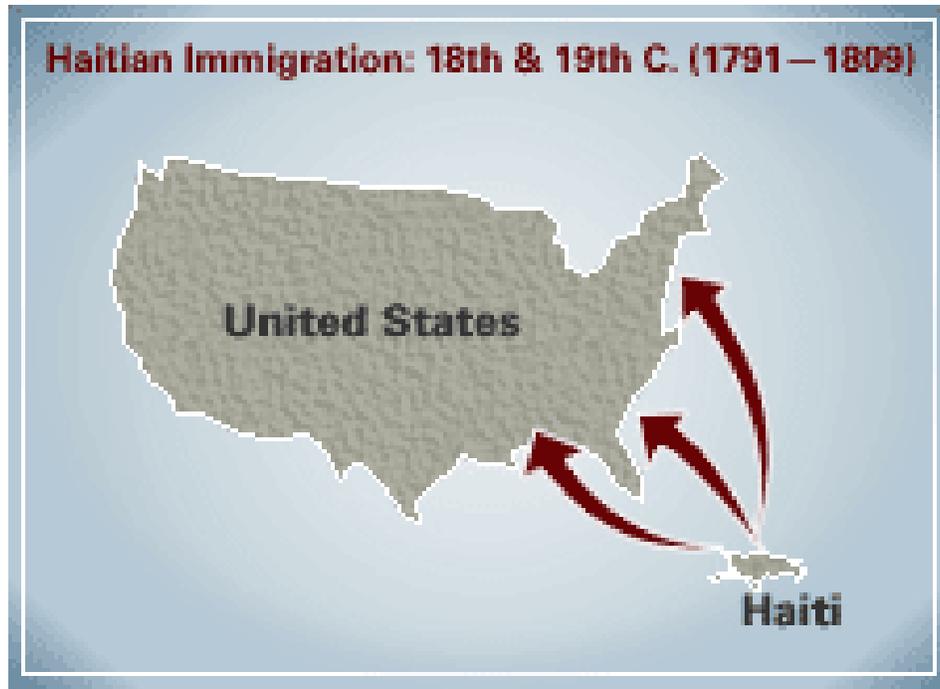


Fulton v. Lewis: The Case of an Immigrant Slave's Petition for Freedom During the War of 1812



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Table of Content

I.	INTRODUCTION.....	4
II.	BACKGROUND OF THE CASE.....	5
III.	RACE RELATIONS IN MARYLAND THE DIFFICULTY OF SECURING FREEDOM.....	10
	A. Thomas Kell: A Halfhearted Abolitionist.....	11
	B. The Revolutionary War’s Impact on Slavery in Maryland.....	14
	C. The Consequences of a Dying Movement.....	17
	D. The Quasi-Race Riots in Baltimore During the War of 1812.....	18
	E. Three Seminal Cases Inhibiting Successful Freedom Petitions.....	21
IV.	THE TRIAL AND APPEAL.....	22
V.	WHO WAS JOHN LEWIS.....	28
VI.	CONCLUSION.....	30

I. Introduction

In 1815 the Maryland Court of Appeals did something that by the early 1800's had become uncommon. The court granted a slave his freedom in the case of *Fulton v. Lewis*, 3H. & J. 564 (1815).¹ The slave was John Lewis (hereinafter Lewis) a native of the island of Saint Domingo, present-day Haiti, who was imported into Maryland after the Maryland General Assembly, enacted a law prohibiting the importation of slaves into Maryland. This was not a landmark decision by any means, it did not establish a profound legal precedent, but it did have a profound impact on the life of one slave and created a small beacon of hope for other slaves from Saint Domingo who would look to the legal system in order to resist their subordinate status.

What makes this case unique is that Maryland courts, by the time of the War of 1812, had developed a pattern of denying slaves their freedom, yet Lewis was able to overcome this obstacle and was awarded his freedom. Unfortunately the trial record is not comprehensive and therefore it is difficult to assert a true reason as to what made Lewis's case so special, that the trial court and the Court of Appeals were willing to depart from the norm and deny a white man his right to property. To understand why Lewis was granted his freedom we must explore the case by placing it in its historical context, and by reviewing the laws of Maryland regarding slavery prior to and during the War of 1812. Moreover, a determination of Lewis's identity may help to solve the puzzle of why he was able to obtain his freedom when so many others failed.

Close examination of the trial record reveals two viable theories as to who Lewis was and why he was granted freedom. The first theory is that Lewis was a slave from Saint Domingo, was brought to Maryland legally by his owner, and the reason why he was successful was

¹ Schweninger Collection, Court of Appeals, S382-54 No. 79, *David Fulton v. Negro, John Lewis*, transcript 18 May 1812, MSA SC 4239-3-9 (hereinafter transcript). Available at Maryland State Archives online.

because he had a strong case and three very good attorneys. The second theory is that Lewis was not a slave but a skilled hairdresser and that the defendant, David Fulton (hereinafter Fulton), tried to illegally enslave him. So, because Lewis was in fact free and never had been purchased by Fulton the jury did not believe Fulton and neither did the Court of Appeals, which is why it upheld the lower court's decision.

This paper will address the facts of the case and the events that led to Lewis's importation and sale to Fulton, while discussing the main characters involved.² Second, in an attempt to fully appreciate the significance of the Court of Appeals ruling this paper will briefly discuss the social, legal and political history of Maryland between 1790 and 1815. Third, it will address the trial proceedings and the subsequent appeal to determine why Lewis was successful in obtaining his freedom when other African Americans were being denied freedom. Finally, it will examine an alternate theory as to the identity of Lewis than the one presented in the court records.

II. Background of the case

Sometime in July or August of 1793, John Levant a French subject arrived at Baltimore with his wife and three slaves.³ Levant, along with hundreds of other French refugees, was fleeing from his home country of St. Domingo and was seeking asylum in the United States.⁴

² For the sake of keeping this paper simple I will accept Fulton's view of the case, namely that Lewis was imported into Maryland and sold therein, until I discuss Lewis's potential identity in the theory of the case section.

³ Transcript at 4.

⁴ In Motion the African American Migration Experience, Haitian Immigration: 18th and 19th centuries. (last accessed on 11/21/12). Available online at <http://www.inmotionaame.org/print.cfm;jsessionid=f830229791352586800298?migration=5&bhcp=1>

They were fleeing from a civil war in St. Domingo, which we now call the Haitian Revolution. The Haitian Revolution was the second Revolution in the new world, but the first that led to a black republic. The destruction and turmoil brought about by the Revolution led to a massive exodus of French nationals. A large number of these refugees settled in port cities through out the east coast, notably in New York, Philadelphia, New Orleans, Charleston, Savannah, and Baltimore.⁵ The French navy actually deposited a number of these refugees in Norfolk, Virginia.⁶ In July of 1793 fifty-three ships filled with refugees and their slaves landed in the port of Baltimore.⁷

In order to fully comprehend the response of the French residents of St. Domingo, namely the massive exodus, consider the vivid description provided by Reverend John R. Beard, in his biography of Toussaint L’ouverture⁸. Rev. Beard describes with vivid imagery the chaos that was St. Domingo:

The slaves awoke as if from an ominous dream ... the negroes on the night of August 21st, 1791, arose in the terrific power of brute force ... [t]hey fell on the plantations, slaughtered their proprietors, and destroyed the property ... [t]hose rich houses, those superb factories, were in ruins. Conflagration raged everywhere. The mountains, covered with smoke and burning fragments, borne upwards by the wind, looked like volcanoes. The atmosphere, as if on fire, resembled a furnace. Everywhere were seen signs of devastation,--demolished edifices, smoldering [*sic*] embers, scattered and broken furniture, plate, and other precious articles overlooked by the marauders; the soil running with blood, dead

⁵ In Motion the African American Migration Experience

⁶ Milestones 1784-1800, The United States and the Haitian Revolution, U.S. Department of State, Office of the Historian, (last accessed on 11/20/12) available at <http://history.state.gov/milestones/1784-1800/HaitianRev>

⁷ In Motion the African American Migration Experience

⁸ Rev. John R. Feard, D.D., John Rely, *Toussaint L’Ouverture: A Biography and Autobiography*, Academic Affairs Library, UNC-CH University of North Carolina at Chapel Hill, 2001 (last accessed on 11/20/12), available online at <http://docsouth.unc.edu/neh/beard63/beard63.html>

bodies heaped the one on the other, mangled and mutilated, a prey to voracious birds and beasts ...⁹

The French slave owners had two options either stay and fight and risk suffering the fate of their white countrymen or flee the country with whatever they could take with them. Levant chose the latter. Whether or not Levant intended to board a ship headed for Baltimore is a mystery, but a 1793 refugee pass¹⁰ indicates that it was highly unlikely. The massive exodus of 1793 created a problem – too many people wanting to get out but not enough ships to get them out. The solution was the establishment of a rule, which stated that anyone who wanted to leave the island needed authorization from the Civil Commissioners of the French Republic.¹¹ The Commissioners designated the ship that the refuge could embark on, and if the person did not embark on the designated ship on the specified date the permit would be void.¹²

Nonetheless, Levant landed in Baltimore in 1793 and resided therein until his departure in 1796.¹³ He returned to the West Indies, presumably with his wife, but without one of the slaves he had brought with him to Baltimore. This was because in 1794 Levant sold Lewis to a man named William Clemm.¹⁴ Clemm was a famous and wealthy merchant. He owned many

⁹ Id at 48

¹⁰ In Motion the African American Migration Experience

¹¹ Id

¹² Id

¹³ Transcript at 4

¹⁴ Id

properties in and around Baltimore and imported copper and silver from England.¹⁵ His son William Clemm Jr. was the husband of Maria Clemm, the aunt of Edgar Allan Poe, and their daughter Virginia was Poe's wife.¹⁶ William Clemm Sr. owned other slaves, and like many other slave owners in Baltimore he hired them out to work on the ships at the harbor.¹⁷ Slavery in Baltimore was different than slavery on the plantations of Princess George's County and other parts of southern Maryland. During the 1800s in Baltimore slaves traveled around the city and those with special skill would be hired out by their masters for wages, which would sometimes be divided between the slave and the master. Lewis may have had a special skill, but that subject will be explored in section IV. However, it seems that William Clemm did not hire Lewis out for too long, if at all, because he sold Lewis the same year he purchased him to Fulton.

Fulton, like William Clemm, was a prominent Baltimore merchant.¹⁸ He was a partner in the firm Fulton & Starck Grocery and Flour Business, as the name suggests he imported and sold produce.¹⁹ But before engaging in trade he owned stables and sold horses and horse equipment.²⁰

¹⁵ *Federal Gazette*, III, 1275, 4 (Dec. 11, 1797); See *Federal Intelligencer*, III, 631, 4 (Nov. 12, 1795); *Federal Gazette* (Baltimore, MD) XXVII, 4169, 3 (September 25, 1807); *American and Commercial Daily Advertiser* (Baltimore, MD) XXVI, 4163, 3 (September 18, 1812)

¹⁶ *Letter: Edgar Allan Poe to Mrs. William Clemm [Maria Clemm] and her daughter Virginia*, August 29, [1835], Maryland Digital Cultural Heritage, (last accessed on 11/20/12); *Letter (incomplete): George Poe, Jr. to William Clemm*, March 6, 1809, Maryland Digital Cultural Heritage, (last accessed on 11/20/12), available at <http://collections.mdch.org/cdm/compoundobject/collection/poe/id/113/rec/18>

¹⁷ August 11, 1796, *Federal Gazette*, V, 863, 4

¹⁸ *Federal Gazette*, 5074, 3 (Sept. 5, 1810); *Republican* 77, 4 (Dec. 31, 1802); Fulton was involved in the public affairs of the city, see *American Commercial Daily Advertiser*, 4569, 3 (Jan. 7, 1814)(Fulton listed as a member of the first ward of the city council); See also *Baltimore Patriot*, 67, 2 (March 21, 1815); *Baltimore Patriot*, 79, 2-3 (April 3, 1813), *Baltimore Patriot*, 79, 3 (Oct. 13, 1814).

¹⁹ *Federal Gazette*, 5273, 1 (May 8, 1811)

Perhaps this is how he became acquainted with one of the attorneys representing him in the freedom petition case against Lewis, namely Thomas Kell, who was a racehorse enthusiast.²¹ But I digress, leaving the discussion of Thomas Kell for later in section III.

According to the lower court's transcript, Fulton owned Lewis for approximately 17 years before Lewis filed the complaint against him, on July 1811, in the Court of Oyer and Terminer and Goal Delivery for Baltimore County, alleging that Fulton was holding him as a slave illegally.²² Representing Lewis were three talented lawyers from Baltimore. His lead counsel was John Scott Jr. a member of the 1820 House of Delegate, and counselor for the city of Baltimore from 1821 to 1831.²³ More importantly, he was the son of John Scott Sr., the Chief Justice of the Court of Oyer and Terminar, who presided over the case.²⁴ The other two attorneys representing Lewis were John Montgomery and Thomas Jennings. John Montgomery at the time of the suit was the Attorney General, and prior to the case he had served in the House of Delegate for Harford County, and the United States House of Representative. He then served two terms as the Mayor of Baltimore.²⁵ Thomas Jennings was appointed Deputy Attorney General of

²⁰ *Federal Gazette*, 1339, 4 (February 24, 1798); *Federal Gazette*, 2122, 1, (Sept. 12, 1800);

²¹ Scharf, *History of Baltimore City and County*, 814 (Thomas Kell listed as a manager of the Racing association for the improvement of the breed of horses)

²² Transcript at 2

²³ *Baltimore Patriot*, XVI, 91, 2(October 18, 1820); *Baltimore Patriot*, XVII, 2514, 2 (March 5, 1821); *Baltimore Gazette and Daily Advertiser*, 75, 12486, 2 (April 4, 1831)

²⁴ Transcript at 2

²⁵ John Montgomery, Archives of Maryland, Biographical Series (last accessed on 11/24/12) available online at <http://www.msa.md.gov/msa/speccol/sc3500/sc3520/001400/001497/html/msa01497.html>

Baltimore City Court in 1831 and was known for his talent as an eloquent advocate.²⁶ On the other side, representing Fulton, were Thomas Kell and Elias Glenn. The lead counsel, Elias Glenn, was the United States Attorney for Maryland and remained in this position until his 1825 appointment to the bench of the United States District Court of Maryland.²⁷

There was no shortage of talent arguing this case, which broaches the question, how could a slave afford to litigate such a case? A question that will hopefully be answered in section IV. Nevertheless, ascertaining the best legal representation possible was essential for a successful freedom petition, because by the early 1800s freedom petitions were more often than not denied.

III. Race Relations in Maryland and the Difficulty of Securing Freedom

The founding generation had mixed feelings regarding slavery. During the Revolutionary War principles of freedom and egalitarianism sprang from the mouths of white citizens from New Hampshire to Georgia. They were advocating for their freedom from the tyranny of the British government. But in the midst of all the cries for freedom a few brave citizens witnessed the hypocrisy in demanding freedom while maintaining a system that enslaved thousands because of the color of their skin, and decided to extend the campaign for freedom to those second class citizens who had no voice to advocate for their own liberation. Abolition, or at least the reformation of the slave system, became an idea supported by many Americans through out the war. As a result, the free black population increased – many of them securing their freedom in courthouses through out the state. But by the late 1790s, just a few years after the Revolution, this abolitionist movement seemed to be losing some steam, and obtaining freedom through the courts became a daunting and often fruitless task.

²⁶ *Republican Star*, XXXII, 52, 3 (August 23, 1831); *Baltimore Gazette and Daily Advertiser*, 85, 14092, 2 (April 14, 1836)

²⁷ Elias Glenn, Archives of Maryland, Biographical Series

A. Thomas Kell: A Halfhearted Abolitionist

Marylander's seemed to be exhausted by the freedom campaign of the Revolutionary War, and individuals no longer held the strong abolitionist ideals they once maintained. Thomas Kell was no exception. Thomas Kell was born September 22, 1772 to Captain Thomas Kell and Aliseanna Kell.²⁸ His father was a wealthy man, making his living by piloting ships from Baltimore to the West Indies, and actually died in Guadeloupe in 1790. According to a 1783 tax list Captain Kell owned 125 acres of land in Joppa Maryland, a small town just outside of Baltimore.²⁹ Captain Kell built his home on this property, which still stands today, albeit with some modifications. The house is located on 1801 Old Joppa Road, Towson, Maryland and has been preserved as a historic site since 1973.³⁰ Thomas Kell Jr. and his 14 other siblings were raised on this property, and Thomas Kell Jr. would have likely been taught Latin by professor John M'Closkey, who opened a boarding school at their house in 1785.³¹

He married Mary Gouldsmith in 1797 and had four daughters. His daughter Elizabeth Kell married August Bradford in 1835, the governor of Maryland during the Civil War.³²

²⁸ Thomas Kell, Archives of Maryland, Biographical Series,

²⁹ Maryland Historical Trust, Inventory Form for State Historic Site Survey, Maryland State Archives, (last accessed on 11/18/12) available online at http://www.msa.md.gov/megafile/msa/stagsere/se1/se5/014000/014000/014064/pdf/msa_se5_14064.pdf

³⁰ Id

³¹ *Maryland Journal*, XII, 62, 3 (Aug. 5, 1785)

³² Thomas Kell, Maryland State Archives, Biographical Series

Thomas Kell owned several properties in and around Baltimore.³³ The British commandeered one of his properties, a large farm located on the outskirts of the city, during the War of 1812.³⁴ His estate was situated on a small hill giving the British an unobstructed view of the American lines on Hampstead Hill, which is why Colonel Arthur Brooke set up temporary headquarters on this property.³⁵

Thomas Kell Jr. did not follow his father's career choice instead he opted for a legal career. He commenced his legal career on August 10, 1796. Like many lawyers of his time his practice was dominated by property cases, evidenced by the Court of Appeals docket of 1810, 1812, and 1814. There is no indication that he ever argued in another petition for freedom case. The most famous case he is associated with is the mail robbery case *United States v. Hare*, 26 F. Cas. 148 (1818) where he along with William Wirt, the Attorney General of the United States, Reverdy Johnson, and Elias Glenn, the U.S. District Attorney argued on behalf of the federal government to convict three men who had robbed the great southern mail carrier.³⁶ Unlike other Maryland lawyers of his time he did not have a prominent national presence but he did have a distinguished local legal career. In 1799 he was appointed the state prosecutor, today the states attorney, for Harford County. He served in this position until 1805, but was appointed again in

³³ Thomas Kell, Dielman File, Maryland Historical Society

³⁴ Id; see also Scott Sheads British at the Gates: Three Country Estates East of Baltimore, Maryland in the War of 1812 Celebrating the 200th Anniversary of the war of 1812, (last accessed on 11/22/12), available online at <http://maryland1812.wordpress.com/2011/04/07/british-at-the-gates-three-country-estates-east-of-baltimore/>

³⁵ Id

³⁶ David Hoffman and the Science of Jurisprudence, Thurgood Marshall Law Library, University of Maryland Francis King Carey School of Law, (last accessed on 11/20/12) available online at <http://www.law.umaryland.edu/marshall/hoffman/usvhare.html>

1823 and served until 1829.³⁷ From 1824 to 1827 it would seem that he was holding two positions because he was also the appointed Attorney General of Maryland.³⁸ In 1827 a seat on the bench for Baltimore County became available after the death of Judge William H. Ward and Thomas Kell was chosen to fill the vacancy.³⁹ He remained on the bench until May 7, 1833 when he resigned to accept a less celebrated but more lucrative position as the Clerk of Baltimore County Court.⁴⁰ He held the mentioned position until a year before his death. He died on March 8, 1846 in his residence located on 65 East Baltimore c. Exeter Street after suffering with an illness for two weeks.⁴¹

Like many lawyers Thomas Kell pursued a career in politics. His contemporaries thought of him as a dedicated Republican “never known to have waiver from his republican principles” and a “true friend of Baltimore” having gone to Annapolis in 1827 when he was not a member of the House of Delegates to preserve the auction duties for Baltimore.⁴² He appeared on the political scene in 1797 serving as the secretary of the city commissioners.⁴³ Then in 1798 he

³⁷ History of the Prosecutor in Harford County, Harford County State’s Attorney’s Office, (last accessed on 11/24/12)
<http://www.harfordcountymd.gov/statesAttorney/index.cfm?ID=792>

³⁸ Maryland State Archives

³⁹ *Easton Gazette*, 3 (Aug. 19, 1827)

⁴⁰ Histories of the bench and bar of Baltimore City, 58; see also Maryland Historical Society

⁴¹ Baltimore Sun, obituary (March 9, 1846); Baltimore City Directory of 1845, Baltimore City Archives Online.

⁴² *Baltimore Patriot*, 2 (Aug. 28, 1821)

⁴³ *Federal Gazette*, 3 (May 18, 1797)

served as the clerk of the city counsel for the first branch.⁴⁴ He capped off his political career by serving twice as a member of the Maryland House of Delegates from Baltimore City, first in 1814 then again in 1816.⁴⁵

Thomas Kell was a devoted Republican, but unfortunately for Lewis, his dedication to abolition was not so firmly rooted. On January 28, 1795 Kell became a member of the Maryland society for promoting the abolition of slavery, and the relief of free Negroes and others unlawfully held in bondage, and served as a member of the present acting committee of that society.⁴⁶ However, by 1811 he was no longer advocating for freedom for those unlawfully held in bondage, instead he was promoting the unlawful bondage of a black man. Perhaps he ignored his prior commitment, because Fulton was his friend, which was possible since both of them were horse enthusiasts and both served in the same local public offices. Or maybe he took the case because Fulton was a wealthy merchant and could pay him good money for his services. After all Kell seemed to have cared more about money than anything else, evidence by his resignation from the respected Baltimore County bench for a less prestigious but more profitable position. Whatever the case, Kell's representation of Fulton exemplifies the shift in Maryland from supporting abolition after the Revolutionary War to restricting the rights of African Americans both free and enslaved by the time of the War of 1812.

B. The Revolutionary War's Impact on Slavery in Maryland

The Revolutionary War had a direct influence on the abolitionist cause, as mentioned above, but it also had an indirect effect. The tobacco revolution was responsible for the increase

⁴⁴ *Federal Gazette*, 2 (Feb. 15, 1798)

⁴⁵ Scharf at 194

⁴⁶ *Federal Intelligencer*, III, 387, 3 (Jan. 28, 1795)

in slave labor in Maryland in the 1600s, which led to Maryland's involvement the trans-Atlantic slave trade.⁴⁷ But the Revolutionary War disrupted the international tobacco market essentially ending tobacco's prominence in Maryland. During the war planters could no longer look to the British market to purchase manufactured goods to cultivate tobacco and had to become self-reliant.⁴⁸ Consequently, planters trained their slaves to develop skills such as smelting iron. After the Revolution many of these slaves used these newly acquired skills to enter the artisan class and earn wages, which many of them used to purchase their freedom.⁴⁹ Moreover, farmers in northern Maryland and on the Eastern Shore turned away from tobacco to the production of corn and grain, essentially ending the tobacco is king mentality. The production of food goods required less slave labor, "encouraging slaveholders to sell some slaves, hire others, and occasionally free others."⁵⁰

The direct and indirect effects of the Revolutionary War helped garner support for the abolition of slavery, which is why abolitionists were able to "bring the question to the floor of the state legislature several times in the 1780s and 1790s."⁵¹ Slavery was not abolished in Maryland until 1864,⁵² but in 1783 the General Assembly made a slavery related concession by

⁴⁷ A Guide to the History of Slavery in Maryland, Maryland State Archives, 4

⁴⁸ Id at 8

⁴⁹ Id at 8, 9

⁵⁰ Id at 9

⁵¹ Id

⁵² Maryland Constitution of 1864, Art. 24

enacting a law prohibiting the importation of slaves into Maryland.⁵³ Because Lewis was granted his freedom under this law I will discuss it in further detail in Section IV. The act, however, was not entirely progressive. Section three of the act stated that all slaves granted freedom under the act or manumitted by the laws of the Maryland were not entitled to vote, hold office, testify against a white man, or enjoy any other rights of a freeman, other than to acquire property and seek redress in court for injury to himself or his property.⁵⁴ This act, however, is evidence that at the time of its enactment African Americans born free – meaning not having been manumitted or granted freedom under the act – were entitled to vote and hold political offices. In Fact, in 1792, Thomas Brown, a free African American, campaigned for the Maryland House of Delegates for Baltimore.⁵⁵

The legislature was not the only branch of government making concessions to the abolition movement. By 1786 Maryland courts influenced by the movement began granting more slaves their freedom by allowing oral testimony as evidence in freedom petition cases where slaves claimed freedom based on descent from a white woman.⁵⁶ Luther Martin, a famous Maryland lawyer, in the case of *Mahoney v. Ashton* stated, “large numbers of negroes [sic] have been let loose upon the community by the hearsay testimony of an obscure illiterate individual”

⁵³ Act of 1783, Ch. 23, Session Laws of 1783, Archives of Maryland Online, Maryland State Archives

⁵⁴ Act of 1783, ch. 23 § 3

⁵⁵ A Guide to the History of Slavery in Maryland, Maryland State Archives, 9, (last accessed on 11/22/12), available online at http://www.msa.md.gov/msa/intromsa/pdf/slavery_pamphlet.pdf

⁵⁶ Id at 28; See also Patricia Ann Reid, *Between Slavery and Freedom*, 19, 20 (2006).

claiming to be descents of a free white woman.⁵⁷ Bigotry aside Luther Martin was correct, the free black population in Maryland was growing, partially because of the liberal granting of freedom in courts, and also because of the aforementioned factors.

C. The Consequences of a Dying Movement

By the second half of the 1790s as the abolition movement began losing popularity the tide changed and racism began spreading through out the state paralyzing the freedom rhetoric that was so prevalent during the Revolution and the few years immediately following it. In Maryland African Americans first felt the effects of the weakening abolition movement in 1796, when the General Assembly passed a comprehensive legislation severely restricting the ability of slaves to obtain freedom. The act of 1796, Ch. 67⁵⁸ prohibited slaves from petitioning for their freedom in the general courts, and allowed such petitions to be brought only in the county court where the petitioner resides. This would work in favor of the master since the jury would be comprised of the master's friends and neighbors. Moreover, the act deterred attorneys from taking freedom petition cases by imposing a penalty for bringing a frivolous petition. The attorney representing the slave would be responsible for paying all legal cost arising from the case if the case were dismissed, unless the judge found that there was probable ground to suppose that the slave had a right to freedom. But slaves were not the only targets of this law, section 20 of the act established strict vagrancy laws by providing that, any free negro or mulatto found living idle, or without visible means of maintenance, may be apprehended and if he or she could not pay for their imprisonment that person could be forced to leave the state, but if that person returns he or she may be sold to serve for a term of six months. Slaves and some free

⁵⁷ Reid, *Between Slavery and Freedom*, 72 quoting (Harris and McHenry, *Maryland Reports*, volume four, *Mahoney v. Ashton*, 314)

⁵⁸ Act of 1796, Ch. 67, *Session Laws of 1790*, Archives of Maryland

blacks were beginning to experience the shift that would make securing freedom in the 1800s an up hill battle.

The black immigrants from Haiti were the next ones to experience the wrath of the General Assembly. In 1797, the General Assembly passed a law to repeal the 1792 law, which created an exception to the 1783 law, allowing French refugees to import their slaves into Maryland. The law was not enacted because of humanitarian concerns but because Marylanders, in particular Baltimoreans, were afraid that these black immigrants would start their own insurrection in Maryland. The law stated that “many of the slaves imported into this state by the French subjects ... have been guilty of disorderly conduct, and or suspected to be dangerous to the peace and welfare of the city of Baltimore” therefore the mayor was given the power to arrest and deport any French slave suspected of such conduct.⁵⁹ But the law still protected the French slaveholders property right by providing compensation for the deported slave. The fear of black Saint Domingans materialized, not in Baltimore, but in New Orleans on January 8, 1811 when several hundred slaves took part in a failed slave revolt.⁶⁰ However, the specter of a black rebellion would be conjured up again in Maryland, as a cover to mask the animosity held by many whites towards African Americans, both free and enslaved, living in Baltimore.

D. The Quasi-Race Riots in Baltimore During the War of 1812

On June 1812 President Madison signed the declaration of war initiating the War of 1812. The declaration of war was received with mixed emotions through out the country. Republicans supported the war, while most Federalists not only opposed but publicly criticized

⁵⁹ Archives of Maryland, Session Laws, Act of 1797, Chap. 76

⁶⁰ In Motion the African American Migration Experience

“Mr. Madison’s War.”⁶¹ In Baltimore the public critique of the war and the Madison administration published in a Federalist newspaper lit the fuse that exploded the political, social, and racial powder keg that Baltimore had become by 1812.⁶² These political, social, and racial tensions culminated into riots during the summer of 1812. The scope of this paper will limit the discussion to the racial aspect of the 1812 riots.

Economic conditions in Baltimore aggravated the racial animosity that whites were beginning to rekindle towards African American in the late 1790s. After the Revolutionary War Maryland began moving away from slave labor to a workforce dominated by wage earners. In Baltimore African American benefitted from this change. The skills that many African Americans developed during and after the Revolution allowed them to compete for jobs with Baltimore’s lower white working class, comprised primarily of immigrants.⁶³ Moreover, many of the cities manufacturers and artisans preferred to hire African Americans to white wage earners. Also from 1802 to 1812 rising prices and stagnant wages negatively impacted the working class intensifying the developing racial divide.⁶⁴ So, when the political discourse brought about by the war sparked riots through out the city, whites used this as an opportunity to exact mob violence on African Americans under the guise of political conflict.

⁶¹ Walter Borneman, 1812 The War that Forged a Nation, 44

⁶² Richard Chew, The origins of Mob Town: Social Division and racial Conflict in the Baltimore riots of 1812,

⁶³ Chew at 279, 283

⁶⁴ Id at 283

The mob needed little incentive to turn their attention from wealthy Federalist towards African Americans. Aware of the racial tension the city elites diverted the attention from themselves by fueling rumors of a possible black insurrection. Samuel Sterrett, a prominent Federalist and Maryland militia captain, testified that in “the midst of all this anarchy and confusion, alarms were raised of a conspiracy among the negroes, hostile to the whites.”⁶⁵ A mere hint of a conspiracy was sufficient to shift the mobs attention from white elites to African American. James Briscoe a free affluent African American accused of making statements promoting insurgency was one of the first to experience the wrath of the mob. The mob demolished Briscoe’s house and his house next door where his daughter lived. Briscoe had informed Major John Abel that he had heard rumors that his properties were going to be targeted the day before the attack, giving Judge John Scott time to take appropriate action in ordering the militia.⁶⁶ Instead the judge ordered Abel not to take action until a warrant could be produced for the person that had made the threat, by the time the militia arrived it was too late. The inappropriate delay by Judge Scott is evidence the authorities inability or lack of desire to protect the black residents.

The riots ceased in 1812 but the rumors of black revolt persisted through out the war contributing to the growing racial divide in the state. During the war somewhere from 3,000 to 5,000 slaves from Virginia and Maryland escaped to the British.⁶⁷ Like at the time of the Revolution the British once again were offering slaves freedom and a chance to fight

⁶⁵ Id

⁶⁶ Id at 282

⁶⁷ Christopher T. George, *Mirage of Freedom: African Americans in the war of 1812*; *Maryland Historical Magazine*, Volume 91, 4. Maryland Historical Society (1996)

their masters. The British policy regarding American slaves fueled the rumors of slaves running away and taking up arms in preparation for an impending slave revolt.⁶⁸ For example, the *National Intellegencer* published a story about runaway slaves that rowed out to an American ship thinking they were the British. According to the paper the slaves were apprehended after asking for weapons for a plan massacre of whites.⁶⁹ The distrust of African American is also evidence by the fact that Major General Samuel Smith, refused to enlist African Americans in the state militia.⁷⁰ In sum, the fear of a slave rebellion that developed in the 1790s as a consequence of the Haitian Revolution created anti-black paranoia in the state, which led white citizens to be committed to slavery and maintaining African Americans in a subordinate role.

E. Three Seminal Cases Inhibiting Successful Freedom Petitions

Maryland courts were not isolated from the racial tensions that developed from the influx of black St. Domingans into the state as a result of the Haitian Revolution. The courts, influenced by the anti-black paranoia, adopted a pattern of favoring enslavement. Between 1790 and 1810 the Court of Appeals heard several freedom petition cases and decided most of them in favor of the slave owner. The following three freedom petition cases exemplify this pattern and are particularly relevant because they involve the bringing of slaves into Maryland.

⁶⁸ Christopher George at 437

⁶⁹ Id.

⁷⁰ Id at 441

In *De Kerlegand v. Negro Hector*, 3 H. & McH. 185 (General Court of Maryland 1794), the court applied the act of 1792, ch. 56,⁷¹ retroactively in order to preserve the property right of a French slaveholder who had entered Maryland with a slave before the enactment of the said act. In denying the slave his freedom the court seemingly adopted the defendants argument that the act of 1783, ch. 23 prohibition on the importation of slavery only meant to prohibit the voluntary importation of slaves into the state and not involuntary importation. Then in *Spriggs v. Mary* 3 H. & J. 491 (Md. 1814), and *Spriggs v. Presley*, 3 H. & J. 493 (Md. 1814), the Maryland Court of Appeals reversed the judgment of a lower court granting the petitioners their freedom because they had been born outside Maryland and had been brought into the state after the enactment of the Act of 1796, ch. 67,⁷² which prohibited the importations of certain slaves into the state. The Court of Appeals held that because the petitioners, along with their mother, a Maryland resident, had been conveyed as gifts to an infant living outside the state, therefore that infant through her guardian was entitled to bring the petitioners into the state the act of 1796, ch. 67 notwithstanding. The three aforesaid cases established strong legal precedents against granting freedom in cases where slaves claimed their right to freedom under the act of 1783, ch. 23 or its successor the act of 1796, ch. 67.

IV. The Trial and Appeal

Confronted with a combination of social, legal, and political factors guaranteeing the denial of freedom to slaves, particularly slaves claiming freedom under the prohibition of

⁷¹ *Infra* at 14

⁷² The act of 1796, chap. 67 consolidated previous law relating to slaves, including the act of 1783, chap. 23

importation acts,⁷³ Lewis's faith in the legal system did not waver and on July 9, 1811 he filed a complaint at the Court of Oyer and Terminer for Baltimore County,⁷⁴ against Fulton demanding his freedom. In the initial complaint Lewis alleged that he was born free and was held in slavery by Fulton illegally. But the complaint was modified halfway through the case, providing Lewis an alternate argument to claim his freedom. The trial record and the appellate report lack detailed information about the case and the arguments made by the lawyers. Accordingly, the following interpretation of the arguments presented on behalf of the parties is speculative.

After the complaint was filed the court issued the summons, which was delivered to Fulton by the sheriff. Fulton and his sole counsel at the time, Elias Glenn, timely presented themselves to the court and denied the allegation stating that Lewis was not entitled to his freedom. His counsel then asked for leave "imparle", which means that the court will delay proceedings, generally for the parties to gather evidence or discuss a settlement. The court granted the extension and scheduled the case for September 16, 1811. On that date the parties again appeared in court but the story was the same. Fulton by his counselor asked for another leave to imparle and the court once again rescheduled the case. The record does not indicate on what grounds he based his prayer for imparle, but clearly he was not yet prepared for a trial on the merits. The case was rescheduled for January 13, 1812. The parties both appeared in court on that date but this time Fulton appeared with an extra lawyer, namely Thomas Kell. Lewis, not to be out done, appeared with three lawyers, John Scott Jr. his original counselor, Thomas Jennings

⁷³ Act of 1783, and Act of 1796

⁷⁴ The Court of Oyer and Terminar had jurisdiction over felonies and other crimes, offenses and misdemeanor. Freedom petitions were treated as criminal cases, which is why they fell within this courts jurisdiction.

and John Montgomery. The appearance of the new lawyers was an indication that the parties were now ready for a trial.

The judges sitting on the bench that day were, John Scott Sr. (chief justice and father of John Scott Jr.), George Presbury, and Job Smith. The case began with Fulton once again asserting that Lewis was not free. The court then called a jury of twelve men to hear the case. After these twelve men were sworn in the Lewis's attorneys motioned the court to withdraw a juror named James Hazlet. The record does not disclose why this particular juror was withdrawn. Lewis attorneys then requested leave to amend the complaint, the court granted the request and the rest of the jurors were discharged. Apparently, the leave was more of a recess because the case continued that same day and a new jury was sworn in, albeit four of the previous jurors remained on the jury. The new complaint read,

“To the honorable the justice of the Court of Oyer and Terminar and Gaol Delivery for Baltimore County – the petition of John Lewis, negro humbly showeth; that he is a native of the island of Saint Domingo was born free and by the laws of the state of Maryland is entitled to his freedom and that he is illegally held in slavery by the said David Fulton of Baltimore County. *Your petitioner further showeth unto your honors that he is a native of the Island of Saint Domingo and that he is held in slavery by the said David Fulton when by the laws of the state of Maryland he is entitled to be free, that is to say by having been brought into this state and sold therein, and by not having been exported within one year after his importation and by not having been recorded within the time limited by law [emphasis added].* Your petitioner therefore prays that your honors will cause summons to issue for the said David Fulton that he may show cause if any why your petitioner should not be discharged from slavery and declared and he will pray ye”

Lewis's attorneys adopted a new strategy for the case – they chose to argue in the alternative.

First, they argued that Lewis was born free in Saint Domingo and came to Maryland as a freeman. Therefore, his subsequent enslavement in Maryland was illegal. Free black men in Maryland could not be forced into slavery, unless they violated some criminal law, like the vagrancy law, *supra*, that required such a penalty. Accordingly, if Lewis's lawyers could convince the jury that Lewis was born free in St. Domingo and entered Maryland as a freeman

then he would be entitled to his freedom. The record does not indicate whether Lewis had any evidence to prove that he was born free in St. Domingo, if he did not it would be extremely difficult for him to win his freedom. The jury was all white and probably knew Fulton or had heard of Fulton, since they were all from Baltimore. Furthermore many of them presumably held animosity towards blacks, especially St. Domingan blacks, because of the widespread fear of a black rebellion at this time. The deck were stacked against Lewis and the lack of evidence, perhaps was sufficient to induce his lawyers to adopt a new game plan. So, if the jury did not accept Lewis's initial argument but instead believed Fulton's story that Lewis was brought to Maryland as a slave and was sold therein, then they would argue that Lewis's importation was illegal according to the act of 1783, ch. 23.

An examination of the trial record reveals that the jury adopted Fulton's story, since his memorandum of the facts was the only fact statement sent in the transcript to the Maryland Court of Appeals. Also the transcript reveals that before directing the jury on how to decide the court indicates that it had accepted Fulton's story. Therefore the trial was more likely than not dominated by the second argument. Under the second argument Lewis's attorney would have had to concede that when Fulton entered Maryland he entered as a slave.⁷⁵ But because his alleged entrance was in 1793, after the enactment of the 1783 prohibition on the importation of slaves, he would be immediately entitled to his freedom, unless Lewis's importation fits into one of the exceptions.⁷⁶ The act of 1783, ch. 23 § 1, states that any slave imported into Maryland

⁷⁵ See *infra* at 2-4

⁷⁶ Lewis filed his freedom petition in 1811 therefore his case should have been governed by the act of 1796, ch. 67 which replaced the act of 1783, ch. 23, however, section 31 of the 1796 act states that all rights acquired under the act of 1783 shall not be affected or impaired by the act. Since, Lewis's argument is that he was entitled to his freedom in 1793 when he was first sold, before the enactment of the 1796 law, then the act of 1783 must apply.

after the enactment of this law shall be immediately entitled to his freedom, unless the slave was brought into the state by a U.S. citizen who intendeds to reside in the state, has resided in the state for at least one year, and who is importing a slave that has resided in the U.S. for at least three years before his or her importation. Moreover, Section two of the act creates an exception for persons travelling through the state, or sojourning in the state for a short time, so long as they do not sell their slave(s) in the state but carry them out when they leave the state. Under this law Lewis would be entitled to his freedom because John Levant was not a U.S. citizen and if he was only sojourning in the state Lewis would still be entitled to his freedom, since the subsequent sale violated the exception.

However, Lewis's importation was subject to a third exception created by the act of 1792, ch. 56, which allowed French subjects to import slaves into Maryland with some restrictions. According to the Court of Appeals report⁷⁷ it was under this law that Fulton based his argument. Fulton's attorney probably argued that John Levant was a French subject that he was entitled to import five slaves under the law since he was a married man; therefore none of Levant's slaves are legally entitled to freedom. The problem with this argument is that section 4 of the 1792 act explicitly prohibits any French subject who has imported a slave to sell that slave to any person residing in the state. To overcome this problem Fulton's lawyers tried to manipulate the holding in *De Kerlegand*.⁷⁸ Presumably, they argued that *De Kerlegand* stands for the premise that the act of 1783 only meant to prohibit the voluntary importation of slaves, and slaves that were

⁷⁷ *Fulton*, 3H. & J. at 565

⁷⁸ *Infra* at 17, 18; See also *Fulton* at 564

brought here involuntary are excluded from the act, including the prohibition on the sale of imported slaves in the state.⁷⁹

To counter this argument Lewis's lawyers probably argued that not only is Fulton's argument reading too much into *De Kerlegand*, but more importantly *De Kerlegand* should not control the outcome of the case because the facts here are substantially different than the facts in *De Kerlegand*. First, the court in *De Kerlegand* did nothing more than state that the act of 1792 applies retroactively to a French subject who sought asylum in Maryland and became a U.S. citizen before 1792 as a result of the Haitian Revolution. The *De Kerlegand* court does not make any distinction between voluntary and involuntary importation when they analyzed the act of 1783. Nor does the act itself make such a distinction, under the act and the 1792 act the only way to overcome the importation prohibition is if the importation falls within the stated exception. In this case Lewis was imported in accordance with the third exception, but once he was sold that exception became void, and he was immediately entitled to his freedom. Second, in *De Kerlegand* the defendant was the original slave owner who imported the slave into Maryland. In this case the original owner had left the state and the person asserting the exception was a subsequent owner who was not a French subject. Furthermore, unlike in *De Kerlegand*, here the slave was sold to a Maryland resident, an action expressly prohibited by the 1792 act and the act of 1783. In fact in *De Kerlegand* the defendant admits that under the treaty between France and America, which led to the 1792 act, "De Kerlegand, as a French subject, might hold this property, if not brought here for the purpose of sale."⁸⁰ Thus, *De Kerlegand* is not binding on Lewis's case.

⁷⁹ See *Fulton* at 565

⁸⁰ *De Kerlegand* at 196

The lower court agreed that under the facts presented by Fulton, Lewis was entitled to his freedom. The court held that Lewis is immediately free and awarded him \$15.03 for costs he incurred in the prosecution of his petition.⁸¹ Fulton, disagreed with the court and asked for a leave to except, the court signed his bill of exception on February 20, 1812. The lower courts transcript was filed in the Court of Appeals on May 18, 1812⁸². The Court of Appeals decided the case on May 1, 1815. The court affirmed the judgment of the lower court.⁸³

V. Who was John Lewis?

The lack of information in the trial record and the appellate record makes it very difficult to confidently assert the true identity of Lewis. However, the original complaint, which asserts that Lewis was born free in St. Domingo, provides an alternate theory as to his identity then the one presented by Fulton's story. According to Fulton, Lewis was a St. Domingan slave brought to the U.S. by his master John Levant. But the Baltimore directories and the original petition seem to tell a different story as to who Lewis was.

Under the original petition Lewis claims that he was born free and does not mention anything about being brought to the U.S. as a slave. This is not an unbelievable statement because French refugees were not the only ones escaping from St. Domingo to the U.S., many free blacks were also on those ships.⁸⁴ So, Lewis may have been one of those free black men one

⁸¹ Transcript at 4

⁸² *Id.* at 1

⁸³ *Fulton* at 565

⁸⁴ In Motion the African American Migration Experience (according to this site, "The revolution in Saint Domingue unleashed a massive multiracial exodus: the French fled with the bondspeople they managed to keep; so did numerous free people of color, some of whom were slaveholders themselves. In addition, in 1793, a catastrophic fire destroyed two-thirds of the

of the ships that arrived in Baltimore in 1793. If this is true then it's possible that he settled in Baltimore and by started hiring himself out as a hairdresser therein. The Baltimore City directories list a colored man by the name of John Lewis as a hairdresser from 1810 to 1816.⁸⁵

Many African Americans from St. Domingo were skilled hairdressers and some became wealthy from this profession.⁸⁶ For example, Pierre Toussaint was a St. Domingan slave - imported into New York by his owner after the commencement of the revolution.⁸⁷ Toussaint was a skilled hairdresser and made a small fortune working as such. He supported his owner while they were living in New York until he was freed in 1807. He then purchased his sister's freedom in 1811, and the freedom of a young Haitian woman whom he later married.⁸⁸ He continued working and became somewhat of a philanthropist helping several people and organizations, including the Catholic Church financially.⁸⁹ In 1990 he was buried in Saint Patrick's Cathedral, becoming the first person other than an archbishop to be buried there.⁹⁰ If Lewis was anywhere near as talented as Toussaint he could have been a wealthy man and because he had no owner and no ties to Baltimore this could have induced Fulton to enslave him

principal city, Cap Français (present-day Cap Haïtien), and nearly ten thousand people left the island for good.”)

⁸⁵ Baltimore City Directories of 1810, 1812, 1814-1815, 1816, available at Baltimore City Archives online.

⁸⁶ Baltimore City Directory of 1810, (Many of the Hairdressers listed in the directory are colored men.)

⁸⁷ In Motion the African American Migration Experience

⁸⁸ Id

⁸⁹ Id

⁹⁰ Id

and hire him out. Fulton had a connection to the hairdressing business through one of his tenants, John Coulter, who opened a hairdresser and perfume shop at one of Fulton's properties, namely the sign of the globe in Baltimore in 1807.⁹¹ Perhaps Fulton was trying to enslave Lewis and force him to work at this shop because he was a skilled hairdresser and could potentially make Fulton a lot of money. Further, if Lewis was a talented hairdresser then this explains how he was able to afford the services of three talented lawyers. If this were the case then it might be a good reason as to why John Lewis was able to secure his freedom when others could not. This, however, is only a theory, deduced from the very little information produced in the trial record.

VI. Conclusion

The Revolutionary War was the source of the first mainstream abolition movement. The direct and indirect effects it had on American society changed the perspective of many white citizens regarding slavery. But the popularity of this enlighten movement was short lived in Maryland. The Haitian Revolution and the influx of black St. Domingans into Baltimore began to slowly weaken the movement. As a result, Maryland's generally assembly dedicated itself to the maintaining African Americans in a subservient status by developing harsher laws relating to slaves and free blacks, fearing that the blacks would start their own revolt in Maryland. The courts followed the assembly's example, by denying many slaves their right to freedom. But the general public did not act on their fears and their revived racism until the Baltimore riots in 1812, when whites violently attacked several African Americans and their property. Lewis must have been aware that the race relations in Baltimore were not at their best when he decided to file his petition for freedom. His lawyers must have known that the courts were disinclined to grant slaves their freedom. But, their confidence in the legal system helped them look past the

⁹¹ *American and Commercial Daily Advertiser* (Baltimore, MD) X, 1785, 4 (January 30, 1805)

obstacles and Lewis was reward with his freedom. This case is a microcosm of the commitment of antebellum slaves to the law as a way of challenging their subservient status even though justice was not always on their side.