



HISTORY LESSONS

INSTRUCTIVE LEGAL EPISODES FROM MAINE'S EARLY YEARS — EPISODE 3: AN ENSLAVED MAN SUING IN FEDERAL COURT

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INTRODUCTION

IN 1837, LAMBERT BERCIER of French Guadeloupe engaged Captain Sylvanus Prince of North Yarmouth, Maine, to transport Bercier's 30-year-old slave Polydore and Bercier's 17-year-old son Eugene to Maine on board the brig *Galen*. The outcome was *Polydore v. Prince*,¹ an 1837 federal decision often ignored² and sometimes mischaracterized,³

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¹ 19 F. Cas. 950, 1 Ware 402 (D. Me. 1837). Court documents are inconsistent in spelling Polydore and Sylvanus, varying between “y” and “i.” We use “y,” which predominates.

² “[N]ever cited in a federal case dealing with slavery”; “[t]he omission ... is particularly striking in the *Dred Scott* case.” Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* 245 (1981).

³ For example, Finkelman, *id.* at 243, says the case “was a suit against the ship *Prince* by Polydore, a slave traveling with his master from Guadeloupe to Portland, Maine.” Evan J. Roth, *Maine’s Place in Lincoln’s “House Divided,”* 28 Me. B.J. 16, 18 n.23 (2013), says in a footnote that Prince was the ship’s name. Not so. The ship was the brig *Galen*, and Prince was the captain’s name. The ship itself was not libeled; only the captain was asked to respond to “a cause of damages, civil and maritime.” And 17-year-old Eugene Bercier carefully did not call himself Polydore’s master, for reasons appearing later.

holding an enslaved man could sue in federal admiralty court for floggings on the high seas. Recent access to archived court documents permits us to revisit the case.⁴

The voyage started June 21.⁵ Lambert Bercier paid fares for both Polydore and Eugene. During the voyage, Captain Prince beat and flogged Polydore several times. On July 15, after the voyage ended, Portland admiralty proctors⁶ Codman and Fox filed a sworn libel in federal court against Prince, seeking damages of \$300 on Polydore's behalf. The case proceeded before Maine's only federal judge, Ashur Ware.⁷

July 17 was "the day assigned for hearing & trial."⁸ Polydore's proctor Fox summoned Prince, Eugene, and five other witnesses to appear in court on that date, and Eugene's sworn statement was taken in writing. Prince also appeared and filed a motion to require Polydore to give surety to appear and pay costs. Judge Ware denied the motion for reasons he explained later. The hearing was then postponed to July 25.⁹ Additional summonses were issued for July 19 and 25. On July 19, three "depositions"¹⁰ of crew

⁴ We examined scanned original pleadings and papers emailed from the National Archives at Boston (Waltham, Massachusetts).

⁵ In his written testimony, Eugene Bercier said the first beating was July 1, "ten days after leaving Point Petre Guadeloupe." That would make the departure date June 21.

⁶ Proctor was the term used for admiralty lawyers.

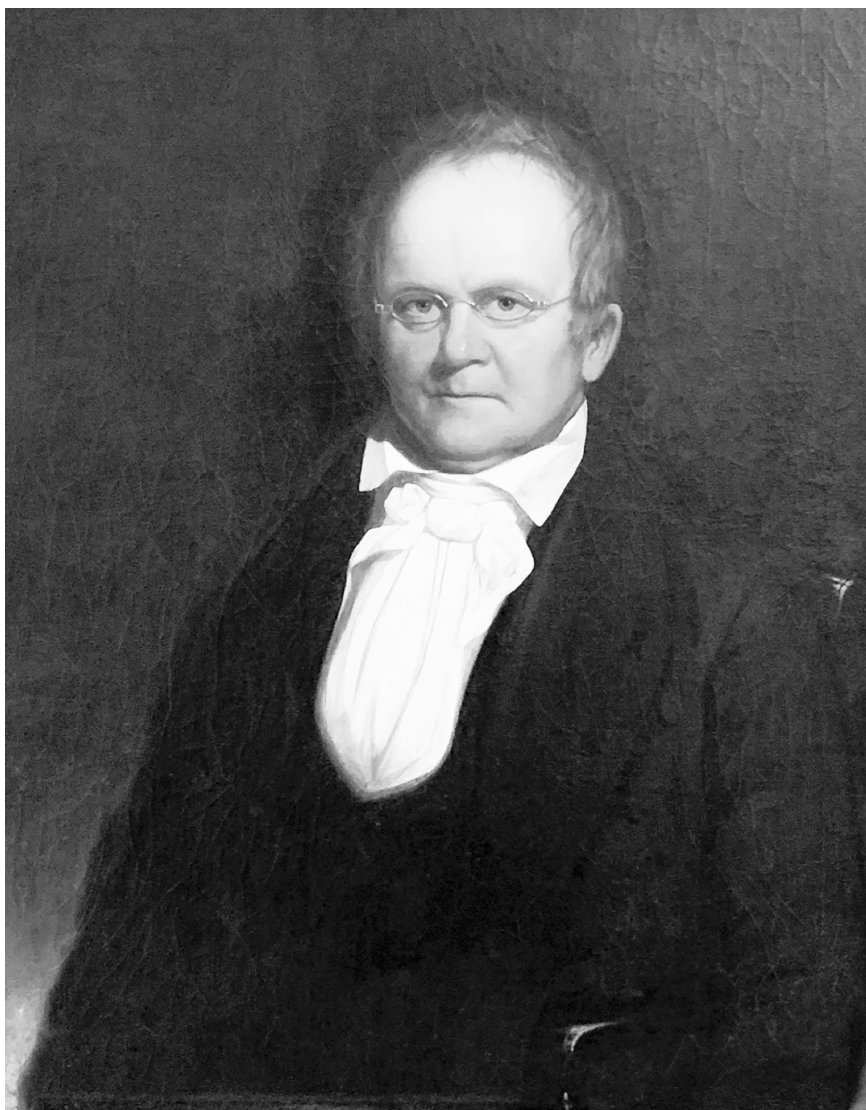
⁷ Peter Charles Hoffer, William James Hull Hoffer, and N.E.H. Hull, *The Federal Courts: An Essential History* 125 (2016), treats the libel as seeking Polydore's freedom and refers to "next friends" suing on his behalf. We found nothing in the case file or documents about next friends, and the libel itself makes no request for a declaration of freedom, calling the lawsuit only "a cause of damages, civil and maritime." It was Prince, the captain, who invoked Polydore's enslaved status. Lambert and Eugene both seem to have recognized that Polydore's enslaved status became problematic when the vessel reached Maine, a free state – by their treatment of him as a servant, not a slave; the fact that nothing was required of Polydore on the voyage; and Eugene's fear that Polydore might leave him rather than go on to New Orleans. Certainly Judge Ware's reasoning leads to the conclusion that Polydore became free in Maine, but Ware was not called upon to declare Polydore a free man.

⁸ Final record book, p. 449.

⁹ *Id.*

¹⁰ These were not depositions in the contemporary sense (question-and-answer format). Instead, they were written statements sworn before the clerk of the federal court.

An Enslaved Man Suing in Federal Court



*Judge Ashur Ware, as depicted in the portrait hanging in the
Edward T. Gignoux Courthouse in Portland.*

members were taken by consent to be used at trial. On their covers they are called “testimony,” like Eugene’s July 17 sworn statement. On July 25, Prince filed his sworn response to the libel. Although there is no trial record, there must have been live testimony in addition to what is contained in the written documents. For example, there are travel and attendance costs for two other witnesses. And in his decision Judge Ware referred to at least one detail not appearing in the written “testimony.”¹¹ According to the final record book, judgment was entered “after a full hearing of the evidence produced as well on behalf of said Respondent as on the part of said Libellant & the arguments of the respective Proctors.”¹²

SWORN STATEMENTS

Libellant Polydore

Polydore’s sworn libel¹³ claimed that he boarded the *Galen* as a fare-paying passenger and conducted himself appropriately throughout the voyage, but that Prince beat and flogged him severely. Specifically, on July 1 Prince, “with his fist clenched without any provocation, struck, beat & bruised your Libellant, and afterwards on the same day with force and violence committed a second assault on your Libellant giving him twelve severe blows with a cowhide whereby your Libellant was dangerously bruised & hurt & put in great pain & suffering ... afterwards on the 5th day of July AD 1837 the said Prince, on the high seas committed another assault on your Libellant with a Rope, and with great force and violence struck your Libellant many severe blows whereby he was severely hurt & wounded and much lacerated.” Polydore said he was “damnified” in the amount of three hundred dollars.

Eugene Bercier

Eugene Bercier described Polydore as his father’s 30-year-old slave sent to accompany Eugene on the voyage as a “servant.” Polydore “does not

¹¹ See *infra* note 23.

¹² Final record book, p. 451.

¹³ We include the libel and answer, although Judge Ware appears not to have considered Prince’s sworn answer as evidence, stating at one point that there was “no proof in support of” one of Prince’s sworn assertions. See 19 F. Cas. at 950.

An Enslaved Man Suing in Federal Court

understand English – not at all,” and Captain Prince understood “only a few words” of French. Eugene said Polydore woke him on July 1 “to be a witness to a flogging which he received by a cow hiding from the Captain” and Polydore was “severely cowhided.” On July 5, Polydore also “received twenty eight lashes with a rope about as thick as two fingers & was twisted together & had a handle to it,” and he was “severely whipped & he has now many marks on his back.”

In addition to specifying Polydore was only his “servant,” Eugene said: “Polydore was told by my father if he had a mind to do anything on board the Brig to do it but he was not commanded by my father to do anything.” Reading between the lines one might conclude the Berciers had some concern about Polydore’s status as he entered a free state, especially given federal statutes prohibiting importing slaves.¹⁴ Eugene said in his written testimony that on the day of the flogging “I told [the captain] my father forbade my flogging or whipping him. The Capt. asked me to tell Polydore to behave better. I told him if I did so, Polydore would leave me when I got to this country.” There is then an extensive discussion of the cowhide. Eugene said Polydore told the captain he threw it overboard, but in fact Eugene had retrieved the cowhide from the captain’s mattress and locked it in his own trunk. Eugene said he lied to the captain about the cowhide because he “wanted to have it before the Court.”

Lewis Young

Lewis Young, the *Galen*’s 22-year-old cook from Eastport Maine, saw Prince “one morning flog Polydore under the main boom – he first struck him with his fists I believe ... He gave him about three blows with his fists as near as I can guess – He struck him in the side of his face.” Young recounted an ensuing argument over whether Polydore had sworn at Prince, Polydore speaking French, and refusing Prince’s demand to clean out a hen coop. “Then the capt. struck him with the cowhide – can’t say how many blows but struck him a good many & told him to go forward ... There were a number of marks on his back – they were cut so deep as to

¹⁴ See 1807 Act to Prohibit the Importation of Slaves after 1808, 2 Stat. 426 (Mar. 2, 1807); 1818 Act modifying the 1808 importation prohibition, 3 Stat. 450 (Apr. 20, 1818); 1820 Act making slave trafficking from a foreign country to the United States a crime of piracy punishable by death, 3 Stat. 600 (May 15, 1820).

fetch blood.” The cook recounted another whipping on July 5. He said Polydore “went down in the hold & I saw him go over the molasses casks into the cabin & get the cowhide & come forward with the cowhide & said he meant to throw it overboard – I do not know what he did with it.” The cook says he heard Polydore tell “his master in French to tell the Capt. that he had thrown it overboard-& his Master Eugene told the Capt so. The Capt then went & got a piece of cod line & twisted it once & fastened it on to a stick about eighteen inches long – it was tied to the stick & it made two ends of lines – there was a knot in the end of the line – I was below & heard the whipping but did not see it.” The cook said Prince asked Eugene to make Polydore behave better. “Eugene said he was not afraid that Polydore would leave him.¹⁵ I asked Polydore if he meant to leave Eugene – he said he was not going to leave him – Polydore I believe & as far as I see keeps under Eugene.”

Bartlett Stowell

Bartlett Stowell, a 19-year-old seaman from Albany, Maine, said he “saw the Capt. strike Polydore with his fists three times.” Polydore refused the captain’s demand to clean out a hen coop and “[t]he Capt struck Polydore with the cow hide before he struck him with his fists – I do not know how many blows he gave with the cow hide – but he gave him a good beating – I saw blood on his back afterwards – I saw the Capt afterwards flog him on the forecastle with a piece of a small line lashed on to the end of a stick – There was one knot in the end of the line – one end of it – he gave him a severe whipping & struck him a good many blows but was not a great while in whipping – it left the marks on his back.”¹⁶

William Shannon

William Shannon from Halifax, Nova Scotia, recounted the dispute between the captain and Polydore over the cowhide, Polydore saying he

¹⁵ This was inconsistent with both Eugene’s written testimony recounted above and Prince’s sworn answer recounted below.

¹⁶ Stowell added: “A Lawyer has sued Capt. Prince for beating me.” The docket in that case, *Stowell v. Prince*, no. 29 (D. Me. Aug. 1, 1837), reveals that Prince admitted he beat Stowell, but said it was justified because of his inadequate performance as a crew member. After a hearing, Judge Ware dismissed Stowell’s libel. *Id.*

An Enslaved Man Suing in Federal Court

took it and threw it overboard, and the captain beating him “with the double of a small line – I counted the blows which the Captain gave him & he gave him twenty eight blows ... He gave him pretty hard cracks – the blood came I saw it – there was only a very little blood – I saw no stick – I saw the line – I saw no knots in the line but it might have [been] full of them.”

Respondent Captain Sylvanus Prince

Prince signed an 11-page sworn answer on July 25. At the outset, he challenged Polydore’s ability to sue in federal court. He argued Polydore as “a negro Slave” in Guadeloupe had no capacity to bring a lawsuit. According to Prince, only Polydore’s owner – Lambert Bercier – could maintain the suit on Polydore’s behalf.

Prince also said that upon arrival in Portland, Eugene and Polydore planned to set out for New Orleans by way of New York “as soon as possible,” and in New Orleans Polydore was to become the slave of another son of Lambert. Prince claimed Lambert actually engaged *him* to stand in Lambert’s place regarding both Polydore and Eugene. (Eugene said in his written testimony that his father did not put him under Prince’s care and that Prince had no control over him or Polydore. He did say that his father asked Prince to show him to a boarding house in Portland.) According to Prince, in light of Polydore’s lower fare (60 francs vs. 150 for Eugene¹⁷), Polydore was to render services to Prince as well as Eugene.

Prince went on to detail many complaints about Polydore’s behavior, including his insolence and use of French. He said Eugene refused to reprimand Polydore because he was afraid Polydore would run away when they reached Portland. Things erupted over a hen coop that Polydore resisted cleaning, which contained fowls that Prince alleged were for Eugene. When Prince insisted, Polydore swore at him in French “which the respondent was well enough acquainted with the language to understand and in particular *Sacre nam de ge* [sic],¹⁸ *cochon*, and other like French phrases.” Prince accused Polydore of using offensive body language (“insolently and insultingly clapped his hand upon his posteriors, turning them toward the respondent”).

¹⁷ Eugene’s written testimony said 12 *dollars* vs. 30.

¹⁸ Perhaps Prince’s mishearing of “*dieu*.”

Libel Adj^r June Term 1837
 P 27
 Pollock
 Sylvanus Penn
Codman & Fox

Costs.

Libel	17
travel att. &c.	2.97
warrant	2
entry fee	5
printing	72
Sher. W. Shammor	75
E. Young	1.25
B. Stowell	75
E. L. Percin	1.50
4 subpoenas	60
service of same	6.48
Witness travel attending	
E. L. Percin	1.20
W. Shammor	1.20
E. M. Morris	1.20
E. Young	1.20
S. Radford	1.20
B. Stowell	2.54
swearing 10 witnesses	.60
record in Register	3.75
service of warrant	4
taxing costs	50
	<u>56.06</u>
Damages	51
	<u>\$107.86</u>

Amount paid in Sept. 1. 1837

filed July 15. 1837 was attached issued
 some day returnable Monday July 17th
 1837

Portion of original libel cover showing costs,
 witness fees, and damages.

An Enslaved Man Suing in Federal Court

Prince admitted he pushed Polydore “but with no more force or strength than was necessary” and did not use his fist. He said Polydore was “obstinate, unruly, disobedient and insolent,” and Prince “went for the cowskin and struck him a few times with the same over and upon his back,” but “in a moderate manner.” Thereafter he did not permit Polydore to use the cabin but required him to sleep “forward” like the crew. Prince said Polydore stole the cowhide from Prince’s cabin and Eugene falsely said Polydore had thrown it overboard. When Eugene refused to discipline Polydore, Prince “took a small codline which he had attached to a small stick for the purpose, and whipped him with it doubled, giving him a few strokes with it as he believes not over a dozen but he denies that there were any knots in it or that he did it in a violent manner – but that he did it in a calm, reasonable and moderate manner.”¹⁹

THE DECISION

Judge Ware wrote an opinion dated August 21, 1837,²⁰ and published it in his first volume of *Admiralty Decisions*.²¹ The judge’s synopsis of the facts makes clear he did not accept much of Prince’s version of what happened.²²

¹⁹ Prince intimated he had authority as captain to flog Polydore (“feel[ing] it absolutely necessary to cause the Said Polydore to submit and to feel that he was under your respondent’s authority, as master of the vessel, as no other person on board could or would exercise any”). Answer, p. 7. Ware ignored the argument.

²⁰ According to Judge Ware’s successor, Judge Edward Fox (who was one of Polydore’s proctors), Judge Ware was known for deciding “claims for wages, torts, &c.” promptly, because “any protracted delay of judgment therein, is tantamount to a denial of justice.” He decided most of these causes “upon the conclusion of the arguments, and those which were retained for advisement, were at once examined, and an opinion prepared and announced in a very few days. The researches [Judge Fox] made do not indicate, that in any admiralty cause presented to him for decision, his opinion was delayed for more than thirty days, and generally it was announced the week succeeding the hearing.” *Proceedings of the United States District Court for Maine District, Commemorating the Services and Character of Hon. Ashur Ware, Late Judge of Said Court* 23 (1873).

²¹ “Two volumes have ... been published of the decisions of Judge Ware, in the Admiralty Court of Maine, from 1822 to 1849, under the revision of that able judge; which are standard authority on the numerous questions therein determined.” William Willis, *A History of the Law, the Courts, and the Lawyers of Maine* 71 (1863). The first volume was published in 1839. *Id.* at 642. It is cited as 1 Ware. For reader convenience we have generally used the more accessible F. Cas. citations.

²² 19 F. Cas. at 950. Roth says “[t]he Polydore facts are stated in the West headnotes, not

Here it is:

This was a libel for an assault and battery committed by the master on a passenger, on a voyage from Guadaloupe to Portland. It appeared from the evidence that the libellant was a slave in Guadaloupe, that he was put on board the vessel by his master, Mons. Bercier, in company with his son, Eugene, a youth of about 17 years of age, whom he was to attend during his residence in this country, as his servant. One morning, some days after they had been at sea, the captain ordered Polydore to clean out a hen-coop, in which there were some live fowls. Polydore refused, and the captain in his answer, says, that he behaved otherwise insolently to him, and the testimony of some of the witnesses confirm his statement. But it is also in proof, that Polydore did not understand a word of English, nor did the master understand much more of French. It is also alleged by the master that in consequence of his taking Polydore at a low rate of passage money, he receiving 60 francs for Polydore and 150 for Eugene, that Polydore was to perform such service in relation to Bercier, and also such service on board the vessel as might be properly required of him; that the fowls were for Eugene, and that it was Polydore's business to attend to them. But there is no proof in support of the first part of this allegation, and it appears in point of fact, that the fowls instead of being exclusively for Eugene, were used as a common stock on board the vessel.²³ Upon the refusal of Polydore to do the service that he was ordered, the captain gave him a pretty severe flogging with a piece of dry twisted cowhide; some days afterwards, the cowhide was abstracted from the cabin and not to be found; on the captain's inquiring for it, he was told that Polydore had taken it and thrown it overboard, when in fact it had been taken and secreted by Eugene for the purpose of bringing

the opinion itself." Roth, *supra* note 3, at 21 n.22. Actually, there are only four West headnotes, and they do not contain any facts. Roth probably means the portion of the opinion that appears after the decision's date but before the Judge's name. This section of "facts" has been with the decision from the outset, and we quote it verbatim in text. Judge Ware was his own reporter of decisions, *see supra* note 21, so he must have written the facts. West did not begin providing its own case synopses and headnotes until 1887. *See* Shelly Albaum (then vice president of Primary Law Development at West), *The National Reporter System Celebrates Historic Anniversary*, Law & Tech. Res. for Legal Prof'ls (Oct. 15, 2002), <https://www.llrx.com/2002/10/features-legal-research-past-present-and-future-the-national-reporter-system-celebrates-historic-anniversary/>.

²³ This detail does not appear in the written testimony.

An Enslaved Man Suing in Federal Court

it to this country and exhibiting it in Court, as the instrument with which Polydore had been flogged. Both Eugene and Polydore concurred in deceiving the captain. The captain then gave Polydore another flogging with a small rope.

In his legal analysis, Judge Ware explained why he had denied Prince's motion to require Polydore to provide a surety to guarantee he would appear and pay costs. Calling it "the usual stipulation for costs" with sureties, the judge said it was not required of seamen in admiralty because they could seldom obtain sureties (for lack of property). Likewise, "[t]o require of [Polydore] to enter into a stipulation for costs with sureties, would be the same thing in effect as saying that he had no right to ask redress in this Court."²⁴

The more important issue, Judge Ware said, was Prince's objection "founded on the supposed personal incapacity of [Polydore as a slave from French territory] to maintain any action in a Court of justice, under any circumstances."²⁵ Federal admiralty jurisdiction covered a tort on the American vessel *Galen* on the high seas.²⁶ But Judge Ware said there was a wide diversity of opinion on the topic of whose law applied to determine capacity to sue, citing Justice Joseph Story's 1834 *Commentaries on the Conflict of Laws*.²⁷ He characterized "foreign jurists" as holding that legal capacity is determined by the law of a person's domicile, and that capacity or incapacity follows a person everywhere, a principle embodied in the Code Napoleon (applicable in French Guadeloupe). But Judge Ware went on to recount a multitude of exceptions and decided that, instead, the general principle should give way to local law: "I come to the conclusion that the libellant is not disqualified from maintaining an action for a personal tort committed within our jurisdiction, merely because he is by the laws of his own country rendered incapable of maintaining an action in the forum of

²⁴ 19 F. Cas. at 950. Apparently Prince also argued that Polydore should at least have provided a "juratory caution," a sworn inventory of his property, assigning it as security. Judge Ware said Prince never made a motion for such, and thus the request was waived. *Id.*

²⁵ *Id.* at 951.

²⁶ *Id.* at 956.

²⁷ Joseph Story was the Supreme Court Justice assigned to Maine in the First Circuit. Judge Ware and Justice Story reportedly had high mutual respect. See D. Brock Hornby, *Requiem for Harden v. Gordon*, 51 J. of Mar. L. & Com. 149, 159-62 (2020).

his domicile.”²⁸ He then cited cases from England and Scotland holding slaves became free when they reached a free territory like England or Scotland, and a Massachusetts Supreme Court decision the year before²⁹ reaching the same conclusion in the case of a six-year-old slave her owner brought voluntarily from New Orleans to Boston.³⁰ Judge Ware held:

when a slave passes into a country by whose laws slavery is not recognized, his civil condition is changed from a state of servitude, to that of freedom, and he becomes invested with those civil capacities which the law of the place imparts to all who stand in the same category.³¹

He also addressed whether a federal court was situated differently from a state court – “that slavery existing in some of the individual States and not being prohibited by the constitution and laws of the United States, the national Courts might be bound ... to recognize the incapacities of slaves having a foreign domicile ... whether sitting in a State where slavery is admitted, or where it is prohibited.”³² But Judge Ware ruled that:

a Court sitting in Louisiana, is no more bound than one sitting in Maine, to recognize as to any acts, or rights acquired, within the exclusive jurisdiction of the United States, the artificial incapacities of persons resulting from a foreign law. The question in both cases, would be, whether the party could by the laws of the United States, have a standing in Court. The Court certainly is not bound to enforce against him, a personal incapacity derived from the law of his domicile, because that law can have no force in this country any further than our law on the principles of comity chooses to adopt it.³³

Therefore:

[I]t is not for me to say what would be the judgment of a Court sitting within a jurisdiction where slavery is allowed, but sitting

²⁸ 19 F. Cas. at 953. That also disposed of Prince’s argument that he had Lambert’s slave-holding authority over Polydore. 19 F. Cas. at 956.

²⁹ *Commonwealth v. Aves*, 35 Mass. (18 Pick.) 193 (1836).

³⁰ In other words, the six-year-old was not an escaped or fugitive slave, in which instance Article IV Section 2 of the Constitution protected the slaveholder.

³¹ 19 F. Cas. at 955.

³² *Id.* at 956.

³³ *Id.*

An Enslaved Man Suing in Federal Court

as this Court does, in a place where slavery by the local law is prohibited, I do not feel myself called upon to allow that disqualification when it is alleged by a wrongdoer, as attaching to the libellant by the laws of a foreign power, for the purpose of withdrawing himself from responsibility for his own wrong.³⁴

So Polydore – although enslaved in Guadeloupe – could sue in federal court in Maine, and Judge Ware awarded him \$51 for Prince’s beatings and floggings, along with costs of \$56.86.

THE AFTERMATH

In his July 17 written testimony, Eugene said that he was “going from the City as soon as possible for New York” and that Polydore was “going with me.” We don’t know whether Eugene and Polydore remained in Portland until the damages were paid on September 1.³⁵ We have found nothing further about Polydore. *Ancestry.com* says Eugene died in Opelousas, Louisiana on December 21, 1858, at the age of 38.³⁶ *Findagrave.com* says Prince died on June 14, 1871, at the age of 82, and is buried in Yarmouth, Maine’s Old Baptist Cemetery.

³⁴ *Id.*

³⁵ A portion of the libel’s cover shows Polydore’s proctors’ receipt that day.

³⁶ According to African-American abolitionist David Ruggles, Lambert, with twelve family members and one slave, George Washington, voyaged from Guadeloupe to New York City in 1838, the year after Polydore’s and Eugene’s voyage to Portland. They were on their way to New Orleans – again on a ship whose captain, Nathaniel Gordon, was from Maine. David Ruggles, *Case of Bercier And Gordon of the Brig Dunlap*, *Mirror of Liberty*, Jan. 1, 1839, at 24. Lambert had originally engaged Gordon to transport them to Portland, but then paid him extra to dock in New York. *Id.* at 28 (letter from Ruggles to Capt. Nathaniel Gordon, recounting statements Gordon made, July 16, 1838). When Lambert insisted that George Washington remained his slave even in New York, Ruggles persuaded the U.S. Attorney to issue warrants for the arrest of Lambert, Gordon, and the ship for violating federal and state law prohibiting importing slaves. Lambert and Gordon were released on bond, and ultimately the federal grand jury failed to indict them (according to Ruggles, after the defendants’ representatives were allowed into the jury room during jury deliberations and voting). *Id.* at 29. For the cavalier attitude toward enforcing slave importation laws in New York City at the time, see generally Jonathan Daniel Wells, *The Kidnapping Club: Wall Street, Slavery, and Resistance on the Eve of the Civil War* (2020).

One is left wondering how and why this lawsuit came to be filed. How could Polydore, an enslaved man from Guadeloupe who did not understand English, have the language fluency and assets to engage a Portland, Maine lawyer shortly after his arrival?³⁷ Was Eugene the instigator? After all, Eugene undertook to hide the cowhide during the voyage to preserve it for evidence, and he provided favorable written testimony. Was the 17-year-old seeking to stay in 30-year-old Polydore's good graces so Polydore would not abandon him but accompany him to New Orleans?³⁸ Did the possibility (and later reality) of damages entice Polydore? We have no answers to those questions.

CONCLUSION

In 1857, 20 years after *Polydore*, the Supreme Court decided that Africans transported to the United States in bondage, as well as their descendants, could *never* sue in federal court under jurisdiction reserved for diversity of citizenship because they could never become United States citizens. That case, *Dred Scott v. Sandford*,³⁹ recognized Maine was unique in allowing African-Americans to “participate equally with the whites in the exercise

³⁷ Perhaps that led to Hoffer, Hoffer, and Hull's inference, *supra* note 7, that “next friends” brought the lawsuit. At a memorial for Judge Fox in 1882, counsellor Charles P. Mattocks said Fox

frequently espoused the cause of the unfortunate. A marked instance was that of the slave Polydore, who arrived here in a vessel from the West Indies, and was shamefully abused in this harbor [the beatings actually occurred earlier on the high seas] by the master of the vessel. Polydore, through Fox, his counsel, sought redress for the injuries he had received. The defence was ingenious, and it was supposed at the time it would be successful. It was claimed in defence that Polydore, being a slave in the West Indies, could not bring a suit here; but Judge Ware, after a careful examination of the authorities, in which he was greatly aided by the brief prepared by Polydore's counsel, held Polydore could recover for personal injuries.

Reports of Judgments of Hon. Edward Fox: United States District Judge for Maine District First Circuit, vol. II, (Thomas Haskell, ed., Portland 1888), Appendix “In Memoriam, Edward Fox” 559 (1882) (accessed on Google Books and on file with author).

³⁸ A challenging journey for a 17-year-old from Guadeloupe in the days when passenger railroad service was still in its infancy.

³⁹ 60 U.S. 393 (1857).

An Enslaved Man Suing in Federal Court

of civil and political rights,”⁴⁰ but did not mention *Polydore*. Strictly speaking, there was no need to mention *Polydore*, because *Polydore* involved admiralty jurisdiction, whereas *Dred Scott* turned on diversity of citizenship jurisdiction. In fact, *Dred Scott* said:

[W]e are by no means prepared to say that there are not many cases, civil as well as criminal, in which a Circuit Court of the United States may exercise jurisdiction, although one of the African race is a party; that broad question is not before the court.⁴¹

A perfect place to cite *Polydore* and its holding. But sadly it was not the *Dred Scott* Court’s objective to illuminate the rights of people who came from Africa in bondage, only to constrict them.



⁴⁰ *Id.* at 416 (citing Chancellor Kent).

⁴¹ *Id.* at 425.