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Slew vs. Whipple (1766)

Jenny Slew was the first in Essex County in the 1760s to file suit for wrongful enslavement against her owner. *Slew vs Whipple* (1766) is so commonly discussed in histories of northern abolition of Massachusetts slavery that Jenny Slew has become an iconic figure in academic and popular history.¹ She has come to represent the fight for freedom by the northern enslaved. Her claim to freedom, however, was based on having had a white mother and she called on white neighbors old enough to have known her mother to confirm her claim. At the time, Slew's case hauled out old stories of injustice that local people had long desired to forget. She brought into public view her slide into slavery and the white community's complicity in it.

Archival records do not reveal what inspired fifty-year-old Jenny Slew to file suit. Some aspects of her life, however, give some hints. In 1747, Jenny Slew had married an enslaved man named Caesar who was owned by Stephen Emmerson of Ipswich.² Emmerson moved to

¹ "Freedom for Jenny Slew, November 1766," *Historic Ipswich*, accessed March 3, 2018, <https://historicipswich.org/2014/01/10/freedom-for-jenny-slew/>. "Ipswich Riverwalk Mural," Ipswich Visitor Center, accessed March 3, 2018, accessed March 3, 2018, <http://www.ipswichvisitorcenter.org/home/ipswich-riverwalk-mural/>. See also George C. Moore, *Notes on the History of Slavery in Massachusetts* (New York, D. Appleton & Co., 1866), 113; Lorenzo Greene, *The Negro in Colonial New England* (Port Washington, NY: Kennikat Press, 1942), 292-3; A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process, The Colonial Period* (Oxford: Oxford University Press, 1978), 84-85; Gary Nash, *The Forgotten Fifth: African-Americans in the Age of Revolution* (Cambridge, Massachusetts: Harvard University Press, 2006), 17-18; Catherine Adams and Elizabeth H. Pleck, *Love of Freedom Black Women in Colonial and Revolutionary New England* (New York: Oxford University Press, 2010), 137; Emily Blanck, *Tyrannicide*, 35; Manisha Sinha, *The Slave's Cause: A History of Abolition* (New Haven, Yale University Press, 2016), 67- 69.

² "Jane Sleigh" married Caesar, "servant of Stephen Emmerson" July 31, 1747. "Ipswich Marriages Negroes," *Early Vital Records of Massachusetts From 1600 to 1850*, accessed April 29, 2018, <http://ma-vitalrecords.org/MA/Essex/Ipswich/aMarriagesOt.shtml#Negroes> (hereafter *Ipswich Vital Records Marriages Negroes*.)

Newmarket, New Hampshire in 1758 and died insolvent there in 1763. It is unknown if he took Caesar with him or sold him first. His estate sale listed no enslaved persons for sale so, as Jenny Slew remarried later, it is probable that her husband, Caesar, had already died.³

Slew's purported owner, John Whipple, was elderly and possibly in ill-health when she sued in 1765. He died in 1769 at the age 74, leaving a younger widow, Mary, who would live on for another thirty years.⁴ Having already lost one husband because of slavery, Slew may have wished to improve her marriage prospects or at least, be able to marry again without a master's permission. She may have negotiated remaining with the Whipples after her successful suit as her opportunities to go elsewhere were limited. If she believed John Whipple would not live many more years, she might have been concerned about what would happen to her should Whipple die. If she wanted to avoid becoming subject to a new master, when Whipple's widow remarried, or to avoid being sold, bequeathed or leased to a different, perhaps distant, household, ~~then~~ she would need her free status confirmed. Crucially, given the ages of the people who testified for her, she may have wanted to establish her status while there was still someone left alive who knew who her mother had been.

Whatever her reasons, identifying herself as a spinster, she filed suit against John Whipple Jr., gentleman of Ipswich in the March 1765 session of the Essex Court of Common Pleas

³ "Stephen Emmerson," *New Hampshire Gazette*, July 1, 1763. Jane, a "free Negro woman", married Scipio, servant of Samuel Potter, November 21, 1771, *Ipswich Vital Records Marriages Negroes*.

⁴ "Ipswich Deaths Negroes," *Early Vital Records of Massachusetts From 1600 to 1850*, accessed April 29, 2018, <http://ma-vitalrecords.org/MA/Essex/Ipswich/aDeathsOt.shtml#Negroes> (hereafter *Ipswich Vital Records Deaths Negroes*.)

(ECCP) in Ipswich.⁵ Whipple's attorney, Edmund Trowbridge, immediately objected that the writ was improperly written because Jenny Slew was identified as a spinster even though she was known to have been married.⁶ The court overruled the defense's objection and the case was heard by the jury. Only two witnesses were **called subpoenaed**: seventy-six year old, slave-owning Caleb Balch and seventy-one year old Anthony Wood, both of Beverly. Whatever evidence was introduced to support Slew's case, it did not convince the jury **that** which found for Whipple. Slew and her attorney, Benjamin Kent, appealed.⁷ At the Superior Court of Judicature (SCJ) appeal trial held in November 1766, four additional witnesses **testified subpoenaed**, their ages ranging from fifty-four to sixty-seven, and this time the jury ruled for Slew, awarding her £4 in damages and charging Whipple with over £9 pounds in court costs.⁸

⁵ When *Slew vs. Whipple* was heard at the Superior Court of Judicature, the court records for the ECCP case were transferred to the higher court. They are now kept in the Massachusetts Supreme Judicial Court archives. Except where otherwise noted, the court details that follow are from: *Slew vs Whipple*, Nov. 1766, Suffolk Files no.131426, Massachusetts State Archives, Boston, MA. [Hereinafter referred to as *Slew vs Whipple*, Suffolk#131426.]

⁶ Edmund Trowbridge (1709-1793), a Harvard graduate, was a highly regarded attorney and judge. He would be appointed to the Superior Court of Judicature in 1767 serving until 1775 when he went into retirement following the uproar over SCJ justices receiving royal pay. John L. Sibley, and Clifford K. Shipton, *Sibley's Harvard Graduates: Biographical Sketches of Those Who Attended Harvard College ... with Bibliographical and Other Notes*, Vol. 8 (Boston: Massachusetts Historical Society, 1873), 505 - 520 (hereafter referred to as: Sibley-Shipton, *Sibley's Harvard Graduates*.)

⁷ Benjamin Kent took either plaintiff or defendant cases in freedom suits in Essex County or elsewhere. In 1768, he represented William Muzzy of Lexington in *Margaret vs. Muzzy* (1768), Margaret was a mixed race woman who sued William Muzzy for her freedom. Kent and Muzzy lost the case. It was not appealed. In a 1771 Plymouth County case, Kent represented Casar in *Casar vs Watson* (1771) winning both the inferior and superior court trials. In Essex County, Kent represented Jenny Slew in *Slew vs Whipple* (1766), Solomon Dodge in *Lewis vs Dodge* (1769) and Larcom in *Juno vs Larcom* (1775). He would be appointed the Suffolk County Attorney General in 1776, serving until 1785. Although not political himself, he would, under the influence of of his Loyalist son-in-law, move to Halifax in 1785 at the age of seventy-seven. Sibley-Shipton, *Sibley's Harvard Graduates* Vol 8, 220-230.

⁸ *Slew vs Whipple*, Suffolk#131426.

John Adams witnessed the courtroom discussion during the SCJ retrial and took notes which ~~inform~~ provide what is known today about the arguments made in court.⁹ Slew's attorney, Kent, was forthright about not arguing Slew's case based on anything but Jenny's maternal descent: "I shall not enter into the Right of some Men to enslave others."¹⁰ Jenny Slew's mother had been white, he argued, and since free or slave status followed the mother, Jenny could not be legally enslaved. Evidence of this was provided by some, if not all, of the witnesses. Adams' notes say that Slew was her original name and that she had been born of a white woman named "Betty Slew."¹¹ From court and local records, the biographies of the Slew family, including Jenny's, can be pieced together to construct an understanding of how Jenny Slew might have become enslaved.

Slew was not a common name in Essex County - the only Slews in Essex County lived in Beverly and Salem.¹² The Beverly Slews were a poor and low status family founded in Beverly

⁹ Being meant for his personal study later, the notes are frustratingly incomplete at times. Adams' legal papers were collected and annotated in 1965 by L. Kevin Wroth and Hiller B. Zobel. They are now available online along with the annotations. Discussion of Adams' notes (and those of William Wetmore (1749-1830) which were found included in Adams' papers) are based on both sets of notes and the Wroth/Zobel annotations; which source is used will be noted. John Adams, "Adams' Copy of the Declaration, and Report Superior Court, Salem, November 1766," *Legal Papers of John Adams, Volume 2, Adams Papers Digital Editions*, accessed April 13, 2018, <https://www.masshist.org/publications/apde2/view?id=ADMS-05-02-02-0004-0002-0001> (hereafter "Slew vs Whipple", *Adams Papers*.) It is not clear that Adams' notes are fully reliable. He wrote: "Evidence was that Jenny Slew was commonly reputed to be the Child of Betty Slew a white Woman by a Negro Man." Gridley's submission of a marriage between two slaves named the enslaved as Elisabeth White and John Chaddich. This may be where Adams' picked up the nickname "Betty" for Slew's mother. There is no record of a Slew named "Betty" or any variation. "Vital Records of Beverly, MA to the end of the year 1849," *Early Vital Records of Massachusetts From 1600 to 1850*, accessed April 28, 2018, <http://ma-vitalrecords.org/MA/Essex/Beverly/> (Hereafter *Beverly Vital Records*.) As discussed below, however, there is evidence to believe that Jenny's mother might have been Rachel Slew of Beverly.

¹⁰ "Slew vs Whipple," *Adams Papers*.

¹¹ "Slew vs Whipple," *Adams Papers*.

¹² "Surname Index," *Early Vital Records of Massachusetts From 1600 to 1850*, accessed April 28, 2018, <http://ma-vitalrecords.org/Surnames.shtml>. Alternative spellings of Slew are Sloo and Slu.

by William Hoar (1661 - 1696). William had married Dorcas Galley (1635-1720) who notoriously told fortunes and taught her daughters how to steal from her clients.¹³ She was accused of witchcraft during the Salem Witchcraft hysteria and escaped death by confessing and accusing others.¹⁴ Her daughter, Tabitha (1695 - 1703), married Leonard Slew (1675 - 1703).¹⁵ In the early 1700s, the couple moved to Maine, leaving behind a grown son also named Leonard (1678- 1744) and a daughter, Rachel (?- 1734). Leonard married, but there is no record of Rachel ever having done so. In 1728, the brother and sister sold their rights in the Beverly common lands ~~that~~ they had inherited ~~through from~~ their Grandfather Hoar.¹⁶ Both were baptized into the church very late in life, Rachel in 1721 and Leonard just before his death in 1743.

The witnesses who testified at the SCJ trial were all residents of Beverly, ranging in age from 54 to 76.¹⁷ They were all from old, respectable Beverly families, some of them slave-owning families. Given their ages, they would have been old enough to have known or known of Leonard and Rachel Slew. That these particular people were summonsed to be witnesses strongly implies they were expected to testify as to the racial identity of Jenny Slew's mother. If Rachel Slew, the only Slew woman of the right age, had given birth to a mixed-race child, they

¹³ George Francis Dow, ed., *Records and Files of the Quarterly Courts of Essex County Massachusetts Vol. VII, 1678-1680* (Salem, Massachusetts: Essex Institute, 1919), 54.

¹⁴ Bernard Rosenthal, ed., *Records of the Salem Witch-Hunt*, (New York: Cambridge University Press, 2014), 22.

¹⁵ Dow, *Records and Files*, 54.

¹⁶ "Book 55, Page 10," *SalemDeeds.com*, accessed April 29, 2018, <http://salemdeeds.com/salemdeeds/bpimage.aspx?book=55&page=10>.

¹⁷ They were: Caleb Balch b. 1689, Hannah Dodge nee Rayment b. 1699, Anthony Wood b. 1694, Jonathan Hart b. 1711 and Sarah Herrick nee Rayment b. 1704. If Jenny Slew was fifty years old, then they would have been 26, 16, 21, 4, 11, respectively. *Beverly Vital Records*.

would have known and they would have known what had happened to the child before and after Rachel's death in 1734.

In 1705, the Massachusetts legislature passed a law outlawing marriage and sexual relations between white people and people of color.¹⁸ The law required children of color of a white mother to be put into service, if the mother could not support the child; it did not dictate what the status of those children should be when they were grown. All children, indentured servants and slaves, were legally the property of their parents or masters. It seems likely that the local community used this law to place a mixed-race Slew child as a servant and not distinguished her status from that of any other enslaved child of color. In court, Benjamin Kent asked why the defense did not introduce a bill of sale; a question designed to make it clear that there never had been a sale. It was Jenny Slew's decision to finally contest her status that brought the whole story into public view.

The specific question the jury had to grapple with, in Slew's case, was whether her free, white mother had conferred on her a status that could not legally be taken from her or ~~that~~ ~~whether~~ her color and her lifetime status as a slave meant that she had never had the freedom she now claimed. John Adams' notes at the time describe the justices discussing whether status should be determined by *partus sequitur ventrem* (the child follows the mother) or whether status should be presumed from color. They also understood that this issue was subsumed by a larger

¹⁸ "1705-06 Chap. 0010. An Act For The Better Preventing Of A Spurious And Mixt Issue, &c..." *Massachusetts Acts and Resolves*, accessed April 30, 2018, <http://archives.lib.state.ma.us/handle/2452/119000>.

one; one of the judges remarked: “This is a Contest between Liberty and Property—both of great Consequence, but Liberty of most importance of the two.”¹⁹

This high-level discussion may have held significance for the jury. Property rights were integral to Massachusetts provincials’ conceptions of their rights as Englishmen and as free men. A jury of elected men who were themselves property owners would take very seriously the task of depriving a man of his property. This may explain the ECCP jury’s verdict for Whipple. At the SCJ appeal trial that followed, Kent brought in additional Beverly witnesses and their testimony may have added enough about Slew’s family history to convince the jury that Whipple could not claim ownership rights. Whipple was fined a penalizing £4 in damages.

¹⁹ “Slew vs Whipple,” *Adams Papers*.