

THE
CONSTITUTIONAL HISTORY
OF
NEW YORK

FROM THE BEGINNING OF THE COLONIAL PERIOD TO THE
YEAR 1905, SHOWING THE ORIGIN, DEVELOPMENT, AND
JUDICIAL CONSTRUCTION OF THE CONSTITUTION

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History of Slavery

SLAVES.

In the article on slavery in New York, in the first volume, I have cited the act of 1799 providing for the gradual abolition of slavery, and also the act of 1817, which, among other things, required the person entitled to the service of a child of a slave to make an affidavit as to his age, in default of which he was not entitled to the service of such child as authorized by the statute, but such child was entitled to his freedom after arriving at

the age of eighteen years. In *Griffin v. Potter* (1835) 14 Wend. 209, the validity of this legislation was challenged, but sustained. The court say that "when our government was first instituted, one portion of the population was in bondage to the other. Slavery existed by virtue of the laws which were in force previous to our political existence as a state. It could be justified only by necessity. It was at war with our principles; and, as the legislature was of opinion that there was no necessity for its continuance, a law was passed to operate upon those thereafter to be born." There was no inherent right of the master to the services of a slave. The relations between the two were the result of an arbitrary arrangement of society which was subject to legislative control, and the legislature therefore had power to impose conditions on the continuance of the services, and to secure emancipation on the master's failure to comply with the conditions. The court further say "it is a fundamental principle of our government that all men are born free and equal; that is, entitled by nature to equal freedom and equal rights. The regulations of civil society have qualified the rights of different portions of society. The best interests of the whole sometimes require that some shall be put under the guardianship and control of others. It is therefore by virtue of the arbitrary institutions of society, and by those alone, that one man has an interest in the services of another; property, strictly speaking, in the person of a human being, cannot exist." The right of one man to the services of another exists "by authority of law,—by force of the positive institutions of civil society." The power of the legislature over social relations is sufficiently ample to justify any act regulating the status of masters and slaves.

The provision of the same statute requiring the master to provide slave children with elementary education was

also sustained as a legitimate exercise of legislative power. By the abolition of slavery, which was fixed by the statute to take place July 4, 1827, slave children would become members of society with the same status as white children, and the legislature had power to require masters of such slave children to prepare them in some degree for their new relation to society.

The subject of slavery was also considered in *Lemmon v. People* (1860) 20 N. Y. 562, where the court, construing the provision of the Revised Statutes (1 Rev. Stat. 657) making free every slave brought into this state, except on certain conditions, say that "every sovereign state has a right to determine by its laws the condition of all persons who may at any time be within its jurisdiction; to exclude therefrom those whose introduction would contravene its policy, or to declare the conditions upon which they may be received, and what subordination or restraint may lawfully be allowed by one class or description of persons over another. Each state has, moreover, the right to enact such rules as it may see fit respecting the title to property, and to declare what subjects shall, within the state, possess the attributes of property, and what shall be incapable of a proprietary right."