

THE CALIFORNIA TRAVAILS OF FORMER SLAVE ARCHY LEE

By John S. Caragozian

As California applied for statehood in 1850, the slavery debate was consuming the nation. California intensified the debate, because, as a free state, it would tip the then-balance of 15 free and 15 slave states.

The U. S. Congress' infamous Compromise of 1850 admitted California, but also included a Fugitive Slave Act to strengthen slave owners' power.

The act penalized people who assisted escaping slaves, fined federal officials who failed to assist capturing slaves, and established a summary procedure for U. S. Commissioners to decide contested cases. As an illustration of the act's pro-slavery bias, commissioners were paid \$10 when an African-American was declared a fugitive and returned to an owner, but only \$5 when not so declared.

Ironically, California, which gave rise to the Fugitive Slave Act, was rocked by a notorious dispute involving it.

Archy Lee, an African-American man born around 1840, was enslaved at a Mississippi cotton plantation owned by Simeon Stovall. In 1857, after stabbing a local white man who survived, Lee left Mississippi, apparently with the consent of the Stovall family.

The record of Lee's travels are hazy and disputed, but Lee eventually met up with a Stovall adult son, Charles, perhaps on the North Platte River in present-day Nebraska. From there, they travelled overland to California. In October 1857, they arrived broke in Sacramento. Lee hired out as a cook, and Stovall taught school. *See generally* Brian McGinty, "Archie Lee's Struggle for Freedom" (2020), at 6-13, 20.

While formally a free state, *see* Cal. Const. (1849), Art. 1, Section 18, California was politically dominated by Democrats, most of whom sympathized with the South. For example, the first California legislature barred African-Americans from testifying against whites, whether in civil or criminal proceedings. *People v. Hall*, 4 Cal. 399 (1854). Likewise, blatantly pro-slavery governors had been elected, most recently in 1857, and racism prevailed in California's cities and mining districts.

At the time, Sacramento was the state capitol and a commercial center, connected by water with San Francisco Bay. In early January 1858, Stovall prepared to depart for San Francisco, likely intending to return to Mississippi with Lee. Lee, however, refused to leave, perhaps learning that California was a free state and that its few African-Americans had organized

themselves for mutual protection. See Brian McGinty, *supra*, at 17-18, 20, 37-39; Rudolph Lapp, "Archy Lee" (1969), at 3.

Accordingly, on Jan. 6, 1858, Stovall successfully sought a writ from a Sacramento County judge for Lee's arrest. Lee was jailed, and the judge transferred the case to U.S. Commissioner George Johnston under the Fugitive Slave Act. Local newspapers covered the case, and a lawyer appeared for Lee. Lee argued that he was not a fugitive, because Stovall had voluntarily brought him into California. Commissioner Johnston agreed and held that he lacked jurisdiction over a non-fugitive.

Lee remained in jail upon the case's return to state court, where the county judge heard testimony. On Jan. 26, 1858, the judge freed Lee, ruling that Lee was not a fugitive and that no California law authorized slave owners to seize African-Americans and carry them away into slavery.

After this ruling, Stovall's lawyer appeared before a Sacramento justice of the peace with an affidavit that Lee was a slave trying to escape. The justice of the peace issued a warrant for Lee's arrest, and Lee was again jailed in Sacramento.

Stovall then applied to the California Supreme Court for a writ of habeas corpus against Lee. Stovall believed that the Supreme Court would be a favorable forum because two of its three justices were avowedly pro-slavery.

On Feb. 6, 1858, the court heard the matter. Stovall argued that the California constitution's general slavery ban was ineffective without specific legislation, that California could not deprive him of his property without due process, and that comity required California to respect Mississippi's slavery law. Lee countered that Stovall had earned money in and become a resident of California and therefore was bound by California's anti-slavery law. *In the Matter of Archy, on Habeas Corpus*, 9 Cal. 147, 148-55 (1858).

On Feb. 11, 1858, the Supreme Court, with only two justices participating, orally announced that Lee should be delivered to Stovall, but did not elaborate. The subsequent written opinion was curious: It accepted Lee's conclusion that California could enforce its anti-slavery law against Stovall, but favored Stovall seemingly out of pity, stating that the law should not be "rigidly enforce[d]" where Stovall believed that he owned Lee. See *id.* at 163-171.

While Stovall appeared to win a definitive legal victory, he still had the practical problem of returning Lee to Mississippi, presumably by ship from San Francisco. The case's nationwide newspaper coverage, including special criticism of the pro-slavery Supreme Court, exacerbated Stovall's difficulties. This coverage energized California's African-Americans and some whites to organize in support of Lee.

African-Americans raised money for prominent San Francisco lawyers, eventually including Abraham Lincoln's close friend Edwin Baker. Also, African-American businessman James Riker executed an affidavit that Lee was being illegally shipped out of California. Lee's lawyers presented the affidavit to San Francisco County Judge Thomas Freelon, who then issued an arrest warrant against Stovall for kidnapping.

Stovall became generally aware of pro-Lee activity, so he and Lee hid after the Supreme Court decision. They travelled through Stockton, and later Stovall hired a boat to sneak them onto a Panama-bound steamship after the ship had left the San Francisco waterfront (which, Stovall correctly surmised, was being watched by Lee's supporters).

However, San Francisco police officers, acting per the kidnapping warrant, were on the steamship. On March 5, 1858, when Stovall's boat drew alongside the steamship in the Bay, the officers recognized Lee and Stovall and, after a mild fracas, brought Lee and Stovall to shore. *See generally* Brian McGinty, *supra*, at 63-70, 165.

Stovall posted bail on the kidnapping charge, which was eventually dismissed on a technicality. Regarding Lee, Stovall's lawyer argued to Judge Freelon that the Supreme Court had decided the matter and that the subsequent Riker affidavit was incompetent per California's ban on African-Americans testifying against whites.

Stovall's lawyer then reversed course and agreed to Judge Freelon's release of Lee. This reversal was a tactic, because a U.S. marshal immediately arrested Lee and brought him before Commissioner Johnston.

Even though Johnston had previously ruled against Stovall in Sacramento, Stovall now argued that Lee was mere property and had no right to counsel. Johnston rejected the argument and, beginning on March 19, heard the matter with both Lee and Stovall represented.

Lee adduced affidavits and live testimony that Stovall brought Lee to California, that Stovall's ownership of Lee — even under Mississippi law — was uncertain, and that Lee was therefore not a fugitive. Stovall cited the U.S. Supreme Court's recent Dred Scott decision that slaves lack citizenship rights and that a slave's status depended on the state where the slave had resided, not where caught. *Scott v. Sandford*, 60 U.S. 393, 406-07, 452 (1857).

Before the hearing ended, Stovall left San Francisco, ostensibly to gather additional evidence in Mississippi. On April 14, 1858, Johnston, without waiting for Stovall's return, issued a final decision accepting Lee's arguments and freeing Lee. *See generally* Rudolph Lapp, *supra*, at 42-57.

Legislators attempted to undo Johnston's ruling via statute, but nothing was enacted, and California's pro-slavery sentiment ebbed during the Civil War. *See, e.g.,* Brian McGinty, *supra*, at 93-99.

Archy Lee emigrated to British Columbia within a week after being freed by Commissioner Johnston. San Francisco's African Methodist Episcopal Zion Church had raised money for Lee's passage.

Like other African-Americans, Lee was relatively well treated in British Columbia, but returned to the U.S. to live in Nevada from 1862 to 1864. He then went to British Columbia again, but returned to California. In 1873, he died here, poor and, according to a newspaper, suffering from "exposure and dissipation," aged 33.

John Caragozian is a Los Angeles lawyer and on the Board of the California Supreme Court Historical Society. He thanks Janie Schulman for her contributions to this column. He welcomes ideas for future monthly columns on California's legal history at jcaragozian@sunkistgrowers.com.

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