## TRIAL OF THE SLAVE-MOTHER AND HER CHILDREN.

*From The Cincinnati Gazette, Feb. 11 and 12.*

### FIRST DAY.

ARCHIBALD K. GAINES, CLAIMANT, *vs.* MARGARET GARNER AND HER THREE CHILDREN.

Court met at 9 o'clock, but the fugitives did not appear for some time.

A little after 10 o'clock Margaret and her children were brought in. She is about five feet three inches in hight, and rather stoutly than delicately made. She is a mulatto, showing from one fourth to one third white blood. Her forehead is high, and has a protuberance—not so large of course, but something like that which made Daniel Webster's so striking. Her eyebrows are delicate lines finely arched, and her eyes, though not remarkably large, are bright and intelligent. The African appears in the lower part of her face, in the broad nose and thick lips. Her ear is small, her wrist and hand large, and she wears a plain gold or brass ring on the little finger of the left hand. She is 22 or 23 years of age.

She was dressed in dark calico, with a small handkerchief on her shoulders, pinned closely about her neck, and a yellow cotton kerchief was wrapped, turban-like, or *a la ole Virginny*, around her head.

The child in her arms is a little girl about nine months old, and is much lighter in color than herself—light enough to show a red tinge in its cheeks.

Her eyes during the trial were generally cast down. She would look up occasionally for an instant with a timid, apprehensive glance at the strange faces around her. The babe, with its little hands, was continually fondling her face, but she rarely noticed it, and her general expression was one of extreme sadness. Only once, when it put its hand to her mouth, we observed her smile upon it, and playfully bite its little fingers with her lips.

On the left side of her forehead, just above the outer extremity of her eyebrow, is an old scar, and on the cheek-bone of the same side another. We asked her how those scars came there. She said, "White man struck me."

The boys are 4 and 6 years old, respectively, and are bright-eyed, woolly-headed, cunning-looking little fellows, as almost all little black boys are. Their fat cheeks dimple when they laugh, and they amused themselves most of the time during the trial by sitting on the floor and playing with the turned table-legs.

The murdered child was almost white, and was a little girl of rare beauty.

Mr. Archibald K. Gaines, the master, is not a large man, being but little above medium hight and quite slender. His head is small; his hair bushy, standing up, and gray. He wears whiskers, meeting at the chin, also gray. His face is thin, the lower part quite narrow, and marked with numerous lines. He has a small foot and hand; the latter looks rough, but more from exposure than labor. His dress is careless, but his general manner rather gentlemanly. There is nothing coarse, disagreeable or repulsive about his appearance, but, on the contrary, he seems to be (and we have no doubt he is) an agreeable and intelligent gentleman. He is a member of the old school Presbyterian Church; is regarded as very orthodox, and is the chief supporter of the church clergyman of that denomination in his neighborhood.

The Court having announced that it was ready to proceed with the case,

Mr. Jolliffe applied for a continuance, on the ground that the only witness by whom they expected to prove Margaret's having been in Ohio by the consent of her master, was now in Oregon, and they wished time to get his deposition.

Margaret's deposition was offered, which stated that when a small girl she had been brought by John P. Gaines (who then owned her) and Eliza Gaines, who is now living with her uncle in Kentucky, and that her children have all been born since she was thus brought into Ohio. She asks time to get the deposition of John P. Gaines, who now lives in Oregon Territory, of which he was not long since Governor.

The Court decided that the case should go on, but in the event of the Commissioner deciding this point material to the cause, he would make proper provision for obtaining this testimony.

Mr. Jolliffe then rose and made a professional statement—the first he had made in the case. It was to the effect that he verily believed the deposition of Margaret to be true, and that if the cases of the mother and children could be severed, and she made a witness, that she would state the facts given in her deposition. He therefore asked that the mother and children be tried separately, in order that she might be a witness for them.

Mr. Wall objected to this "most strenuously." They were all claimed together as slaves under one warrant, and what the mother might swear to after the frenzy she had exhibited, they did not know, and would not risk.

Mr. Jolliffe replied, that if on sending for Mr. Gaines's deposition he should prove to be dead, it would deprive them of their only chance to prove their freedom.

The Court decided against a severance.

Mr. Jolliffe then asked that the Rev. A. A. Livermore be appointed as guardian *ad litem* for "Cilley," the babe.

Col. Chambers thought such a proposition too absurd for argument. It was bringing the case where the gentleman had all along tried to put it, viz: within the humanities.

The Court decided against the appointment of guardian, and the evidence for the claimant was then commenced.

TESTIMONY FOR THE CLAIMANT.

Dr. Elijah Smith Clarkson sworn, said: I know that woman and two of the children—the two oldest; the woman is called Peggy (for Margaret), largest boy is called Tom, the next Sam; these people are under the laws of Kentucky slaves to Archibald K. Gaines, the claimant; have known her twenty years—from a child two years old; has all that time been a slave; she has belonged to claimant about ten years I should think; before that time she was owned by Major John P. Gaines, late Governor of Oregon; the mother also belonged to Major Gaines; Peggy is twenty-three or four years old to the best of my knowledge; has had a child within a year; did not attend her on that occasion—went over the next day and found her doing well enough.

Cross-examined—Margaret or Peggy's mother's name was "Cilly," they both belonged to Jno. P. Gaines, and became the property of this claimant by purchase; I lived in the neighborhood at the time of the alleged purchase; have lived within a mile and a half of Mr. Gaines for twenty years; it is customary to transfer slaves by bill of sale, but have known sales without this; J. P. Gaines had a daughter, Miss Mary Gaines, who is probably about seventeen at this time; she is now in Kentucky; I presume John P. Gaines to be now in Oregon; been there about six years; I was family physician for John P. Gaines; Mr. Gaines has other brothers, Richard, Benjamin, William and Le Grand; one of them lives near Natchez, and one, I think, in New-Orleans; their mother lives with Mr. Archibald Gaines; is a widow; do not know whether Mrs. Elizabeth Gaines does not claim to be the owner of Peggy during her life; Mr. Gaines has several other slaves beside these; she is the wife of Simon.

Ques.: "Is he the father of these children?" Col. Chambers: "We admit that."

Major Wm. B. Murphy, sworn, said: I knew Peggy there; have known her for some time; I declare I can't say how long; she is said to belong to Mr. Gaines; claimed by him as his slave, and served him as such; known her as such from six to ten years; live some three and a half miles from Mr. Gaines.

Cross-examined—When I first saw her it was said she was the property of Jno. P. Gaines; he was then living where Archibald K. Gaines now lives; was not present when she was sold to the present claimant; am not certain I ever saw her on the plantation of Mr. Archibald Gaines; have seen her about the neighborhood, and knew her as Mr. Gaines's woman; Miss Mary Gaines is now about 15 or 16 years old; first saw Peggy in Ohio last Monday week; Mary Garner and her husband and Simon were with her, and her three children that she has here, and another one; it was at a house below Millcreek bridge; I saw the other child; its throat was cut. Objected to by Col. Chambers. Court stated that as the warrant embraced four children, it was proper to show what had become of the other one. It was finally admitted that one child was killed, and that the mother attempted to kill the other three, at the time of the arrest; that one has a cut on its throat; another has one on its head, and the infant a blow.

Question by Mr. Jolliffe—Did Simon, this woman's husband, shoot one of the persons making the arrest at the time? Objected to by Col. Chambers, and objection sustained by the Court.

Adjourned to Monday morning at 10 o'clock.

After the crowd passed out, the little negro boys were carried down in the arms of the Marshals, and the woman Peggy, taking the proffered arm of the polite Deputy U. S. Marshal, Mr. Brown, was escorted to the omnibus.

### SECOND DAY.

Court met at 10 o'clock.

On entering we were surprised to see a large number of gentlemen wearing the badge of the Legion of Honor (a red ribbon in the button-hole). The first thought was that they might be distinguished Frenchmen—invited guests to the 22d February celebration—but we afterward learned that the special U. S. Marshals appointed to guard this negro woman and her three children, had so high an appreciation of the duty that they had thought proper to compliment the Legion of Honor by assuming its badge.

TESTIMONY FOR THE CLAIMANT CONTINUED.

Peter Nolan, sworn, said—Know the woman and her three children; knew them for four or five years in Boone County, in Mr. Gaines's possession—as his slaves; I lived a year on Mr. Gaines's place, and worked more or less with him for the last five years.

Cross-examined—Lived not much over a quarter of mile from Mr. Gaines's house; know that this woman is Mr. Gaine's slave only from seeing her on the place and understanding that she belonged to him; Mr. Gaines's family consists of four children and his wife; his mother lives with him, and has ever since I can recollect; am not sure that this woman Peggy does not belong to old Mrs. Gaines; never heard her claim her.

A bill of sale from John P. Gaines to the claimant was then offered, and, on Mr. Finnell's stating that he knew it to be John P. Gaines's handwriting—that he corresponded with him, etc.—it was admitted without being legally proven. It read as follows:

"I have sold and delivered to A. K. Gaines five slaves—Sam, Harry, Peggy, Hannah and Charlotte—and all my right and interest thereto, for the sum of $2,500, which sum I acknowledge the receipt of. Given under my hand this 17th day of November, 1849 JOHN P. GAINES."

Col. Chambers explained the recent date of this by stating that it was given to supply an old one that was lost.

John Ashbrook sworn, said: Know Peggy; the two eldest children; the youngest I don't know; have known Peggy for fifteen or sixteen years; she was then the slave of John P. Gaines; about six years since he sold out to Archibald Gaines, the claimant here; I have been in the habit of purchasing Mr. Gaines's stock.

James Marshall (the owner of Simon, Peggy's husband, and the claimant in the former case) was called, and said: I know Peggy and the two oldest boys; have known her for twenty years; she belonged to Major John P. Gaines during a part of that time, and the residue to Archd. K. Gaines; she escaped from Kentucky last Sunday night two weeks; know Simon, Peggy's husband; he was born mine; Peggy has belonged to Mr. Archibald Gaines some 12 or 14 years.

Cross-examined—Last saw Peggy in Kentucky a while before Christmas.

Statutes of Kentucky were then offered in evidence, especially that part of them from page 627 to 648, relating to slaves, also to page 364, where it states a slave, after five years' possession, becomes absolute property, so that no proof of title or bill of sale is necessary.

The claimant rested his case here.

TESTIMONY FOR THE SLAVES.

Ann Smith, a colored woman, sworn—Am a nurse; commenced nursing between five and six years of age; they were white children—in the families where I lived; it is a common thing for children five, six or seven years old to nurse white children in the families to which the belong.

Other colored nurses, and Dr. Price, a physician of Philadelphia and Cincinnati, testified to the same effect.

Mr. Jolliffe then said I now offer in evidence a duly certified copy of an indictment found by the Grand Jury of Hamilton County against Margaret Garner, charging her with murder in the first degree.

Col. Chambers objected.

Mr. Jolliffe wished to introduce this to prove that he cannot have the certificate for the transfer of Margaret Garner that he is asking for. That the indictment was a bar to it. It was for the Court to decide whether the Fugitive Slave law overrides the law of Ohio to such an extent that it cannot arrest a fugitive slave, even for the crime of murder. He then read the 10th amendment to the Constitution, stating that all rights not delegated in the Constitution are reserved to the States, etc. This execution of its own criminal laws every State has reserved to itself, and no act of Congress can interfere with it.

These slaves cannot after being remanded be reclaimed as fugitives from justice. A demand for a fugitive from justice must be based on affidavit that the person so demanded fled. She cannot flee when she goes by force—by order of Court and against her will. She cannot be arrested under any process after the Commissioner shall have granted his certificate. The writ of capias under an indictment for murder cannot stay the delivery. If the certificate is granted, it wrests from the State the right to punish murder.

If this was decided to be the law a fugitive could, on the trial, shoot down the Marshals, or even the Commissioner, and he could not be punished for so doing. Paramount is this right—the right of the State is superior to all private claims.

Col. Chambers—This was a repetition of the old story that this woman preferred the gallows to delivery in Kentucky.

The practical effect of all these sorts of motions was to abolish the Fugitive Slave Law at once. All a fugitive would have to do would be to commit some trifling offense and he would become the prisoner of the State of Ohio.

The Court observed that it could not be received because it had already a motion pending on this question.

Mr. Jolliffe—We have one other witness; we want Margaret Garner sworn as a witness, not for herself, but on behalf of her three children.

Col. Chambers objected on the ground that, being a fugitive, the provisions of the Fugitive Slave Law directly forbid her being a witness for herself or anybody else.

After a long discussion, the Court stated that it had refused to sever the cases simply on the ground of delay, but could see no objection to admitting the woman's testimony in behalf of her children, and she was accordingly put on the stand and sworn.

Margaret Garner (the mother of the three living and of the murdered child) being sworn, was asked—Were you ever in Ohio before? Ans. Yes, Sir. Ques. When? Ans. I came here when I was about seven years old. (To other questions from time to time, her answers were as follows): I came here with John Gaines and his wife; her name was Eliza Gaines; they came on a visit to Mr. Bush's, who lived in Covington, and staid there a week; during that time they spent one day over here, and they brought me over to nurse the baby; that was Mary Gaines; Mary wasn't quite as large then as my baby. (Her baby is about nine months old.) They brought me across the river to Cincinnati; we came over pretty soon in the morning, and staid tolerable late in the evening; don't know whether it was a tavern or private house they stopped at; don't remember the name of the people where they stayed; was never over any other time than that; I'll be twenty-three years old the 4th day of next June; Miss Mary Gaines is very near seventeen years old; she's at her uncle Archibald's in Boone County; John P. Gaines was my master at that time; that was before he sold me to Archibald K. Gaines; don't recollect anything particular on that day I was over here, except that my mistress was very careful in keeping me close by her; kept me sitting by her side all the time; don't know what they came over here for; Mrs. John P. Gaines is dead; she died in Oregon; John P. Gaines is in Oregon; pretty near seven years since he went there; these three children here with me are mine; all been born since I was here in Ohio with John P. Gaines; as far as I understand old Mrs. Gaines owned me; I lived with her; often heard her say, when Mr. Gaines was by, that I was her servant; never heard him deny it; never heard him say it was so.

Mr. Jolliffe—Take the witness.

Col. Chambers—I've nothing to say to her.

At 2 o clock Court took a recess for 30 minutes.

Mr. Geo. J. Guilford, of *The Commercial*, was called for, but not appearing, it was agreed to admit Mr. Guilford's testimony on the first trial, to wit; that Mr. Marshall had told him that these people had all been in Ohio before their escape.

Court met again, after recess, at 3 o'clock.

REBUTTING TESTIMONY FOR THE CLAIMANT.

James Marshall re-called—Never knew a child seven years' old employed as a nurse in Kentucky; never heard of the like before to-day

Cross-examined—Never knew one of that age employed to nurse a child even in the presence of her mistress; have no recollection of ever seeing a girl seven years old take a child.

W. D. Griffing, John C. Hughes and John Armstrong, were also called to the same point and made statements similar to Mr. Marshall's.

The testimony of both parties closed here. It being 4 o'clock, the commencement of the argument was postponed until this morning.

Adjourned to 9 o'clock this morning.

### THIRD DAY.

Mr. S. J. Wall commenced the argument this morning on the part of the claimant. He began by complimenting the Court for the patience which had been exercised in the hearing of the case, and thought he had never heard a bad cause so ably argued as it had been on the part of the defense. He then pictured the results which must necessarily occur if the prisoners were not given back to their owner—distrust would grow up between master and slave, where now existed respect and esteem, and declared it as his opinion that Kentucky would have long since emancipated her slaves had it not been for the hordes of Northern Abolitionists, with their destructive doctrines. Kentucky was something like the man who said he might be coaxed to do right, but he'll be d—d if he could be driven to do it. He thought that had it not been for Slavery, the present well-fed and sleek negroes and negresses would not be in so good a condition. They would have been left in the wilds of Africa and never known civilization and its benefits.—He then stated the view in which Abolitionists were held by Kentuckians. They were looked upon pretty much the same as thieves were; if anything, the thieves had the preference. For his part, he had known some very good Abolitionists, with whom he would not have the least hesitancy in lying, even with a well-stuffed wallet in his pocket. He was proud that he hailed from Kentucky, although it might be the only thing he could claim to be proud of. It was a noble State yet, although it had been derided and maligned by Abolitionists. Abolitionism, he thought was a comparatively new thing, and he termed it a patent-right philanthropy, brought over by reverend fanatics and unreverend infidels from England. Mr. W. then briefly reviewed the testimony, and thought the evidence of Margaret Garner in behalf of her children could not be received for an instant by the Court. It was preposterous to suppose that she was brought over here at 6 years of age to nurse an infant child. He concluded his argument by expressing the wish that the trial would close to-day, for he said the river would probably soon break up and they would have to pay ferriage to get their negroes back to Kentucky.

ARGUMENT OF MR. S. S. FISHER.

Mr. Wall was followed by Mr. S. S. Fisher, in behalf of the defense, who commenced his argument by paying a tribute to Kentucky and her chivalrous sons, and said he had no doubt that were Ohio threatened by a foreign foe, Kentucky would hasten to her rescue, as she had done in days past; thought Ohio had a glorious history, and was striding on, if not to the first place among the States, at least not the last. He then spoke of the State's rights, and thought them superior and paramount to the Federal laws, and its power could not be wrested from it by any acts of the General Government. He then alluded to the case so often referred to during this trial, Strader and Gorman agt. Graham, decided upon by the Supreme Court of Kentucky. He held that the decision of that Court in Kentucky, according to its laws, had nothing to do with the decisions of Ohio Courts, and could not influence them. He alluded to various authorities to support his views. He contended that where a slave had been brought into a Free State by his owner, and taken back into a Slave State, and should escape and return to a Free State again, he was to all intents and purposes a freeman, and so the authorities in various States maintained, beyond all doubt, a master who brings his slave into this State has no right to command him, while here, to do any act which he is not inclined to—has no right to tell him to get in the ferry-boat and go back to Kentucky—for our laws do not recognize Slavery, and will not permit the master to exercise any act of despotism on the alleged slave. He contended that the testimony of Margaret was entirely uncontradicted, and he could not see why there should be a doubt as to its truth; as to small children, nursing infants under the supervision of the mother, it was so common a fact that it needed no proof, notwithstanding such an occurrence might startle the hills of Kentucky. He thought one woman's testimony, in regard to nursing was worth all the testimony of the male portion of Kentucky. If Margaret was brought over to this State, she was free, and need not have went back unless she had been so inclined; and being once brought over, and returning again, and escaping subsequently to a Free State, she is free, and cannot according to our laws be returned to slavery. Mr. F. contended that there had not been sufficient proof of ownership; to be sure, the name of Peggy occurs in a bill of sale presented here in court, but the question arises as to what Peggy is referred to; there is no proof that the woman here in court is the one mentioned in the bill of sale. Again, it is necessary to prove her escape; there has no escape been proven; and as long as there is no proof, the presumption is that she was brought or came over here with the consent of her master, and that she has been here the last few weeks with his consent. This must be the presumption as long as there is no proof to the contrary. In alluding to the murder of the child, Mr. F. said he regretted that the circumstance had occurred, and while he did not regard it in any other light than a crime, he could not assent to the belief that it was committed in mere ignorance and exasperation. No! he believed the love of liberty had had something to do with it—it was done for freedom. He would ask what was the difference between the story of Virginius, who killed his daughter in the Roman forum, and the story of this woman who killed her child. In his case it was for liberty, in this case it was for the same—they are parallel. There is but little doubt that she intended also to have killed herself. I thank God, Sir, that such a result did not transpire. My Southern brethren love liberty, but they say that their slaves do not. This act of the mother was an unanswerable reply to them, and must forever shut the mouths of those who claim that the ignorant do not rank with the educated in their instinctive love of freedom.

Mr. F.'s argument throughout displayed considerable research and much thought, and at times he was really eloquent. He was followed by Mr. Getchell, of whose previous argument we gave a brief synopsis. We have not space to devote to his remarks in the present claim; they were brief and forcibly read, being principally a reinforcement of his previous argument.

Mr. Jolliffe followed Mr. Getchell in his usual pathetic and forcible manner. During his remarks the Court room was honored by the presence of Mrs. Lucy Stone Blackwell, who took a seat and listened attentively to the speaker. After he had concluded, she was introduced to Mr. Gaines, the claimant, with whom she had considerable conversation, the nature of which we could not ascertain. She afterwards conversed with Margaret for some time. We have heard it said her object is, in case the slave mother should be sent back to slavery, to purchase her freedom, if found out on what terms her emancipation can be secured.

The Court adjourned till to-morrow morning at 10 o'clock, when Col. Chambers will make the concluding argument.