hearings were therefore postponed. It was impossible to keep the slaves in the courtroom overnight, and the marshals decided to take them to the Hammond Street station house of the city police. They were compelled to walk there because the cabmen drove off, fearing that the shouting crowd would destroy their cabs if they accepted the passengers.²⁷ After the slaves were locked in a cell, Gaines came in with the body of the dead child.²⁸ It was now about 3:00 P. M.; the Garners had been in Cincinnati nine crowded hours.

In the station house the slaves awaited the process of law. Margaret Garner sat as though stupefied,²⁹ but she roused herself when a compliment was paid her on her fine looking little boy. She replied sadly, "You should have seen my little girl that — that — (she did not like to say was killed) that died, that was the bird."³⁰ She had a scar on the left side of her forehead running down to her cheekbone. When she was asked how she had come by this mark, she replied only, "White man struck me."³¹

While the federal law was acting to send the slaves back to Kentucky, friends of the Garners were not idle. A writ of habeas corpus was obtained from Judge John Burgoyne of the state's probate court in order to try the legality of detention of the fugitives by the United States authorities. Counsel were prepared to argue that the Garners had been made free by their previous visits to Cincinnati, and that hence they were free persons at the time of their departure from Kentucky on the night of January 27, 1856.³² Foreseeing

²⁷ *Boston Liberator*, February 8, 1856; Cincinnati *Daily Gazette*, January 29, 1856.

²⁸ The Cincinnati *Daily Gazette*, January 29, 1856, commented bitterly, "He was taking it to Covington for interment that it might rest in ground consecrated to slavery."

²⁹ *Boston Liberator*, February 8, 1856.

³⁰ Cincinnati *Commercial*, January 30, 1856, quoted in New York *Daily Times*, February 2, 1856.

³¹ Cincinnati *Daily Gazette*, February 11, 1856.

³² *Ibid.*, January 29, 1856; Frankfort *Commonwealth*, February 5, 1856. There is no stenographic or other official record extant of any of the state or federal hearings

conflict with federal authority, Judge Burgoyne made a trip to Columbus to consult Governor Chase, who assured him "that the process of the State courts should be enforced . . . and authorized him to say to the sheriff that, in the performance of his duty, he would be sustained by the whole power at the command of the Governor."³³

Judge Burgoyne's writ was put into the hands of Deputy Sheriff Jeff Buckingham, who proceeded with a force of assistants to the station house to serve the writ on the United States marshals, but they stubbornly refused to obey the state's habeas corpus. Outside, an antislavery crowd urged the officer to take the slaves by force. Serious trouble was imminent. The outnumbered marshals tried trickery, attempting to lure Buckingham out of the building with an invitation to a drink at the local hotel, but he declined. When Buckingham challenged the right of the marshals to keep slaves in the city police station, they claimed permission from Mayor James J. Faran, but he indignantly denied that he had authorized use of the city's facilities. Faran advised the marshals to yield, and finally they agreed. As soon as the triumphant Buckingham put the slaves on an omnibus, climbed up next to the driver, and ordered him to take them to the county jail, several marshals jumped aboard and drew their pistols. While two or three held down the outraged deputy sheriff, the driver was forced to proceed to the United States courthouse. Off they went, pursued by Buckingham's startled assistants.³⁴

The marshals, who arrived at the courthouse only a moment before the pursuing sheriffs, brought their prisoners into the building, but could not prevent Buckingham and several other sheriffs from following them upstairs. A marshal urged a street crowd, composed of supporters of both sides, to assist the United States authorities in driving out the state officers; despite lack of volunteers the marshals succeeded in forcing out all the invaders except the valiant Buckingham, who, in turn, appealed to the crowd for aid in serving the writ of the state court. By this time Sheriff Gazoway Brash in this case. One opinion by Judge Humphrey Leavitt is available in the official reports. See n. 79.

³³ Chase to Trowbridge, March 13, 1864, Schuckers, *Life and Public Services of Salmon Portland Chase*, 173.

³⁴ Cincinnati *Commercial*, January 30, 1856, quoted in New York *Daily Times*, February 2, 1856; Cincinnati *Daily Gazette*, January 29, 1856.

ears of Hamilton County was advancing on the federal courthouse in force. He seized the Garners but agreed to produce them at the hearings to take place before United States Commissioner Pendery. The Garners were locked in the county jail.

It soon appeared that Brashears' attorneys had advised him that he had not acted lawfully in taking the Garners from the United States marshals. In his return to Judge Burgoyne's habeas corpus, Brashears reported that although the slaves were in the Hamilton County jail, they were in the legal custody of United States Marshal Hiram H. Robinson.³⁵ This seemed to settle the question, and it appeared that the case would proceed before the Commissioner in the usual manner of such litigation.³⁶

On January 30, three days after the escape from Kentucky, the hearings began. The first case was the application of James Marshall for a certificate for his slaves, Simon Garner, Mary, and Simon, Jr. The slaves of Archibald K. Gaines, Margaret Garner and her children, would be dealt with in a separate hearing. John Jolliffe, a prominent antislavery attorney of Cincinnati, acted as chief counsel for the Garner family, while the slave claimants were represented by Colonel Francis T. Chambers of Cincinnati and by two lawyers from Covington, Kentucky.³⁷

As soon as the hearing opened, Jolliffe asked for a postponement. He needed more time to produce evidence that some of the Garners had, with the consent of their owners, been in Ohio before. He contended that since the constitution of Ohio forbade slavery on her soil the slaves had thus become free, and this status could not be taken from them. Margaret Garner's children were born after their mother had acquired freedom; they were free at birth.³⁸ Colonel

³⁵ Cincinnati *Times*, January 29, 1856, quoted in New York *Daily Times*, February 2, 1856; Cincinnati *Commercial*, January 30, 1856, quoted *ibid.*; Boston *Liberator*, February 8, 1856; Cincinnati *Daily Gazette*, January 30, 1856.

³⁶ The Cincinnati *Commercial*, January 30, 1856, remarked that the Commissioner's hearings would then begin unless a new habeas corpus was taken out or a prosecution for murder commenced by the state of Ohio against the Garners. "This will complicate the case so that it is difficult to see where it can end," the newspaper commented. Quoted in New York *Daily Times*, February 2, 1856. Events were to justify fully this view of the matter.

³⁷ *Reminiscences of Levi Coffin*, 548; Covington *Journal*, February 2, 1856.

³⁸ The rule was that a child took at its birth the status of the mother. This doctrine, *partus sequitur ventrem*, was generally accepted in the slaveholding states. Thomas R. R. Cobb, *Law of Negro Slavery in the United States* (Philadelphia, 1858), 68; Jacob D. Wheeler, *A Practical Treatise on the Law of Slavery* (New York, 1837),

Chambers for the claimants asserted that whatever the effect of the Garners' previous visits to Ohio, their voluntary return to Kentucky had divested them of any free status they might have acquired in Ohio. Commissioner Penderly granted the postponement without commenting on either argument.

Upon adjournment the large force of special United States marshals taking the prisoners to the county jail had to push through the crowd in front of the courthouse. Negroes, who had been kept out of the hearing and resented this exclusion, were a large part of the angry throng, and the hostility towards the marshals seemed to be led by a group of well-dressed Negro women.³⁹ Friends of the slaves called a public meeting to help the Garners, and the Hutchinson Family, a traveling group of singers with an abolitionist repertory, volunteered to entertain.⁴⁰ However, no meeting place could be rented in the entire city. The firm of Smith & Nixon, operators of a popular hall, explained that they "have no objection to the Hall being used for a calm and deliberative anti-slavery meeting, but the furniture and fixtures of the room are not calculated for the rough usage of a mass meeting in the present excited state of the public mind."⁴¹ This decision was applauded by moderate opinion, exemplified by the Cincinnati *Daily Gazette*. The newspaper urged that such meetings could serve no useful purpose and pleaded for self-restraint and public order. Resistance to the Fugitive Slave Law, it asserted, "would manufacture pro-slavery sentiments ten thousand times more rapidly than the work can be accomplished by the slavery propagandists of the South."⁴²

In the meantime, the coroner began his inquest into the cause of the Garner child's death. The coroner's jury found that "the murdered child was almost white, and was a little girl of rare beauty,"⁴³ and that she had been killed by her mother, Margaret Garner; the two Garner men were named as accessories.⁴⁴ The next move by the

3, 34. However, John Jolliffe's other arguments were not, of course, accepted legal theory in those states.

³⁹ Cincinnati *Columbian*, January 31, 1856, quoted in New York *Daily Times*, February 4, 1856; Cincinnati *Commercial*, January 30, 1856, quoted *ibid.*, February 2, 1856; Cincinnati *Daily Gazette*, January 30, February 13, 1856.

⁴⁰ Louisville *Democrat*, quoted in Lexington *Kentucky Statesman*, February 5, 1856.

⁴¹ Cincinnati *Daily Gazette*, February 1, 1856.

⁴² *Ibid.*

⁴³ William G. Hawkins, *Lunsford Lane* (Boston, 1863), 125.

⁴⁴ Cincinnati *Daily Gazette*, January 30, 1856.

state of Ohio, in its endeavor to keep the Garners from slavery, was the issuance of warrants for the arrest of all four adults on a charge of murder.

When the federal hearing resumed, Jolliffe, counsel for the slaves, asked the Commissioner to allow state officers to arrest the Garners at once. He realized it seemed strange, Jolliffe remarked, for an attorney to seek the arrest of his own clients for murder, but "each and all of them had assured him that they would go singing to the gallows rather than be returned to slavery."⁴⁵ Counsel for the claimants took a position no less anomalous. He replied that he did not wonder at the attitude of the slaves, and ordinarily he would agree with them. However, it would be wiser to go back to Kentucky than go to the gallows, because in Kentucky the slaves might some day have another opportunity for escape. For his part, he hoped they would have that chance.⁴⁶ Obviously, the effect sought by each counsel was really quite opposed to that for which he argued.

The hearing on James Marshall's application lasted three days. Witnesses for the claimant identified the Garners as slaves; witnesses for the Garners testified to having seen them in Cincinnati on previous occasions.⁴⁷ In his closing remarks, Counselor Jolliffe pleaded with the Commissioner to have the moral courage to decide in favor of the slaves. He warmly defended "the Abolitionists — the hated, the despised."⁴⁸ Vehemently, he denounced the law requiring the surrender of fugitive slaves, asserting that it contravened the word of God and was therefore a violation of the freedom of religion guaranteed by the Constitution. "If Congress could

⁴⁵ *Reminiscences of Levi Coffin*, 561; *New York Daily Times*, February 8, 1856. The *Frankfort Commonwealth*, February 12, 1856, remarked that "the abolitionists love her [Margaret Garner] so well that they would rather have her hung for murder than return her to her master."

⁴⁶ *Cincinnati Daily Gazette*, February 1, 1856.

⁴⁷ *Cincinnati Columbian*, January 31, 1856, quoted in *New York Daily Times*, February 4, 1856; *Frankfort Commonwealth*, February 19, 1856; *Cincinnati Daily Gazette*, January 31, 1856. Simon Garner, Jr., had given up an opportunity to escape the last time he was in Cincinnati because he did not want to go without his family. *New York Daily Times*, February 16, 1856. Thomas Marshall, son of the claimant, was reported to have said the Garners had been "satisfactory servants, often in Ohio." *Boston Liberator*, February 8, 1856. On the witness stand he denied having made the statement. Contradictory evidence was given, and on February 21 the Commissioner issued a warrant for Marshall's arrest on a charge of perjury. *Cincinnati Daily Gazette*, February 22, 1856.

⁴⁸ *Cincinnati Daily Gazette*, February 7, 1856.

not pass a law requiring you to worship God," he thundered, "still less could they pass one requiring you to carry fuel to hell."⁴⁹ Shouts of applause filled the room, while the marshals and the Commissioner cried "Order, Order!"⁵⁰

In rebuttal Colonel Chambers stressed the authority of the Supreme Court of the United States over the state courts, and the binding character of the decisions of that court upholding the rights of slaveholders in similar cases. If the slaves were entitled to freedom under Kentucky law, said Chambers, a trial of the issues should be held in that state.⁵¹ Chambers warned that without obedience to law the Union could not be preserved: "there is a good time ahead, — life to the nation if the people will only be quiet. We have the Union yet, and let those who would dissolve it for the sake of the slave remember that in achieving the liberty of three millions of blacks they are periling those of twenty-four millions of the white race."⁵²

Commissioner Pendery reserved decision on James Marshall's application, and moved on to the matter of Margaret Garner and her children, claimed by Archibald K. Gaines. This case followed the pattern of the previous hearing. Colonel Chambers was especially alert to prevent opposing counsel from bringing the matter "within the humanities"⁵³ in order to gain sympathy for the children. Margaret Garner testified that at the age of seven she had served in Cincinnati as a nursemaid to the infant daughter of her former owner, John P. Gaines, later governor of Oregon Territory.⁵⁴ Although the Fugitive Slave Law expressly forbade testimony by a slave in his own defense, the Commissioner allowed Margaret Garner to give this evidence as to her claimed free status because it involved the status of her children.⁵⁵ As in the previous hearing, Counselor Jolliffe asked that his clients be turned over to the state

⁴⁹ *Reminiscences of Levi Coffin*, 562.

⁵⁰ *New York Daily Times*, February 8, 1856.

⁵¹ At this, counsel for the slaves forgot himself so much as to laugh. *Cincinnati Daily Gazette*, February 8, 1856.

⁵² *Ibid.*

⁵³ *Ibid.*, February 11, 1856.

⁵⁴ Witnesses for the slaves testified that it was not unusual for slave children of tender years to be charged with such duties. *Ibid.*, February 12, 1856.

⁵⁵ *Ibid.* The law provided: "In no trial or hearing under this Act shall the testimony of such alleged fugitive be admitted into evidence." *Statutes at Large*, IX, 462, sec. 6.

for prosecution for murder. The right of Ohio to punish for crime must be superior to private claims, he argued. Otherwise a fugitive slave might shoot United States marshals or even the Commissioner, and not be prosecuted until after the Fugitive Slave Law had run its course. Here Colonel Chambers objected that this reasoning would defeat the operation of the law, since a fugitive would need only to commit some trifling infraction of state law and he would be beyond his master's reach. Because of the large number of previously unadjudicated questions in the case, Commissioner Pendery set March 12, a month later, as the date for his decision on the claims of Gaines and Marshall.⁵⁶

After adjournment there was a meeting of spectators, addressed by Mrs. Lucy Stone Blackwell, abolitionist and famous campaigner for woman suffrage. Many distinguished persons had attended the hearings and visited the Garners in prison, among them Mrs. Blackwell. During the hearing, Colonel Chambers asserted that she had asked a deputy marshal for permission to pass a knife to Margaret Garner, with which the slave could kill herself if the Commissioner sent her back to Kentucky. Jolliffe asked that Mrs. Blackwell be allowed to make a statement in open court in her own defense, but his opponents objected. They suggested instead that a meeting be held after the hearing so that those who desired to listen might do so. Now Mrs. Blackwell drew tears from many listeners as she pleaded for sympathetic understanding of the Garners:

The faded faces of the Negro children tell too plainly to what degradation female slaves submit. Rather than give her little daughter to that life, she killed it . . . With my own teeth would I tear open my veins and let the earth drink my blood, rather than to wear the chains of slavery. How then could I blame her for wishing her child to find freedom with God and the angels, where no chains are? ⁵⁷

She hoped that the Commissioner might yet obey Holy Writ and refuse to give up the fugitives.⁵⁸ In any case, she remarked, Gaines

⁵⁶ Boston *Liberator*, February 22, 1856; Cincinnati *Daily Gazette*, February 14, 1856; Covington *Journal*, February 16, 1856. The Frankfort *Commonwealth*, February 19, 1856, humorously expressed concern lest the length of the Commissioner's opinion be in proportion to the time he was taking to write it.

⁵⁷ *Reminiscences of Levi Coffin*, 565; Cincinnati *Daily Gazette*, February 14, 1856.

⁵⁸ She referred to Deuteronomy 23:15, 16: "Thou shalt not deliver unto his master the servant which is escaped from his master unto thee. He shall dwell with thee, even among you, in that place which he shall choose in one of thy gates, where it liketh him best: thou shalt not oppress him."

had promised to manumit the slaves in Kentucky. Colonel Chambers protested that his client had only said he would determine what to do with them after they were returned to Kentucky. This Mrs. Blackwell denounced as evasion. She gave notice to the world that whenever and wherever possible, she would oppose the Fugitive Slave Law and do her utmost to prevent its operation. There was great applause when she sat down, tempered by very noticeable hisses.⁵⁹

Counsel were surprised at a notification from Commissioner Pendery that his decision would be given on February 21 instead of March 12. Marshal Robinson went to the county jail and demanded possession of the slaves in order to have them before the Commissioner on decision day. By this time the Garners had been formally indicted by the state for murder, and Sheriff Brashears refused to give them up.⁶⁰ Robinson then sought two writs of habeas corpus from United States District Judge Humphrey H. Leavitt. One writ was for the four adults, the other for the children. The writs would test who had the legal custody of the slaves, the United States Marshal or the Sheriff. Robinson's move was countered by friends of the slaves who obtained a writ of habeas corpus from Judge Burgoyne covering the Garner children. Thus the legal framework was erected to keep the entire Garner family from slavery: the four adults were under indictment for murder, the children were held under this latest habeas corpus. Subsequently, Judge Burgoyne made a special order forbidding Marshal Robinson to remove the children from the state pending his final decision on the legality of their detention.⁶¹

The Covington *Journal*, commenting that a conflict between the state and the national government appeared inevitable, warned that "at present the fugitive slave law is very near a nullity. The sooner the South knows what it has to depend upon the better."⁶² Citizens of Boone and Kenton counties in Kentucky held angry mass meetings. They commended Gaines and Marshall for their vigorous

⁵⁹ Cincinnati *Daily Gazette*, February 14, 1856; Boston *Liberator*, February 29, 1856; Covington *Journal*, February 16, 1856.

⁶⁰ Lexington *Kentucky Statesman*, February 26, 1856; Frankfort *Commonwealth*, February 12, 1856.

⁶¹ Cincinnati *Daily Gazette*, February 28, 1856; Frankfort *Commonwealth*, February 26, 1856.

⁶² Covington *Journal*, February 23, 1856.

prosecution of rights under the law, and called upon Kentucky to reimburse them for expenditures incurred in reclaiming their slaves.⁶³

On February 26 Judge Leavitt heard arguments on Robinson's habeas corpus. The Marshal contended that the slaves had been in United States custody ever since their arrest under a federal warrant at the home of Elijah Kite. The state could not take prisoners out of federal custody and the Fugitive Slave Law must be allowed to run its course. Sheriff Brashears argued that fugitive slaves were accountable for their crimes, and could be punished before being returned to their owner. Further, if the Garners were sent back to Kentucky under the Fugitive Slave Law, they would not be fleeing from Ohio justice. Hence they could not be extradited back to Ohio to answer for their crime. In any case, Brashears' argument concluded, the state now had possession of the slaves and the federal court could not seize them by habeas corpus.⁶⁴ Judge Leavitt reserved decision for two days.

No sooner had Leavitt stepped down than Commissioner Pendery ascended the bench to give his decision on the applications of Gaines and Marshall. Certificates would be granted, he announced, and the slaves delivered to the claimants. Simon Garner, Sr., had never been in Ohio before; clearly he was a fugitive slave. The other Garners were also recoverable. The law of Ohio could forbid the enforcement on Ohio soil of the obligation of slave to master, but it could not annul the relationship permanently. "In coming to Ohio the master voluntarily abandoned his legal power over the slave," the Commissioner held, "and in returning voluntarily the slave has equally abandoned his claim to freedom."⁶⁵ Certificates were accordingly issued, but they were not sufficient to take the Garners out of the state's possession. It was necessary to wait for Judge Leavitt's decision on the habeas corpus sought by Marshal Robinson.

Judge Leavitt's decision pointed out that he had been at some pains to find a basis on which to hold that the slaves were in the

⁶³ *Ibid.*, March 1, 1856.

⁶⁴ Cincinnati *Daily Gazette*, February 27, 1856.

⁶⁵ The Commissioner cited *Strader v. Graham*, 5 B. Monroe (Ky.) 173 (1844); 10 Howard 82 (1850); and *United States v. The Ship Garonne*, 11 Peters 73 (1837). See also Lexington *Kentucky Statesman*, February 29, 1856; Cincinnati *Daily Gazette*, February 27, 1856.

lawful custody of the Sheriff. Alas, he had been unable to do so.⁶⁶ The Garner family had first been taken into custody by United States officers under a warrant pursuant to the Fugitive Slave Law. Once a person is in the custody of the United States, even in a civil matter, the prisoner cannot be arrested by a state's criminal process until the United States proceeding has gone to completion.⁶⁷ As to the demands of Ohio justice, Leavitt did not doubt that Kentucky would send the slaves back to Ohio for trial. The Judge made an order removing the prisoners from the county jail into the custody of the United States Marshal.

At once Robinson collected a large force of assistants, served the order on Sheriff Brashears, and took possession of the entire Garner family. The claimants had made affidavit that they feared rescue of the slaves, and it was now Robinson's duty under the law to deliver them safely in Kentucky. The slaves were taken down to the river, while "a large crowd which had gathered around the jail followed, but with the silence and order of a funeral procession. They were attending the funeral of the sovereignty of the State of Ohio."⁶⁸ Within an hour after Judge Leavitt had issued his order, the Garners were once more in Kentucky.⁶⁹

In their home state the victors were given a hero's welcome. Marshal Robinson, speaking from the balcony of the Magnolia House, was also acclaimed by the populace. Denouncing the abolitionists, he was proud that the sovereignty of Ohio had been maintained by vindicating the sovereignty of Kentucky.⁷⁰ He had only done his duty, he declared modestly, yet he had taken pleasure in performing "an act that added one more link to the glorious chain

⁶⁶ Although Humphrey H. Leavitt privately opposed slavery, he upheld the constitutionality of the Fugitive Slave Law. M. Joblin and Company, *Cincinnati Past and Present* (Cincinnati, 1872), 87. In a later case Judge Leavitt charged the jury: "Christian charity was not the meaning or intent of the fugitive slave law, and it would not therefore answer as a defense for violating the law." Henry Howe, *Historical Collections of Ohio*, 2 vols. (Norwalk, 1896, 1898), I, 979.

⁶⁷ Judge Leavitt cited *In re Dorr*, 3 Howard 103 (1845), in which the Supreme Court had held that no court of the United States could issue a writ of habeas corpus except to obtain testimony, when the prisoner was under a state's civil or criminal process. Here Leavitt held the converse to be equally true. *Cincinnati Daily Gazette*, February 29, 1856.

⁶⁸ *Cincinnati Daily Gazette*, February 29, 1856.

⁶⁹ Schuckers, *Life and Public Services of Salmon Portland Chase*, 174. Hiram H. Robinson thus disregarded the order of Judge John Burgoyne not to remove the Garner children pending decision on the habeas corpus of the state.

⁷⁰ *Cincinnati Daily Gazette*, February 29, 1856.

that bound the Union.”⁷¹ Counsel for the claimants “never loved the Union as dearly as now. It was proved to be a substantial reality.”⁷² The return of the slaves was looked upon by the *Lexington Kentucky Statesman* as showing the determination of Cincinnati “to maintain her fealty to the Union,” and as evidence that the South and the Union still had “true friends over the border.”⁷³

The safe return of the Garners to slavery had been insured by engaging hundreds of men to act as special marshals. Payment became a point of extreme irritation between Robinson and Commissioner Pendery. The Commissioner felt that too many had been hired, and he refused to sign an authorization. There were about 400 marshals holding certificates for 28 days’ employment at \$2.00 per diem; the total cost was \$21,456. There were rumors that certificates had been issued to persons who had not actually served, that speculators had bought up certificates at 25 to 50 per cent discounts, and that some marshals had participated in the gambling. Pendery was credited with having uncovered the scandal in Robinson’s office.⁷⁴

Marshal Robinson made a trip to Washington during the hearings to consult President Pierce, who was reported to have said that the Garners were to be returned to Kentucky at all hazards. The President reassured Robinson that the deputies would be paid, promising that if necessary, funds would be supplied from the President’s “secret service money.”⁷⁵ Pierce instructed Secretary of War Jefferson Davis to give Robinson an order directed to the commandant of the United States garrison at Newport, Kentucky, across the river from Cincinnati, to supplement the civil force, if called upon, with troops necessary to guarantee the orderly execution of the Fugitive Slave Law. Encouraged by these assurances, the Marshal returned to Cincinnati and engaged the large force of assistants. Now he was reported to be grumbling that if the certificates were

⁷¹ Cincinnati *Columbian*, quoted in Boston *Liberator*, March 7, 1856.

⁷² *Ibid.*

⁷³ *Lexington Kentucky Statesman*, March 7, 1856.

⁷⁴ *Reminiscences of Levi Coffin*, 569; *New York Daily Times*, February 16, 1856; *Cincinnati Daily Gazette*, February 7, March 5, April 3, 19, 21, 1856. Including the expense of the hearings and other charges, it was estimated that the total cost of sending the Garners back to Kentucky was between \$30,000 and \$40,000. *Ibid.*, April 19, 1856.

⁷⁵ *Cincinnati Daily Gazette*, April 3, 1856.

not paid, no more fugitive slaves would be recovered in Cincinnati.⁷⁶

The Marshal's difficulties increased. State Judge Burgoyne held that the Marshal was in contempt because he had disregarded Burgoyne's order not to take the children out of the state. If the Marshal should offer obedience to the Fugitive Slave Law as excuse for his disobedience to the state order, said Judge Burgoyne, he would be relying on a broken reed, for that law was unconstitutional.⁷⁷ Robinson was fined \$300 and imprisoned. Relief from this sentence was immediately sought from Judge Leavitt who set the Marshal free by a writ of habeas corpus. The federal judge held that Robinson had been imprisoned by the state for an "act done or omitted to be done in pursuance of a law of the United States,"⁷⁸ and was therefore entitled to the protection of the sovereign whose law he had enforced. Leavitt remarked that while a state judge might issue a writ whenever he deemed it appropriate, once the return to the writ showed that imprisonment was under authority of federal law, "his jurisdiction ceases and all subsequent proceedings by him are void."⁷⁹ No judge, or other state or even federal official could, on the basis of private views impair rights of others by setting aside statutes "passed in conformity with the forms of the Constitution. Until repealed or set aside by the adjudication of the proper tribunal, they must have the force of laws and be obeyed as such. Any other principle must lead to anarchy in its worst form, and result inevitably in the speedy overthrow of our institutions."⁸⁰

The melancholy history of Margaret Garner continued. At Governor Chase's instructions, the Attorney General of Ohio on March 6 made requisition on Governor Charles S. Morehead of Kentucky for the return of the Garners. Although Gaines had indicated that he would await extradition proceedings, Margaret Garner was already on her way down the river to the deep South. Morehead expressed his extreme regret and indignation, and assured Chase that

⁷⁶ *Ibid.*, April 3, 19, 1856. The Frankfort *Commonwealth*, February 19, 1856, remarked that the report that troops had been ordered out was "a grand hoax."

⁷⁷ Cincinnati *Daily Gazette*, March 19, 1856. Judge Burgoyne gave grounds usually argued against the law: that the commissioners were improperly exercising judicial functions.

⁷⁸ *Statutes at Large*, IV, 634, sec. 7. This is the "Force Act" of March 2, 1833.

⁷⁹ *Ex parte* Robinson, 20 Federal Cases 965, 968 (1856).

⁸⁰ *Ibid.*, 969.

measures had already been taken to return her to Kentucky.⁸¹ Chase was furious at this indignity to Ohio. He smarted under the criticism leveled at him from antislavery quarters for failing to keep the Garners out of slavery.⁸² The American Anti-Slavery Society took the position that "it is unfortunate for the fair fame of Ohio that she had not a Governor, who, in such a crisis was ready to override, if necessary, all forms of law, and assert the dignity and rights of the State."⁸³ The Boston *Liberator* pointed out the futility of relying on politics: "And this is all, in the last resort, that Free Soil, Republican Governor Chase can do, either to protect personal liberty or to vindicate the laws of Ohio in an acknowledged case of homicide committed on her soil! No Union with Slaveholders!"⁸⁴

On the way to the deep South, the ship carrying the Garners was in a collision, and Margaret Garner fell into the water with her child in her arms. The mother was rescued, the child was drowned. Margaret Garner rejoiced that still another had found death, not slavery.⁸⁵ Reports soon reached Governor Chase that the slave had been returned to Kentucky and lodged in the Covington jail. Chase sent an officer with a requisition, but he was informed by the jailer that the woman had been taken away the night before on orders from Gaines.⁸⁶ Denounced for this "duplicity,"⁸⁷ Gaines wrote an indignant letter to the Cincinnati *Enquirer* stating that he had twice made Margaret Garner available for requisition by Ohio,⁸⁸ but that each time Chase had failed to present a timely requisition. Gaines doubted that the abolitionists desired to bring her to Ohio at all; he charged that they sought only to make political capital of

⁸¹ Cincinnati *Daily Gazette*, March 14, 1856; Boston *Liberator*, March 21, 1856. Samuel J. May, the famous abolitionist, felt that Chase's waiting until March 6 to send a representative was "an unpardonable delay." Samuel J. May, *Fugitive Slave Law and Its Victims* (New York, 1861), 58.

⁸² May, *Fugitive Slave Law and Its Victims*, 56; Schuckers, *Life and Public Services of Salmon Portland Chase*, 175-76; Cincinnati *Daily Gazette*, March 14, 1856.

⁸³ American Anti-Slavery Society, *Annual Report* (New York), May 7, 1856, p. 46.

⁸⁴ Boston *Liberator*, March 7, 1856.

⁸⁵ Louisville *Courier*, March 10, 1856, quoted in New York *Daily Times*, March 14, 1856.

⁸⁶ Schuckers, *Life and Public Services of Salmon Portland Chase*, 176; Cincinnati *Daily Gazette*, April 11, 1856.

⁸⁷ Cincinnati *Daily Gazette*, quoted in May, *Fugitive Slave Law and Its Victims*, 59.

⁸⁸ The Frankfort *Commonwealth* reported on March 11, 1856, that Margaret Garner had been in Frankfort since March 8, and that Gaines had brought her there to "be the more immediately subject to any order the Governor of Kentucky might make in the premises."

the entire affair. He promised that as soon as he learned of the slave's whereabouts he would publish it in the Cincinnati papers so that state authorities might know where their requisition could reach her.⁸⁹ However, if information concerning her permanent home ever became available to Gaines he failed to make it known. Nothing was ever heard of Margaret Garner again.

Failure to regain possession of the Garners for trial deeply disturbed the people of Ohio. The assertion by United States courts that the Fugitive Slave Law took precedence over Ohio's personal liberty and criminal laws seemed a grave imputation of their dignity. When the second Garner child died by drowning public feeling was exacerbated. The angry state legislature enacted a law requiring state officers to take persons out of the possession of United States authorities upon the issuance of a state writ of habeas corpus,⁹⁰ and denounced the Fugitive Slave Law as unconstitutional and "repugnant to the plainest principles of justice and humanity."⁹¹ These circumstances could only result in a heightened conflict between Ohio and the federal government. It was out of cases such as that of Margaret Garner that friction between free states and the national government grew into increasingly bitter hostility.

⁸⁹ Gaines to Cincinnati *Enquirer*, April 14, 1856, quoted in Covington *Journal*, April 19, 1856. Chase doubted that "she was in fact ever brought back there." Chase to Trowbridge, March 13, 1864, Schuckers, *Life and Public Services of Salmon Portland Chase*, 176.

⁹⁰ *Acts of a General Nature and Local Laws and Joint Resolutions Passed by the Fifty-Second General Assembly of the State of Ohio* (Columbus, 1856), April 5, 1856, p. 61.

⁹¹ *Ibid.*, April 11, 1856, p. 247.