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The Law Of Servants And The Servants Of Law: Judicial Regulation Of Labour Relations In Montreal, 1830-1845

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Abstract

Labour relations in Montreal during the years 1830 to 1845 were characterized by flux. The encroachment of expanding industrialization brought with it new social phenomena and pressures, new technology, and a fundamental restructuring of employment relationships. Master-servant relations still contained elements of the deeply stratified and paternalistic labour relationships ingrained in the cultural and social fabric of earlier eras, but increasingly began to exhibit the rudiments of purely contractual relationships which would come to define the modern industrial era. Courts came to play an increasingly important role in resolving labour disputes between parties. While historically the law favored the strict contractual and socio-economic interests of masters, courts began to enforce the reciprocal duties owed by masters to their servants. Servants were accorded greater access to the courts to protect their interests, with the knowledge that they had recourse to extra-judicial means of protest if the law was not sufficiently responsive.

Résumé

Les relations de travail à Montréal étaient en état de fluctuation durant les années 1830 à 1845.L'empiètement de l'industrialisation a fait naître de nouveaux phénomènes sociaux et pressions sociales, une technologie nouvelle et une réorganisation fondamentale des relations d'emploi. La relation maître-apprenti possédait des éléments profondément hiérarchiques et paternalistes, tels que recontrés dans les époques précédentes. De plus en plus, ces relations commencèrent à démontrer des éléments contractuels qui définissent l'ère moderne. Les tribunaux en vinrent à jouer un rôle de plus en plus important dans la résolution des problèmes de relations d'emploi. Alors que l'histoire démontre que la loi favorisait les droits contractuels et sociaux-économiques des maîtres, les tribunaux, eux, commençaient à forcer le respect des obligations des maîtres envers leurs apprentis. Les apprentis eurent un plus grand accès aux tribunaux pour revendiquer leurs droits, et ils savaient aussi qu'ils pouvaient avoir recours à d'autres moyens extra-judiciares si la loi ne répondait pas à leurs besoins.

Abbreviations of Primary Sources

ANQM:	Archives nationales du Québec à Montréal.
JP(QR):	Quarterly Returns for Justices of the Peace for the District of Montreal (identified by borough, township, parish, county, etc.).
KB(F):	Files, Court of King's Bench.
KB(R):	Registers, Court of King's Bench.
PC(R):	Registers, Montreal Police Court.
QS(F):	Files, Court of Quarter Sessions of the Peace.
QS(R):	Registers, Court of Quarter Sessions of the Peace.
WSS(CM):	Criminal Matters, Court of Weekly and Special Sessions of the Peace.
WSS(R):	Registers, Court of Weekly and Special Sessions of the Peace.

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The research for this thesis was primarily undertaken using the resources of the Archives nationales du Québec à Montréal, the McLennan and law libraries of McGill University, and the Bibliothèque nationale du Québec à Montréal. I wish to thank Evelyn Kolish, Pierre Beaulieu, Estelle Brisson and Dominique Boily, all of the ANQM, for their patience and assistance through this research period. I must also offer profuse thanks to Robert McHale, France Lessard, Pamela Carkner and Gaea Guruprasad, true friends all, who selflessly undertook the daunting process of proof-reading the final draft.

This thesis is dedicated with love to my parents, who have bestowed on me an appreciation for the beauty of scholarship, as well as for the intrinsic nobility of law itself.

Ian C. Pilarczyk
June 13, 1997

Introduction

On January 26, 1841, a seventeen year-old apprentice painter and chair-maker named Robert McIntosh stood before the Court of Special Sessions, charged with having deserted Thomas Albert Martin's service for the second time. McIntosh had earlier been convicted and sentenced to fifteen days at hard labour in the local prison, and was ordered to return to Martin's service immediately following his release. The day McIntosh's term of imprisonment was over, he took refuge at his mother's house and his master accordingly had him arrested once again. In light of his previous conviction the Court viewed McIntosh as incorrigible, the type of servant which the master-servant regulations were designed to govern and, if need be, punish. The Court sentenced McIntosh to two months in prison and he was dragged off to spend the remainder of the harsh winter in a dank, poorly-heated prison cell.[1]

The story of Robert McIntosh is one thread in the rich tapestry of Montreal's labour history, illustrating the experiences of an apprentice who ran afoul of the law while bound to his master's service. Thousands of servants like McIntosh laboured each day, employed in innumerable occupations but united by the commonality of contributing to the city's economy. While most servants left behind no written documentation of their lives for posterity, a few are immortalized in the judicial records and newspapers of the time. Analysis of these sources, and the accounts of masters and servants contained therein, assist in reanimating the history of labour law during the early nineteenth-century.

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[1] See pp.113-111, *below*, for a further discussion of McIntosh's court appearances.

This thesis examines labour relations in Montreal between 1830 and 1845 to ascertain the nature and legal regulation of master-servant relationships. As these traditional relationships disintegrated in the face of encroaching industrialization, labour disputes increasingly were settled before courts. Unlike typical characterizations of nineteenth-century legal systems, this thesis argues that servants had significant access to courts to protect their interests and to enforce the obligations of their masters. The omnipresent danger that servants might use extra-legal means of protest to air their grievances served as a powerful societal impetus to provide them with legally-enforceable rights. Thus, by this period, judges--the "servants of the law"--recognized the mutual legal responsibilities inherent in labour relationships, protecting both groups from the worst excesses of the other.

Chapter I.
Research Methodology

A. Legal History Theory

In recent decades there has been increasing interest in reclaiming Canada's legal history, reflected in the activities of the Osgoode Society and in the research of numerous social and legal historians. Central to much of this growing body of work is the recognition that judicial records are an important source of historical information, insofar as they provide invaluable insight into the lives of the "ordinary" classes of citizens who were the least likely to leave behind a written record.[2] Such records--especially those of criminal proceedings--also illuminate the nature and extent to which judicial institutions functioned as instruments of social control, as well as the reactions of those most impacted by these institutions. Court records therefore provide information on power structures as well as social struggles.[3]

In many important respects, however, Quebec legal historiography has lagged behind that of other jurisdictions. Impressive strides have been made to augment scholarship on Quebec's legal

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[2] Barry Wright, "An Introduction to Canadian Law in History" in Weslye W. Pue & Barry Wright, eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Toronto: University of Toronto Press, 1981) 10.

[3] *Ibid.* For examples of scholarship utilizing nineteenth-century Canadian judicial records, see *e.g.* Mary-Anne Poutanen, "Reflections of Montreal Prostitution in the Records of the Lower Courts, 1810-1842" in Donald Fyson *et al*, eds., *Class, Gender and the Law in Eighteenth- and Nineteenth-Century Quebec: Sources and Perspectives* (Montreal: Montreal History Group, 1993) 99; Judith Fingard, "Jailbirds in Mid-Victorian Halifax", in Peter Waite *et al*, eds., *Law in a Colonial Society: the Nova Scotia Experience* (Toronto: Carswell Copy Limited, 1984) 81.

history in recent decades, but there are still vast gaps in the literature.[4] While virtually any research in this area is therefore a welcome addition to the corpus of existing scholarship, legal history is at its most vibrant and illuminating when it focuses on the interplay between law and broader social currents, seeking to identify larger questions before delving into minutiae.[5]

Furthermore, comparative approaches to legal history are invaluable, due to the trenchant insights they provide as well as their relative scarcity.[6] The history of labour relations in Montreal has important similarities and significant divergences from that of other jurisdictions, such as France, England and the United States, as well as those within British North America. While a strictly comparative approach was incompatible with either the objectives or the scope of this thesis, comparisons to other jurisdictions have been incorporated in footnotes whenever they provide context for the Montreal experience.

This thesis, then, sets out to examine the economic and social realities impacting masters and servants during the period 1830 to 1845, seeking to uncover the dynamics of these relationships and inquiring how the legal system acted to enforce servants' obligations to their masters. Furthermore,

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[4] For an immensely informative, albeit slightly dated, article detailing work in this area, see Vince Masciotra, "Quebec Legal Historiography, 1760-1900", (1987) 32 McGill L.J. 712.

[5] D.H. Flaherty, "Writing Canadian Legal History: An Introduction", in D.H. Flaherty, ed., *Essays in the History of Canadian Law*, vol. 1 (Toronto: University of Toronto Press, 1981) 1 at 3.

[6] See generally *Flaherty, supra* note 5. For a discussion of sources on labour law, see Douglas Hay & Paul Craven, "Master and Servant in England and the Empire: A Comparative Study", (1993) 31 Labour/Le Travail 175.

it seeks to explore the extent to which servants were able to protect their interests, through legal and non-legal mechanisms.

B. Applied Research Methodology

A legal historian researching judicial regulation of labour relations in early nineteenth-century Montreal faces daunting obstacles. Judicial records for this period are voluminous yet fragmentary, which in turn largely accounts for the relative dearth of secondary sources incorporating these records. As one's methodology has important and often unstated repercussions on the data gathered and the conclusions reached, this section will discuss the methodologies I have employed and my reasons for doing so.

Two observations are warranted about the relationship between this topic and the sources consulted. First, while this thesis concentrates predominantly on apprentices, journeymen and domestic servants, the sources often precluded identification of the precise status of the parties involved, other than to make the general observation that one acted as subordinate and the other as employer. Accordingly, unless specific identification was possible, I subsumed apprentices, domestic and hired servants, journeymen and labourers under the general rubric of "servant." This has the added advantage of mirroring the more expansive sense in which this term was used during this period than is connotated by its modern usage.[7] I have also used masculine pronouns and the designation "master" throughout, as the preponderance of servants and employers were male.[8]

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[7] See pp.15-16, *below*.

[8] While the preponderance of servants were male, most domestics were female. For insightful analysis of domestic servants in nineteenth-century Canada, see generally Claudette Lacelle, *Urban*

Secondly, the period 1830 to 1845 was examined both as primary materials were relatively plentiful, as well as to best augment the existing secondary sources. Economic and social stability were also considerations, but it should be noted that this period encompassed the Rebellions of 1837-1838.[9] While the Rebellions had an impact on the number of young people available as servants and the structure of juridical institutions, I believe the value of utilizing existing judicial records outweighs any adverse impact the Rebellions may have had on the data examined herein.

Published secondary materials on labour relations in Montreal of this period are virtually nonexistent, with a significant proportion of the scant research in this area consisting of unpublished theses.[10] In contrast, nineteenth-century labour relations in Ontario have been more widely studied. While several such studies have provided valuable information on how to best conceptualize such research, they offer little direct insight into the state of Montreal labour relations during this period.

The primary sources consulted herein include court records, newspapers, notarial documents, Justice of the Peace manuals and legislative enactments. The main body of data was derived from the records of Montreal courts housed in the archives nationales du Québec. Master-servant relations of this period were regulated primarily by the Police Court,[11] the Court of Weekly and Special

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Domestic Servants in Nineteenth Century Canada (Ottawa: Environment Canada, 1987); Grace Laing Hogg, *The Legal Rights of Masters, Mistresses, and Domestic Servants in Montreal, 1816-1829* (M.A. Thesis, McGill University, 1989).

[9] See pp.13-14, *below*.

[10] Of these, virtually all concentrate on a period of Montreal's history prior to 1830.

[11] Police Courts were established following the Rebellions, when Police Magistrates for the city of Montreal were appointed. Police Magistrates enjoyed the same jurisdiction as Justices of the

Sessions,[12] and Justices of the Peace. Justices heard cases by sitting singly or in pairs, and in Montreal the Justices of the Court of Quarter Sessions also disposed of master-servant disputes in summary proceedings.[13] The most serious cases were heard before the highest provincial court, the Court of King's Bench.[14] Courts held by Justices of the Peace outside the city were not courts of

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Peace, except their jurisdiction was limited to the city itself. Donald Fyson, *The Court Structure of Quebec and Lower Canada, 1764 To 1864* (Montreal: Montreal History Group, 1994) 52-55. For discussion of the evolution of police forces in Montreal and elsewhere in Canada, see *e.g.* Elinor Kyte Senior, "The Influence of the British Garrison on the Development of the Montreal Police, 1832 to 1953", (1979) Military Affairs 43; Allan Greer, "The Birth of the Police in Canada", in Allan Greer & Ian Radforth (eds.), *Colonial Leviathan: State Formation in Mid-Nineteenth-Century Canada* (Toronto: University of Toronto Press, 1992) 17; T.J. Juliani, *Canada's Constables: The Historical Development of Policing in Canada* (Ottawa: Crimcare Inc., 1985).

[12] The Court of Weekly Sessions of the Peace was held by any two Justices of the Peace on a weekly basis. The Court's criminal jurisdiction was based largely on the jurisdiction of the Justices who held them, in addition to statutory offences ranging from misdemeanors to infractions of police, fire, export and market regulations. Fyson, *ibid.* at 47-48. Special Sessions of the Peace were generally those held outside the regular Quarter or Weekly Sessions of the Peace in order to facilitate the administration of justice, and typically possessed the same jurisdiction as the Court of Weekly Sessions. *Ibid.* at 49-51. The Court of Weekly and Special Sessions adjudicated the majority of cases involving breach of service.

[13] The Court of Quarter Sessions of the Peace were held every three months by three or more Justices of the Peace. The Court had general criminal jurisdiction, and after 1841 possessed general appellate jurisdiction over Justices of the Peace in petty sessions for offenses against the person, larceny and other property offenses not covered by the Court of King's Bench. *Ibid.* at 41-46. Master-servant disputes, however, were disposed of summarily by individual Justices of this Court and therefore do not appear in registers of the Court's formal sittings. Donald Fyson, *Criminal Justice, Civil Society and the Local State: the Justices of the Peace in the District of Montreal, 1764-1830* (Ph.D. Thesis, Université de Montréal, 1991) 273 [hereinafter *Justices*].

[14] The Court of King's Bench had jurisdiction over all civil and criminal matters within the district, and was composed of a Chief Justice and three Puisne Justices, divided into Superior and Inferior civil terms, as well as a Criminal term. In 1843, it was renamed the Courts of Queen's Bench, reflecting the ascension of Queen Victoria to the British throne. Fyson, *supra* note 11 at 23-

record, and hence written dispositions of these cases are rare.[15] Fortunately, some records detailing the proceedings before Justices of the Peace have survived.

The judicial records consulted for this thesis include the files and registers of the Police Court, the Court of Weekly and Special Sessions, the Court of Quarter Sessions, the Court of King's Bench, and the proceedings before Justices of the Peace for the district of Montreal. These files contained depositions, complaints, arrest warrants and the like and, while incomplete, provide information on the number and variety of labour disputes during this period. The registers for the Court of Weekly and Special Sessions were the most helpful, as they contained the most extensive transcription of testimony, while the information in other registers was severely truncated. The files of the Justices of the Peace, containing quarterly returns of prosecutions filed with the Clerk of the Peace in Montreal, offer only extremely abbreviated information on cases. Due to the vagaries of time, there are substantial gaps within these collections. As such, the disposition of cases for which ample documentation was otherwise available could not always be ascertained.

In analyzing these documents, each case was cross-indexed by both prosecutor and defendant to ensure that individual prosecutions were not counted more than once. This was necessary as in many instances documents pertaining to specific prosecutions appeared in two or

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35. For the sake of convenience, it is referred to as the "Court of King's Bench" throughout this thesis. Occasional reference herein is also made to a court of irregular sittings, the Court of Oyer and Terminer and General Gaol Delivery, whose criminal jurisdiction essentially overlapped that of the King's Bench. *Ibid.* at 38-39.

[15] Justices of the Peace handled the majority of petty criminal matters. In general, their jurisdiction extended to most minor misdemeanors punishable by fine or imprisonment, but usually not to those involving corporal punishment, which were left for the Court of Quarter Sessions. *Ibid.* at 59-64.

even three different files. Cross-indexing had the further advantage of facilitating identification of the occupations, as well as the names, of masters and servants who recurred within the annals of the courts of this period.

To combat the fragmentary nature of these primary sources I attempted to reconstruct missing records by analyzing ten contemporary Montreal newspapers, many of which contain information on the dispositions of prosecutions during this period.[16] Newspapers often provided information on cases which otherwise would have been unavailable, and also contained editorials and articles on master-servant relations in general. Furthermore, many newspapers printed advertisements for runaway servants, thereby furnishing additional information on the prevalence of desertion, as many of these servants were either not prosecuted or the corresponding judicial records have not survived.

Lastly, the existence of notarial contracts is a fascinating legacy of Montreal's civil law tradition. While these documents provide a ready source of information on master-servant relations, the volume of materials in existence made meaningful analysis impossible within the scope of this thesis. Examination was made of the complete files of four Montreal notaries, consisting largely of contracts between masters and their servants. It is with regret that I have given these documents only relatively cursory treatment. However, the four files consulted provided meaningful information on

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[16] The following newspapers were consulted, for the periods specified: *L'Ami Du Peuple* (July 1832-July 1840); *The Canadian Courant and Montreal Advertiser* (January 1830-March 1834); *The Commercial Messenger and British Canadian Literary Gazette* (April 1840-December 1840); *La Minerve* (January 1830-November 1837; September 1842-December 1845); *The Montreal Gazette* (January 1830-December 1845); *The Montreal Herald* (November 1835-December 1836; sporadic copies only); *The Montreal Transcript and General Advertiser* (October 1836-December 1845); *The Pilot* (March 1844-December 1845); *The Times and Daily Commercial Advertiser* (February 1842-December 1845; sporadic copies only); *The Vindicator and Canadian General Advertiser* (January 1830-October 1837).

the varieties of archetypal notarial documents drafted during this period, and several unpublished theses provide additional in-depth sources of information on these documents.

It is essential to observe that the sources themselves have had an impact on the text of this thesis. I have attempted to let uncorrected primary sources speak for themselves whenever possible. However, as some court registers were attempts at capturing longhand the salient points of testimony, they are often confused, filled with aberrant or archaic spellings, capitalizations, random abbreviations, awkward grammar, missing punctuation and the like. Contemporary spelling has been respected, and only obvious errors or omissions have been noted.[17] Within the judicial files, inaccuracies and misspellings abound, although the greater obstacle is illegibility, as many documents were in advanced stages of decomposition. All these primary sources also present difficulties of interpretation--information deemed salient enough to justify inclusion in newspapers, for instance, often reflect the subconscious biases and beliefs of editors and their readers. Judicial records may suffer from analogous shortcomings, couched in the sentiments and language of discourse common to court clerks, Justices and attorneys, rather than that of the primary parties to the controversy. These lacunae notwithstanding, all the primary sources consulted proved to be extremely valuable.

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[17] In some cases more than one contemporary spelling of a word was used; for example, both "gaol" and "goal" were commonly used to refer to prisons during this period, and hence I have respected both spellings.

Chapter II.
The Nature of Labour Relations In Nineteenth-Century Montreal

A. Montreal in 1830-1845

In order to provide the proper historical context, a brief description of Montreal's evolution is warranted.[18] The island of Montreal was first "discovered" by Frenchman Jacques Cartier in 1535, but it was not until 1642 that Montreal was settled as a French colony.[19] In the intervening century the continuous conflicts between England and France were exported to the continent. It was in Montreal in 1760 that the Governor of New France signed the capitulation which brought a virtual end to French rule on the continent, culminating in the cession of French Canada to Britain under the Treaty of Paris in 1763.[20]

In the intervening years, Montreal grew to become British North America's foremost commercial capital. The changes in the first half of the nineteenth-century were particularly dramatic as Montreal exhibited a robust rate of population growth. In 1830 census reports indicated that 27,297 people resided within the city limits.[21] By 1844, the population of the city proper had

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[18] See *e.g.* Leslie Roberts, *Montreal: From Mission Colony to World City* (Toronto: Macmillan Company, 1969); Newton Bosworth, *Hochelaga Depicta, The Early History and Present State of the City and Island of Montreal* (Toronto: Coles Publishing Company, 1974) (facsimile edition); John Irwin Cooper, *Montreal: A Brief History* (Montreal: McGill-Queen's University Press, 1969).

[19] Cooper, *ibid.* at 1.

[20] *Ibid.* at 5-6.

[21] "Return of the Population of the Province of Lower Canada, As Ascertained by the Census Returns of 1830", in *The Montreal Gazette* (27 December 1831). See also Cooper, *ibid.* at 18.

increased to 44,591, with the city rapidly expanding into the outlying suburbs.[22] This population boom was largely fueled by immigration from the British Isles during the first half of the century, resulting in an English-speaking majority in Montreal by the 1840's.[23]

Around the second decade of the century, Montreal began to undergo a pervasive transformation from an artisanal to an industrial-based society.[24] Montreal lost control of the staple trade in furs to London-based traders, and state-financed investments in transportation (namely canals) laid the basis for expansion of a mercantile empire along the St. Lawrence River.[25] Montreal was the site of the beginning of the Canadian industrial revolution, and as the century unfolded it became the leading industrial, financial and transportation center in the country, a position it would maintain for nearly a century.[26]

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[22] Poutanen, *supra* note 3 at 1.

[23] Cooper, *supra* note 18 at 18. See also Robert Sweeny, *Internal Dynamics and the International Cycle: Questions of the Transition in Montreal, 1821-1828* (Ph.D. Thesis, McGill University, 1985) 100.

[24] See generally Sweeny, *ibid.* See also Grace Laing Hogg & Gwen Shulman, "Wage Disputes and the Courts in Montreal, 1816-1835", in Donald Fyson *et al,* eds., *Class, Gender and the Law in Eighteenth- and Nineteenth-Century Quebec: Sources and Perspectives* (Montreal: Montreal History Group, 1993) 127 at 127-128.

[25] Sweeny, *ibid.* at 85; Gillian Hamilton, *Contracts Incentives and Apprenticeship: Montreal, 1791-1820* (Ph.D. Thesis, Queen's University, 1993) 36 & 51-55.

[26] Sweeny, *ibid.* at 84.

Other important social and political changes took place during this period. Along with British rule came the tradition of local government, and until 1833 Justices of the Peace ruled Montreal, making regulations which extended over all facets of city life.[27] In June of that year an Act of Incorporation was passed by the provincial parliament and Montreal was thereby incorporated. Under this Act, Montreal was given limited powers of self-government and a city council was elected by the property owners, although its administrative jurisdiction was limited strictly to the city.[28] The Act of Incorporation expired in 1836, and rule by Justices of the Peace resumed, with the mayor and city councillors being appointed by the provincial government. It was not until 1843 that the elective nature of city government was restored.[29]

The intervening years, however, were deeply troubled. During the years 1837 to 1838, the provinces of Upper and Lower Canada were embroiled in civil war. The Rebellions, as they were known, had their genesis largely in the polarization of politics in Lower Canada (i.e., Quebec) between a mainly French-speaking elected Assembly, and an overwhelmingly English-speaking appointed Legislative and Executive Council. French-Canadian political radicals made demands for a series of democratic reforms but were rebuffed by the English authorities. In 1836 the Assembly went on strike and refused to approve any financial bills. In the spring of 1837, English authorities gave the Governor of Lower Canada the authority to seize provincial funds without approval of the

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[27] Cooper, *supra* note 18 at 25.

[28] *Ibid.* at 26.

[29] *Ibid.* at 26-27.

Assembly. By November, armed conflict erupted between the *Patriotes* and the Tories in Montreal, in turn triggering rebellion in Upper Canada. By the end of 1837, many of the *Patriotes* had been driven to the United States. Aided by American supporters, the Rebellions continued until ultimately squashed in the last days of 1838. During this period, Montreal became the site of numerous court martials of *Patriotes* for high treason against the Crown.[30]

In 1840, Lower and Upper Canada were united to form the Province of Canada. Montreal was made the capital in 1843, although this was destined to be a short-lived affair.[31] Thus, by the end of the period 1830 to 1845, Montreal enjoyed a position as the unrivaled commercial center of Canada, and, for a brief time, also the political center.

B. Varieties of Servitude in Nineteenth-Century Montreal

When examining labour relations in Montreal, distinctions must first be drawn between the various forms of employment relationships existing during this period. The term "servant" had much

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[30] Michael S. Cross, "1837: The Necessary Failure", in Michael S. Cross and Gregory S. Kealey, eds., *Pre-Industrial Canada 1760-1849* (Toronto: McClelland and Stewart Limited, 1982) 141-158. For discussion of the Rebellions see *e.g.* Jean-Paul Bernard, ed., *Les Rébellions de 1837-1838: Les Patriotes du Bas-Canada dans la Mémoire Collective et Chez les Historiens* (Montreal: Boréal Express, 1983); Beverley Boissery, *A Deep Sense of Wrong* (Toronto: Osgoode Society, 1995); Jean-Marie Fecteau, "Mesures d'exception et règle de droit: Les conditions d'application de la loi martiale au Québec lors des rébellions de 1837-1838", (1987) 32 McGill L.J. 465; Allan Greer, *The Patriotes and the People: the Rebellion of 1837 in Rural Lower Canada* (Toronto: University of Toronto Press, 1993); Robert Schull, *Rebellion: the Rising in French Canada, 1837* (Toronto: Macmillan Publishing, 1971); Edwin C. Guillet, *The Lives and Times of the Patriots: An Account of the Rebellion in Upper Canada, and the Patriot Agitation in the United States, 1837-1842* (Don Mills: Ontario Publishing Company, 1938); Colin Read, *The Rising in Western Upper Canada, 1837-1838: The Duncombe Revolt and After* (Toronto: University of Toronto Press, 1982).

[31] Cooper, *supra* note 18 at 21.

broader social and legal connotations than those inherent in its present-day usage. As such, positions as diverse as domestic servants, apprentices, journeymen, hired servants and employees (e.g., store clerks) and day labourers were subsumed under this rubric.[32] Other categories, such as "seamen", "voyagers" and "canoemen" were important elements of the labour landscape, but are usually specifically identified as such in period sources.[33] All servants of the first half of the nineteenth-century, however, shared the distinction of serving a superior, usually referred to as a "master" or "mistress." In order to remain faithful to contemporary language, these terms have been retained as they appear in the primary sources, rather than replaced with the generic terminology of "employer" and "employee."[34] As all these relationships were governed by master-servant law, the term

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[32] This division mirrors that of William Blackstone, who divided servants into four categories under the common law: domestic servants, apprentices, hired labourers, and servants *pro tempore*. William Blackstone, *Commentaries On the Laws of England* (London: Revised Apollo Press, 1813) 429-431. See also Hogg, *supra* note 8 at 25-26; Christopher L. Tomlins, "The Ties That Bind: Master and Servant in Massachusetts, 1800-1850", (1989) 30 Labor Hist. 193 at 211. This last category referred to individuals who served others voluntarily, and often temporarily, in a "superior [or] ministerial capacity; such as stewards, factors, and bailiffs" and are not addressed in this thesis. Blackstone, *ibid.* at 427. As Hogg points out, civil law also implied a distinction between classifications of servants. Hogg, *supra* note 8 at 23-25 (citing Robert-Joseph Pothier). This system of classification was similar but perhaps even more expansive in the United States. As one nineteenth-century American law text on the law of master and servant stated, "all who are in the employ of another in whatever capacity, are regarded in law as servants." Tomlins, *ibid.* at 196 n.10.

[33] Seamen, voyagers, canoemen and the like performed functions largely dissimilar from those of other servants, and were governed by different legislative enactments. All those employed in nautical pursuits, including apprentice seamen, are therefore excluded from analysis in this thesis,. and prosecutions against such defendants have not been counted.

[34] See *e.g.* Hogg & Shulman, *supra* note 24 at 127 note 1 ("Respecting the usage of these historical terms makes the reading of this text more difficult, but their use underscores important cultural distinctions of the society which used them.").

"servant" as used herein encompasses apprentices, domestic and hired servants, labourers and journeymen.

It must also be emphasized that early Victorian society was deeply stratified, and as such there were important conceptual and socio-economic differences between the various categories of servants. A pronounced hierarchy existed among servants, ranging from the skilled journeyman who commanded a high wage to the lowliest domestic or unskilled labourer. To best understand these hierarchies as well as the relationships between masters and servants, a brief discussion of the social stratification of nineteenth-century Victorian society is warranted.[35] Among those residing at the top rung of the hierarchy were large employers, members of the propertied class, merchants, bankers and those engaged in the liberal professions such as the church, medicine, law, and civil service.[36] Below those were small employers, local government officials, wholesalers and retailers, teachers and the like.[37] The third layer of Victorian stratification consisted of artisans, skilled labour (such as

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[35] For discussion of master-servant relationships in other jurisdictions, see *e.g.* Lawrence W. Towner, *A Good Master Well Served: A Social History of Servitude in Massachusetts, 1620-1750* (Ph.D. Thesis, Northwestern University, 1955); Sarah C. Maza, *Servants and Masters in Eighteenth-Century France* (Princeton: Princeton University Press, 1983).

[36] For a discussion of these hierarchies, see John R. Gillis, "Servants, Sexual Relations and the Risks of Illegitimacy in London, 1801-1900", in Judith L. Newton *et al.*, *Sex and Class in Women's History* (London: Routledge and Kegan Paul, 1983) 115 at 140. See also Gareth Stedman Jones, *Outcast London: A Study in the Relationship Between Classes In Victorian Society* (Oxford: Oxford University Press, 1971) 350-357.

[37] Gillis, *ibid.*

journeymen and apprentices), and domestic servants employed in upper-class homes.[38] Semi-skilled workers, soldiers and sailors, police officers, and farmers resided in the next lowest strata (as did most domestics), while at the bottom were unskilled labourers and those engaged in the service sector.[39] As these strata suggest, however, hierarchies existed even within the servile class.

1. Apprentices and Journeymen

Among the most visible servants of this period were apprentices and journeymen. Journeymen--individuals who successfully completed their terms of apprenticeship-- represented the largest part of the skilled freelance labour of the time, commanding the highest wages, the most social respectability and the most opportunity for social mobility. Prior to the widespread industrialization of English and North American cities, apprenticeship was the prevalent form of job training. Apprenticeship was an institutionalized form of "work-study", in which the apprentice provided services for a specified length of time in order to acquire professional skills. The length of the apprenticeship, as well as the obligations of both the master and apprentice, were commonly specified in notarized documents.[40]

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[38] *Ibid.*

[39] *Ibid.*

[40] For a discussion of indentures, see pp.41-51, *below*. Seven year terms of apprenticeship, while standard in England, were not common in either colonial America or Quebec of this period. Hamilton, *supra* note 25 at 18. Interestingly, Justices of the Peace had the power to bind any children above the age of five as apprentices if they were found begging in the street, by virtue of the statute *4 George IV chapter 33*. Discussion of this issue is, however, beyond the scope of this thesis.

The institution of apprenticeship in Lower Canada generally, and Montreal more specifically, may be said to have its roots in the Custom of Paris and the laws of Great Britain, borrowing both their traditions as well as their basic structures.[41] A standard three-tiered system was followed, in which an individual began as an apprentice, graduated to a journeyman, and culminated with being recognized as a master or *maître*. The European tradition, and that of the early-colonial periods in New France and British North America, was that a journeyman had to complete a "masterpiece" or *chef d'oeuvre*, or pay an induction fee or *droit d'entrée* to a guild, in order to be officially recognized as a master. In Quebec during this time, a journeyman merely was required to complete a specified term of employment in his craft in order to be accorded the right to call himself a master. [42] Thus, the sole impediment which prevented most journeymen from holding themselves out as masters and hiring servants of their own was a shortage of capital.[43]

Social historians have shown that the institution of apprenticeship in Canada began to radically change by the beginning of the nineteenth-century, with apprenticeship devolving from a

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[41] See generally Hamilton, *ibid.* See also Pierre H. Audet, *Apprenticeship in Early Nineteenth Century Montreal, 1790-1812* (M.A. Thesis, Concordia University, 1975) 15.

[42] See *e.g.* David Terence Ruddell, *Apprenticeship in Early Nineteenth Century Quebec, 1793-1815* (M.A. Thesis, Université Laval, 1969) 15.

[43] Mary Ann Poutanen, *For the Benefit of the Master: the Montreal Needle Trades During the Transition 1820-1842* (M.A. Thesis, McGill University, 1985) 96-98 [hereinafter *Needle Trades*].

personalized form of work-study to an indistinguishable form of servitude.[44] As labour historian Bryan Palmer has written:

> As masters accumulated capital, stepped up production demands because of market considerations, and hired increasing numbers of apprentices to do the heavy and often unskilled labour needed in the shop, apprentices began to see only the tyranny of their obligations and grew resentful of the master's failure or refusal to fulfill his responsibilities adequately.[45]

While indentures stipulated responsibilities on the part of masters, the quality of life and education received by apprentices was determined primarily by the masters themselves.[46] The breakdown of the institution of apprenticeship was already visible by the turn of the eighteenth-century, manifesting itself in an appreciable upturn in the frequency of desertions by servants in Montreal.[47] By the second half of the nineteenth-century, the traditional vestiges of servitude (most

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[44] See generally Ruddell, *supra* note 42 (Quebec City); Audet, *supra* note 41 (Montreal). See also Bryan D. Palmer, *Working-Class Experience, the Rise and Reconstitution of Canadian Labour, 1800-1980* (Toronto: Butterworth, 1983) 28; Poutanen, *Needle Trades, supra* note 43 at 3. The transformation of American apprenticeship began earlier but the institution was essentially lifeless by the middle part of the nineteenth-century. See W.J. Rorabaugh, *The Craft Apprentice, From Franklin to the Machine Age in America* (New York: Oxford University Press, 1986) 57-75.

[45] Palmer, *ibid.* at 29.

[46] Ruddell, *supra* note 42 at 3.

[47] See generally Audet, *supra* note 41. See also Palmer, *supra* note 44 at 28. Hamilton explains that apprentices were paid "more than the value of their marginal product during the early years of their contract and less during the latter years. It was this divergence...that gave rise to the incentive to run away." Hamilton, *supra* note 25 at 121. For similar experiences in other jurisdictions, see generally Ruddell, *ibid.* (Quebec City); Rorabaugh, *supra* note 44 at 48 (United States). Indeed, the number of runaway servants seems to have increased in North America from century to century. See *e.g.* Sharon V. Salinger, *'To Serve Well and Faithfully', Labour and Indentured Servants in*

profoundly in apprenticeship) had largely given way to a more market-driven variant, which encompassed fewer responsibilities on the part of masters while retaining some degree of the customary paternalistic and proprietary attributes.[48] Along with spreading dissatisfaction on the part of servants, growing insubordination and the formation of collective organizations, came an erosion of masters' authority.[49] Masters therefore increasingly turned to courts to deal with recalcitrant apprentices and other servants as the century progressed.[50]

Pennsylvania, 1682-1800 (Cambridge: Cambridge University Press, 1987) 103 (detailing rise in deserting servants in colonial Pennsylvania). Not all scholars who have analyzed Montreal labour issues have agreed that desertion was an endemic problem. See *e.g.* Hogg, *supra* note 8 at 19 note 8 (stating that she suspects the "problem of desertion [of domestics] is somewhat exaggerated in Lower Canada newspapers and documents.") Hamilton views indentures as an effectual means of combating desertion. Hamilton states that "[i]f the runaway problem was indeed chronic it suggests that masters and apprentices were unable to construct contracts which apprentices would not breach by running away." Hamilton, *ibid.* at 128.Hamilton's analysis of indentures is valuable, but it fails to take into account that even if financial inducements were the primary motivation for apprentices to desert, they were by no means the only motivation. Furthermore, some apprentices, like many other servants, were bound verbally and not by written agreements.

[48] Palmer, *ibid.* at 29. But see Joanne Burgess, *Work, Family and Community: Montreal Leather Craftsmen, 1790-1831* (Ph.D. Thesis, Université du Québéc á Montréal, 1987). Burgess, in her examination of the leather trade in Montreal, concluded that the master-servant relationship within this group of artisans was not disintegrating during the period she examined.

[49] In the United States, masters in the post-Revolutionary period complained that each successive generation of apprentices was increasingly insolent. Rorabaugh, *supra* note 44 at 42-56. For discussion of illegal collective organizations in nineteenth-century Canada, see Palmer, *ibid.* at 30-31. Examples of such early Montreal unions included tailors and shoemakers (1830), printers (1833), bakers, firemen and mechanics (1834), and stonecutters (1844).

[50] Audet, *supra* note 41 at 157; Rorabaugh, *ibid.* at 45 (United States). See also Ruddell, *supra* note 42 at 168-169 (citing decline on the part of masters in training and guiding apprentices as responsible for courts' increasing influence).

2. Domestic and Miscellaneous Servants

The single most striking difference between journeymen and apprentices on the one hand, and domestic and other servants on the other, was that apprentices had the possibility of advancing to journeyman and eventually master status, while the status of domestic and other servants tended to remain static. Largely for this reason, this latter group of servants were commonly conceived of as inhabiting the lowest social strata. Domestic servants in particular, however, were far from a homogeneous class. While the majority of domestics were female, employed to provide household or professional assistance, and lived under their master's roof, the similarities often ended there.[51] The term "domestic servant" encompassed a multiplicity of social scales and job descriptions. At the lowest rung of the social ladder was the "maid-of-all-work", "kitchen skivvy" or "boy servant." In contrast, ladies' maids, nurses and governesses inhabited a markedly different social orbit from that of the less genteel members of the household help.[52]

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[51] For a discussion of domestic servants in Montreal during the period 1816 to 1829, see generally Hogg, *supra* note 8. For discussion of domestic servants in Montreal during 1816 to 1821, see generally Lacelle, *supra* note 8. Hogg defines domestic servants as "anyone who served in a menial capacity, performing work and labour in and about his or her master's or mistress's home, or business, where the work and labour performed were particular to the maintenance of the master...or to the master's...home, or place of business." Hogg, *ibid.* at 23 and note 1. An 1825 census of Montreal indicated that considerable numbers of boys were employed as domestics, often prior to becoming apprentices in other fields. *Ibid.* at 62. For discussion of domestics in other jurisdictions, see *e.g.* Theresa M. McBride, *The Domestic Revolution: the Modernization of Household Service in England and France, 1820-1920* (London: Croom-Helm, 1976); Pamela Horn, *The Rise and Fall of the Victorian Servant* (New York: St. Martin's Press, 1975).

[52] See *e.g.* Gillis, *supra* note 36 at 117.

While domestic servants typically performed functions related to the master's home or business, other servants were employed as hired hands of every description. This sub-class encompassed such trades as canal workers and ditch diggers, farm hands, cart drivers, and innumerable other unskilled occupations.

C. The Master-Servant Relationship

1. Masters' Perspectives

As many social historians have noted, labour relations traditionally were deeply paternalistic.[53] Palmer has stated that paternalism, a "prevailing ethos that defined relations of superordination and subordination in an age of commercial capital and nascent industrialism", developed out of the need to justify exploitation.[54] Paternalism could be characterized by benign or even beneficent aspects, but when challenged could easily revert to despotism. In all cases, the ethos of paternalism attempted to maintain a rigorous social hierarchy.

Examination of the contemporary literature makes evident that the servile class was well-nigh invisible to their employers, deemed unworthy of meaningful consideration.[55] As such, reconstructing the manner in which servants were viewed during this time period entails analysis of a broad spectrum of sources, such as newspaper articles, personal accounts, contemporary works,

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[53] See *e.g.* Palmer, *supra* note 44 at 14-15. See also Salinger, *supra* note 47 at 25 (discussing paternalism in master-servant relationships in colonial Pennsylvania).

[54] Palmer, *ibid.* at 14.

[55] See *e.g.* Lacelle, *supra* note 8 at 29 ("[s]ervants have never attracted attention and have always been considered 'part of the furniture', or by the very nature of their calling, inferior beings not worthy of interest.").

and judicial records.[56] In doing so, one is compelled to conclude that servants were generally considered to be both indispensable and an unremitting irritant.[57] All households with a modicum of self-respect employed domestic servants, for example, and apprenticeship at this time was still a vital and ingrained component of labour relations. In a period before widespread industrialization had taken place, servants retained their place as the primary sources of production.

While virtually all relationships between servants and their masters were marked by varying degrees of tension, it appeared to have been particularly prevalent between masters and their apprentices and domestics. These forms of servitude tended to implicate more personal relationships due to the proximity these servants had to the master's household, serving--and often residing with--the master's family. In addition, apprenticeship (at least in theory) involved a substantial investment of time and instruction on the part of masters not found in other relationships. It is therefore not surprising that domestics and apprentices were generally the most visible servants in contemporary sources.

The public depiction of servants during this period were generally negative. Servants were often portrayed as gauche and inept, or as possessing alarming criminal proclivities. Common to both views was the underlying concern that servants posed a potential risk to domestic and

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[56] But see Lacelle, *ibid.* at 41 (stating that newspapers were silent with respect to domestic servants except for regulations or ads for employment). My research leads me to believe that newspapers are important nineteenth-century sources of information on servants.

[57] See *e.g.* Lacelle, *ibid.* at 55 ("[i]f one concept ran throughout the centuries, it was that service was as much a part of the natural order of things as night following day....To have servants conferred a certain distinction and confirmed membership in a specific level of society. Another concept, just as widespread and just as constant, was that standards of service were constantly deteriorating....")

professional tranquility.[58] Servants were not universally disparaged--accounts of selfless acts of heroism, honesty, and virtue occasionally appeared in the popular press--but these were far outnumbered by negative characterizations.

In contemporary newspapers, servants (most often domestic servants) were frequently and mercilessly lampooned, depicted as little more than bumbling caricatures. Newspapers published frequent accounts of their foibles and shortcomings, often in caustically sarcastic terms. The *Montreal Gazette*, for example, described the experience of employing boy servants as being tantamount to an affliction.[59] More charitably-inclined commentators merely found servants to be

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[58] Lacelle states that servants were reputed to be more immoral and inclined towards crime than other segments of the population. *Ibid.* at 28. *The Montreal Transcript* (14 August 1838) recounted the story of two "respectable servant maids", sent out by their master late at night to fetch a physician, who were taken into custody by a police officer on suspicion of theft. After an investigation, the police officer in question was dismissed from service. This not only supports Lacelle's position, but also indicates that pointing unwarranted suspicion at a gentleman's servants was not entirely without risk.

[59] *The Montreal Gazette* (17 May 1845):

> Is there ever a reader who has not at some time or other encumbered himself with a boy?....A boy is a perpetual blister on the mind....I do not know a more forlorn sight in nature than a calveless, spindle-shanked, duty-faced urchin in pepper and salt, with black velveteens and darned white cotton stockings, dribbling his way, in a narrow silver-banded seven-shilling hat, to the public-house, with a pot in his hand to bring the foaming beverage to his expecting master and mistress. I picture to myself all sorts of domestic misery at the sight--a dinner party, and the unfledged urchin taken...to perform the part of butler to Mary Jane's footman. I see the awkward hound slouching into the room, announcing the bedizened visitors all so happy and so stupid. Then I see...the boy behind the door fussing a pair of baggy Berkins out of his pocket, then the finger-ends dribbling into the soup, and the soup cascading down the back or over the turban of some luckless guest....[They are supposed to] wait at tables, clean shoes, look after a horse and chaise, and make themselves generally useful. *Generally useful*, indeed!--generally mischievous would be more

a constant source of comic inspiration, and regaled readers with accounts of their comical actions and utterances.[60] *Punch*'s satirical advice to servants on how to comport themselves included such helpful suggestions as "[i]f you have been peeling onions, cut bread and butter with the same knife; it will show the multifariousness of your occupations, and perhaps give a hint for raising your wages."[61] Servants were often represented as careless and clumsy: "[a] maid-servant knocks down a tea-cup, a servant breaks a glass, or suddenly tea-pot, cup, and glass, all at once fall in pieces...."[62] Even if the costs of breakage were deducted from their pay, servants might always "break beyond their wages."[63] Most often servants surfaced in newspapers when implicated in employment offenses, such as desertion. But there were more sinister aspects of servants that were frequently highlighted,

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near the truth.

[60] For example, *The Montreal Transcript* (11 April 1843) provided the following anecdote: "A servant girl gave up her place, and assigned to her mistress as a reason, that she was about to be married. On being asked to whom, she answered, 'To a young man who sits near me at church. He's been long looking at me, and when I leave my place he'll soon be speaking.'"

[61] *The Montreal Gazette* (17 September 1845) (reprinted from *Punch*). Among the other nuggets of wisdom were the following: "[i]f your fingers are greasy, wipe them on your hair, which thus acquires a polish"; and "[w]hen your dishes come down stairs, throw them all into scalding water at once. Those that are not broken by the operation may afterwards be taken out, and put in their proper places."

[62] *The Montreal Gazette* (22 July 1844) (discussing why women should have small household accounts to cover the incidental expenses of breakage).

[63] See Appendix F, p. 200, *below*.

such as the threat they posed to persons and property.[64] Theft was an unremitting concern. Published accounts of servants running off with the family silver were legion, and there were a concomitantly large number of prosecutions for such depredations.[65] A typical newspaper account stated that "Mr. Moore, of St. Urbain Street, was robbed by his servant boy, a day or two ago, of several articles of wearing apparel and 16s. in silver; the young culprit was apprehended at Lachine, and the stolen property recovered."[66]

Both the *Canadian Courant* and the *Montreal Gazette*, in discussing the conviction of two young domestic servants for theft from a dwelling house, thought fit to mention that another master had left Montreal several days earlier to apprehend a domestic servant who had robbed him.[67] The wonderfully evocative account of a butler named James Welsh, however, can scarcely be surpassed for its probable effect on newspaper readers: as the family gathered around a loved one's deathbed, Welsh took the opportunity to despoil the house of their treasured heirlooms.[68] Master knew that

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[64] Lacelle indicates that the crimes with which domestic servants were charged included theft, assault with intent to rape, murder, and infanticide. Lacelle, *supra* note 8 at 51. For an example of the latter, see ANQM, KB(F), *Dominus Rex* v. *Zoe Laurin* (14 June 1840) (master alleged his domestic had drowned the infant to which she secretly gave birth).

[65] The theme of servants implicated in theft was also a recurrent theme in literature during this period. See *e.g.* "The Letter of Recommendation", *The Montreal Transcript* (2 September 1843) (short story about a servant who embezzles from two employers).

[66] *The Montreal Gazette* (9 September 1844).

[67] See p.126, *below*.

[68] *The Montreal Gazette* (6 October 1843); *The Montreal Transcript* (7 October 1843). See pp. 127-128, *below*, for further discussion of this case.

larcenous servants would often pawn stolen items within the city, and occasionally resorted to advertising as a means of recovering pilfered property.[69]

Indeed, accounts of theft were sufficiently common that discussion was only merited if the offenses were particularly egregious. In a case which took on international dimensions, an employee was pursued by the Chief Constable of the Montreal Police force, accompanied by one of his wronged employers, as far as Utica, New York. When accosted, he was induced to return to his

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[69] See *e.g.*, *The Canadian Courant* (21 July 1832):

> STOLEN--Ten days ago, supposed to be by a Female Servant, at her Master's--TWO SILVER SPOONS, marked on the handle with the letters, F.B. Should the same be offered for sale, the owner requests to stop the thief and give the information to the Editor of the *Canadian Courant*, in order that justice be done accordingly.

For the frequency with which stolen silverware was offered for sale, see *The Montreal Gazette* (30 September 1830):

> Some respectable jewellers have assured us that it is an every day affair with them, to have a visit from gentlemen or ladies coming to caution them against purchasing plate or other valuables, which have been pilfered by their servants, and the distrust which is thus excited between master and servant has become so great, that the utmost caution and trouble are required to preserve property from the depredation of those who should be its guardians.

employer the sum of £550 which he admitted having purloined.[70] But even such accounts paled in comparison to the story of a trusted servant who had systematically robbed her master for years:

> WHOLESALE ROBBERY--A woman named Carr, who has been for some years employed in this city, by some of the highest families, as a sick-nurse, has been apprehended at the house of a gentleman, whose wife she had been nursing up to the time of her death....Suspicion attached to her in consequence of an accusation of theft which she had made against one of the servants, and upon her box being searched, a large number of stolen articles were found, even to some things which had been put out to dress the deceased lady in. Upon her lodgings being searched, a most extraordinary collection of plunder was discovered: every description of wearing apparel, male and female, plate, linen, china, glass and jewellery were there in large quantities....She appears to have carried on this system for years without detection, and has accumulated a considerable sum of money.[71]

The transgressions of servants such as Carr could hardly have been comforting: the fact that a respectable servant employed by prominent members of the community could steal from her employers for years, undetected, must have struck many as evidence that no servants were above suspicion.

Ironically, one class of servants most often thought of as larcenous--apprentices placed by charities--were often apprenticed precisely as an attempt to forestall the commission of crimes of this

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[70] *The Montreal Gazette* (26 March 1844); *The Montreal Transcript* (26 March 1844). As another example, *The Montreal Gazette* published an account of a African-Canadian servant who had robbed his master "of £125, principally in specie." The servant had "intimated his intention of leaving his [master's] service, and of proceeding to QUEBEC", but after committing the robbery, fled towards the United States before he was apprehended by a member of the Naval Police. *The Montreal Gazette* (8 June 1842). For further evidence of the porosity of the Canadian-American border during this period, see the case of Joseph Ford, p.129, *below* (master crossed the border to apprehend absconding apprentice).

[71] *The Montreal Gazette (23* March 1844). Note that Carr initially pointed suspicion at a domestic servant.

type. A variety of eleemosynary institutions, of which the Ladies Benevolent Association in Montreal and the Children's Friend Society of London were among the most prominent, attempted to provide employment and education for their orphaned and impoverished wards.[72] These institutions hoped to offer a source of reliable labour to employers and simultaneously lead these children onto the path towards economic self-sufficiency and religious salvation.[73] All too frequently, however, these actions were seen as counter-productive. If servants *qua* servants were viewed suspiciously, then those placed by institutions (often orphaned or illegitimate children, raised in atmospheres of misery and vice) were often doubly suspect. Numerous child emigrants from the United Kingdom, many of whom were apprenticed or employed as domestics, were thought to exhibit a criminal proclivity worthy of Charles Dickens' Fagan.[74] Such accounts could do little to

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[72] For a discussion of poor and orphaned children bound into service, see generally Patricia T. Rooke & R.L. Schnell, "Guttersnipes and Charity Children: Nineteenth Century Child Rescue in the Atlantic Provinces", in Patricia T. Rooke & R.L. Schnell, eds., *Studies in Childhood History* (Calgary: Detselig Enterprises Limited, 1982). For a discussion of child immigrants, see Joy Parr, *Labouring Children: British Immigrant Apprentices to Canada, 1869-1924* (Montreal: McGill-Queen's Press/London: Croom Helm, 1980). With respect to the Children's Friend Society, see Parr, *ibid.* at 28 (noting that "exploitative placements in the Cape [of Good Hope] and the Rebellions...quickly discredited the society, and in the early 1840's only the graduates of reformatories continued to be sent overseas."). With respect to the Ladies Benevolent Society, see *e.g. The Montreal Ladies Benevolent Society* (Montreal, 1932); Bosworth, *supra* note 18 at 185.

[73] Emigration was supported both on grounds of public policy as well as out of religious concern. Parr, *ibid.* at 26. Parr also points out that these child emigrants were atypical compared to others as they were sent by charities, without their legal consent, and virtually all were indentured to service when they arrived in Canada. As such, Parr writes that this child migration movement was more akin to "British transportation and indentured service policies of the seventeenth and eighteenth centuries than the private and voluntary population movements of the nineteenth and twentieth." *Ibid.* at 27.

[74] Their penchant for crime was noted by many commentators. As *The Montreal Gazette* (19 November 1836) dryly observed:

inspire confidence among masters or to facilitate the placement of these young wards. However, masters themselves were sometimes faulted for the delinquency of servants. Newspaper editorials, decrying the startling frequency of juvenile crime in major cities, accused masters of allowing their charges to lead lives of dissipation and crime. As the *Montreal Transcript* observed:

> Almost every paper from New York laments the great increase of crime in that populous city. It is astonishing that so great a portion of it is committed by the young....One of the main causes is...the laxity of masters with their servants and apprentices. Instead of looking after the morals of their apprentices, mechanics suffer them, after their daily labor is over, to frequent every place of amusement to which their inclimate leads them, without exerting the least restrain upon them....The duty of a master should not be confined to instructing a boy in the business to which he has engaged himself--the master's authority extends (if his apprentice resides under his roof) also in taking care that his apprentice is reared, as regards virtue and morality, in the same manner as his own children, the neglect of which, in a religious point of view, makes him as responsible for his apprentices as for his own offspring. What parent would suffer children to leave the parental roof, if the master was not responsible for the well-bringing up of his child...![75]

> Within the last few days, several juvenile offenders have been brought up to the police office, charged with offences displaying considerable boldness...[and] an unusual degree of hardihood. These boys, for the most part, form part of the annual supplies sent to this country from the Children's Friend Society of LONDON, with a view of furthering their prospects in life, but if they, generally, do not support a better reputation than several of those that have been about this city, the Province will not be much indebted to the Society alluded to, for an exportation of a band of such consummate thieves as some of them have proved....

See also *The Vindicator* (9 July 1833) (arguing against proposals to expand orphan immigration from London to the colonies, noting that "[m]ost persons who have had such servants...[will] testify with us to the great trouble and anxiety and the little advantage or satisfaction to be derived from their employment."). For an example of an apprentice placed by the Children's Friend Society of London and charged with a criminal offense, see p.129, *below*.

[75] *The Montreal Transcript and General Advertiser* (22 November 1836).

In addition to the dangers of theft, servants could also pose much more grievous threats. Published accounts of servants carelessly setting fires, thereby immolating their master's children or razing their master's dwelling, were recurrent.[76] But disgruntled servants also sought satisfaction by intentionally setting fire to their employer's house, haystack, or barn.[77] On occasion servants resorted to a variety of forms of physical intimidation and violence against masters and their families.[78] For example, some servants attempted to rape their mistresses or, conversely, unfairly accused their masters of rape.[79] Others assaulted or even murdered their master or their family

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[76] See *e.g. The Montreal Transcript* (5 May 1842) (careless servant destroyed house and stable while attempting to light his pipe with a candle, editor observed that "[s]uch carelessness, by which property and life and endangered, is very reprehensible, and deserves to be punished."); *The Pilot* (1 November 1845) (careless carpenter caused fire which destroyed six residences).

[77] See pp.181-185, *below*, for discussion.

[78] See pp.178-181, *below*. It should be noted that relations between servants themselves could also be marked by discord and violence. For example, in 1839 a fourteen year-old domestic servant charged her master's clerk with rape; her master filed a deposition on his clerk's behalf, stating that he was "gentlemanly" and that he believed his domestic was lying. ANQM, KB(F), *Dominus Rex* v. *Antoine Du Hamel* (2 December 1839). Du Hamel failed to appear in court, and a warrant was issued against him. ANQM, KB(R) p.14 (February-March 1840 term). The same year an eleven year-old apprentice gilder accused an eighteen year-old apprentice with whom he shared a bed of committing buggery on him, using threats and force to obtain his consent. ANQM, KB(F), *Dominus Rex v. Thomas Clotworthy* (19 August 1839). The elder apprentice, for his part, admitted that "he did have carnal connection with the said Henry Cole but it was at his entreaties and Solicitations That the Said Henry Cole first did it to the Examinant when he told him that he used to do so to his sister with whom he used to sleep when at home." *Ibid.* Clotworthy was tried and found not guilty. ANQM, KB(R) p. 55-56 (August-September 1839 term). These examples should not suggest that only crimes of a sexual nature marred relations between servants, as assaults and related offenses were more common.

[79] Lacelle, *supra* note 8 at 56.

members, such as the Montreal labourer who borrowed money from his master and repaid the favor by killing him when reimbursement was requested.[80]

For a multiplicity of reasons, therefore, masters often despaired of ever obtaining suitable servants. Faced with perennial labour shortages throughout the first half of the nineteenth-century, masters faced the unpleasant reality that the demand for skilled labour generally exceeded the supply.[81] Susanna Moodie, who detailed her experiences living in Canada in the 1830's, often lamented the state of master-servant relations:

> The serving class, comparatively speaking, is small, and admits of little competition....The possession of a good servant is such an addition to comfort, that they are persons of no small consequence, for the dread of starving no longer frightens them into servile obedience. They can live without you, and they well know that you cannot do without them. If you attempt to practise upon them that common vice of English mistresses, to scold them for any slight omission or offence, you rouse into active operation all their new-found spirit of freedom and opposition. They turn upon you with a torrent of abuse; they demand their wages, and declare their intention of quitting you instantly. The more inconvenient the time for you, the more bitter become their insulting remarks. They tell you, with a high hand, that "they are as good as you; that they can get twenty better places by the morrow; and that they don't care a snap for your anger." And away they bounce, leaving you to finish a large wash, or a heavy job of ironing, in the best way you can.[82]

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[80] *The Pilot* (21 August 1845).

[81] Lacelle, *supra* note 8 at 60. See also Jeremy Webber, "Labouring Lives: Work and Workers in Nineteenth Century Ontario", in Paul Craven, ed., *Labour and the Law* (Toronto: University of Toronto, 1995) 115; H. Clare Pentland, *Labour and Capital in Canada* 1650-1860 (Toronto: James Lorimer & Company, 1981) 56; Paul Craven, "The Law of Master and Servant in Mid-Nineteenth-Century Ontario", in David H. Flaherty, ed., *Essays in the History of Canadian Law*, vol. 1 (Toronto: Osgoode Society, 1981) 175 at 191-196.

[82] Susanna Moodie, *Roughing It In the Bush* (London: Richard Bentley, 1852) 216-217. Similar contemporary accounts abound. See *e.g.* Clarissa Packard, *Recollections of a Housekeeper* (New York: Harper & Brothers, 1836) (cited in Lacelle, *supra* note 8 at 34).

Moodie's statement is illuminating for several reasons, not the least of which is its patronizing tone. However, it also serves to illustrate the labour shortages of this period, especially acute in rural areas. Even when servants were available, many employers undoubtedly felt the maxim "good help is hard to find" was particularly appropriate to their situation. The seemingly insatiable demand for reliable sources of labour helped ensure servants' mobility in the event that disagreements ensued or better opportunities presented themselves. Moodie herself recounted the case of her servant who deserted for a week "without asking leave, or giving any intimation of his intention", therefore forcing her husband to discharge him from service.[83] The shortage of skilled labour, coupled with the perceived risk of employing servants, presented a double-bind. As a means of countering this difficulty, numerous registry agencies were founded to provide pools of reputable servants,[84] including emigrant registry offices.[85]

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[83] Moodie, *supra* note 82 at 149. She also mentioned that "[h]e had under his care a fine pair of horses, a yoke of oxen, three cows, and a numerous family of pigs, besides having to chop all the firewood required for our use. His unexpected departure caused no small trouble in the family...." *Ibid.*

[84] See *e.g. The Montreal Gazette* (21 April 1838) (advertising Registry Office for servants who provided discharge certificates proving good conduct); *The Vindicator* (10 January 1834) (advertising a "House of Call" for journeymen); *The Montreal Gazette* (3 December 1842) (advertising "Intelligence Office for Servants"). For discussion of registry offices, see Lacelle, *supra* note 8 at 31.

[85] *The Montreal Transcript* (25 August 1838) (advertisement for emigrant registry providing "mechanics, labourers, and servants.").

2. Servants' Perspectives

Servants' perceptions of masters are somewhat more difficult to gauge. As stated earlier, masters as a whole took little notice of their servants unless malfeasance was involved, and very seldom gave any consideration to servants' sentiments regarding their social superiors. As such, contemporary discussions about master-servant relations usually devolved into criticisms about unworthy servants, rather than discussing the hardships many of them endured. The life of a servant was often trying, consisting of social isolation and long working days engaged in drudgery, and with a lack of job security in the event of illness or other calamity. Other servants laboured under even worse conditions, employed by masters who were physically abusive, cheated them of wages, failed to provide adequate food and clothing, and the like.[86]

Some servants perished as a result of abuse or neglect. For example, the Matron of a Catholic home in nineteenth century Montreal, in response to inquiries about the death of an abused minor servant, stated "[r]eally there have been so many cases of ill-usage in the past that it would occupy the judges fully for some time if they could *all* be raked up."[87] While only the most egregious cases of abuse generally came to the public's attention, mistreatment of servants was an omnipresent

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[86] See *e.g.* Lacelle, *supra* note 8 at 49; Salinger, *supra* note 47 at 99-114 (discussing the plight of servants in eighteenth-century Pennsylvania). For a rare contemporary mention of an unhappy domestic, see *The Times and Commercial Advertiser* (6 September 1843) (recounting story of an unhappy domestic who left her master's house after a quarrel and was found dead in the forest, her body partially devoured). A maxim recounted in *The Montreal Transcript* (14 April 1838) is also illustrative: "A man who catches his wife scolding her servants is apt to be reminded that the peacock, with all its beauty, has the harshest voice in the world."

[87] Parr, *supra* note 72 at 106 and note 20. For a discussion of child apprentices from England who died of neglect, see *ibid.* at 107.

problem. Susanna Moodie recounted the experiences of a young Irish boy (later hired as their domestic servant, with much success) who appeared on her front stoop, barefoot, clothed in tatters, starving and half-dead from the winter cold. In recounting his personal history, Moodie quoted him as saying:

> "I'm a poor foundling from the Belfast Asylum....[M]y masther...brought me out wid him as his apprentice and during the voyage he trated me well. But the young men, his sons, are tyrants, and full of durty pride; and I could not agree wid them at all at all. Yesterday, I forgot to take the oxen out of the yoke, and Musther William tied me up to a stump, and bate me with the rawhide. Shure the marks are on my showlthers yet. I left the oxen and the yoke, and turned my back upon them all, for the hot blood was bilin' widin me; and I felt that if I stayed it would be him that would get the worst of it."[88]

In 1839, for example, a Justice of the Peace in Upper Canada fined a master five pounds for assaulting his servant girl who was unable to walk from the beating she had suffered; the records of the Justice indicate that she was "in the most wretched condition literally naked[,] filthy and full of bruises so much so one would hardly suppose her a human being." In her deposition, she alleged she had been flogged, kicked and beaten with a rope, hand-spike, fire tongs and a poker.[89] The mistreatment of servants was a particularly widespread problem among those placed by benevolent institutions, in large part because the shadow of solicitous parents was not present to curb masters'

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[88] Moodie, *supra* note 82 at 153.

[89] Susan Lewthwaite, "Violence, Law and Community in Rural Upper Canada", in Jim Phillips *et al.*, eds., *Essays in the History of Canadian Law*, vol. 5 (Toronto: Osgoode Society, 1994) 353 at 357. Some masters posed hazards to the well-being of their servants due to mental aberration. See *e.g. The Montreal Gazette* (11 January 1830) (citing account of deranged master who attempted to kill his domestic servant and succeeded in killing his wife, before taking his own life).

violent impulses.[90] However, abuse was not peculiar to orphaned or immigrant servants, and no doubt mistreatment was a common reason behind desertion and cancellation of notarial documents.[91]

Masters were also accused of seducing or raping female servants, abandoning them to their own devices when their shame became visible.[92] In the most extreme cases, masters even murdered

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[90] See *e.g.* Rooke & Schnell, *supra* note 72 at 89 (noting the case of a prosecution brought by an apprentice's parents for "heartless and brutal treatment" against a master who had whipped, malnourished, and bedded his apprentice in rags.) Rooke and Schell state that "[i]t must be noted that similar 'heavy and severe chastisement' was frequently the lot of pauper and home children but their plight was met with apathy." *Ibid.* See also Parr, *supra* note 72 at 51 (noting that Andrew Doyle, senior inspector for the Local Government Board in 1875 found "an intolerable incidence of ill-treatment, overwork and physical abuse" among four hundred British children in service in Ontario and Quebec.).

[91] See *e.g.* Lacelle, *supra* note 8 at 59.

[92] See *e.g. ibid.* (nineteenth-century Quebec); Salinger, *supra* note 47 at 112 (seventeenth- and eighteenth-century Pennsylvania); Gillis, *supra* note 36 at 115-117 (nineteenth-century London). For an excellent discussion of the legal response to seduction of domestic servants in nineteenth-century Canada, see generally Martha J. Bailey, "Servant Girls and Upper Canada's Seduction Act: 1837-1946", in Russell Smandych *et al.*, eds., *Dimensions of Childhood: Essays on the History of Children and Youth in Canada* (Winnipeg: Legal Research Institute of University of Manitoba, 1991).

Examination of the files of the Court of King's Bench uncovered a complaint wherein a maid alleged her master had raped her, although the matter never progressed to trial. The maid claimed that she was alone in the house with her master, loading the dining room stove, when he "caught hold of her hand and pulled her across the passage into his bedroom....She caught hold of the door but he...broke her hold away and threw her down" and after a long struggle, he "fully affected his purposes." Her master allegedly first threatened her life if she told anyone and then offered her ten dollars to keep silent, promising her "she would never want while she lived." She rushed out into the street, where she accosted a Police Magistrate. The Magistrate and his wife allowed her to stay with her, and he filed a supporting deposition attesting that "her dress and her hair were strangely disordered, she had on no bonnet and appeared hardly able to walk. She stated, with difficulty, that [her master] had committed a rape upon her." He further attested to the fact that his wife examined her and that she exhibited physical signs of having been sexually assaulted. ANQM, KB(F), *Dominus Rex* v. *Alexander McDonald* (1 November 1842) (deposition of Rose McManus); (4 November 1842) (deposition of John Trineer). According to the court records, the witnesses defaulted on their first appearance, and on the second hearing the grand jury refused to indict.

pregnant servants to keep their secret safe.[93] As Joy Parr has pointed out, "[h]ired girls lived inside the household but outside the incest taboo"[94] and were vulnerable due to their gender, youth, physical proximity and social class.[95] Seduction of female servants was such a prevalent problem that protective measures were taken by many benevolent societies that sent servants from England to Canada during the nineteenth-century. For example, some agencies only sent boys, or girls under ten years of age; others did not place female servants unless the household also contained an adult woman, or carefully instructed mistresses not to leave servants home at night without the presence of another woman.[96] But women could also be a threat to a servant's virtue. Frequent accounts were

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ANQM, KB(R) p. 6 (February-March 1842 term).

[93] See *e.g. The Vindicator* (26 March 1833) (citing *The Providence Journal*):

> A short time since, a young girl, named Berdict, residing as a domestic in the family of Mr. David Gibbs, Innkeeper...was suddenly taken sick and died. Seven or eight days after her burial, strong suspicions were entertained that she came to her death by violent means. She was taken from the grave, and an inquest held upon her body. She was found to be *enceinte*, and the jury returned a verdict of "death by violence from some persons or persons unknown." Gibbs has been arrested, together with his daughter, and a woman named Leech, who lives in this city.

[94] Parr, *supra* note 72 at 114.

[95] See *e.g.* Salinger, *supra* note 47 at 112; Bailey, *supra* note 92 at 160 (noting the Seduction Act focused "on the particular vulnerability of servant girls to sexual use by their masters because of a power imbalance between the parties based on gender, age, class, the master-servant relationship, and in some cases race or ethnicity."). Bailey goes on to say that while the Seduction Act can be viewed as "denying the moral agency of females, another view is that...[it] lessened the inequality of [women] by reallocating the risks of sexual contact and the burdens of illegitimate children." *Ibid.* at 182.

[96] Parr, *supra* note 72 at 115. Parr further notes that between eleven and thirteen percent of the

found of brothel keepers decoying young women with offers of employment and instead conveying them to houses of ill repute.[97]

Even if not outright abusive, parsimonious masters skimped on provisions and swindled servants of wages lawfully due them. Some masters obeyed the law of their contracts, if not the spirit, by supplying the required items of clothing to their servants but of a thread-bare and tattered nature.[98] Servants not infrequently complained of improper nourishment, with inedible food or scanty portions being served, or both.[99]

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young women sent to Canada as domestic servants became pregnant during the late nineteenth and early twentieth-century. *Ibid.*

[97] See *e.g. The Montreal Gazette* (27 April 1844) and *The Montreal Transcript* (30 April 1844) (recounting the story of an eighteen year-old woman who was "inveigled" from Montreal to New York by a woman "who represented herself to be a milliner, but who placed the poor girl in a house of ill fame, where her ruin was accomplished by force."); *The Times and Commercial Advertiser* (14 September 1843) (containing grand jury report to Court of King's Bench which stated that "[w]omen, married and single, keepers of brothels are in the habit of seeking out young females, emigrants, hiring them as servants at high wages, and thus decoying them for the purposes of seduction...."). *The Montreal Transcript* (20 January 1838) observed that reports from Boston courts indicated that "young women from the country were enticed to the house [of ill repute] through the aid of intelligence offices" probably similar to those advertised in Montreal during this period. See *infra* notes 84 & 85.

[98] See *e.g.* Parr, *supra* note 72 at 93 note 29 (noting that unscrupulous masters cheated their servants of wages due, sent them back when their clothes wore out, failed to supply them with winter clothing at all or provided them with threadbare garments).

[99] For examples of such allegations made by servants, see pp.109-112 (case of John Edmondstone) and pp.112-113 (case of Regis Villeneuve), *below*. See also Lacelle, *supra* note 8 at 46 ("[some scholars] report that feeding servants cost a great deal and a number of families were somewhat reluctant to set aside sufficient amounts for them. Yet still others mention the servants' numerous complaints that some masters measured milk with eye-droppers and cut portions of meat better fit for cats than servants."); Rorabaugh, *supra* note 44 at 42 (stating American apprentices often complained about the food their masters provided).

Perhaps the most common negative proclivity among masters during this time period was a tendency to dehumanize their servants, demanding they be little more than automatons. A contemporary issue of *Punch* aptly satirized the unreasonable demands of some masters and mistresses by publishing a letter from "a Lady inquiring the Character of a Servant", detailing the manner in which her servants were expected to be on constant beck-and-call, and required to subsume all human interests and traits not directly relevant to their service.[100] By and large, however, little criticism of the behavior of masters and mistresses was publicized. In a rare exception, the *Montreal Gazette* excerpted such an article:

> How much domestic comfort depends upon servants is too familiar to every one to be insisted on; but whilst every housekeeper is eloquent in elegiacs on the state of servants, their ingratitude, their deceit, their stupidity, their carelessness, to say nothing of greater crimes, how little eloquence is bestowed on masters and mistresses! Yes, what an invaluable book would be the real confessions of a servant; her genuine experience of several mistresses, her feelings respecting her own conduct and its reward, her sorrows and anxieties so recklessly caused! What a revelation it would be! We should then hear the other side of the question, and it might go far towards a true understanding of the relation of master and servant.[101]

Servants not only had to contend with the meanness of their masters, but also had to grapple with attempts to sully their reputations, and hence their future employability. Some servants placed advertisements as a means of restoring their good name[102] or sought legal redress, prosecuting their

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[100] See Appendix E, p.197, *below*. See also Lacelle, *ibid.* at 59 (containing account of a female servant who chose to go to prison rather than return to her obnoxious master).

[101] *The Montreal Gazette* (19 June 1845) (citing *The Claims of Labour*).

[102] See *infra*, note 196 at 76. See also Lacelle, *supra* note 8 at 60 ("[m]asters could always brandish the need for good references as a weapon because they would be requested before the

masters for physical abuse, non-payment of wages, wrongful termination, and the like.[103] Other servants chose to desert from service or lashed out at their masters by committing acts of violence or arson, but many more simply endured their master's caprices as best they could.

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servant's departure and were often vital in finding another situation."). Many registry offices, for example, required such references.

[103] For a discussion, see pp.156-168, *below*.

Chapter III.
Legal Regulation of Master-Servant Relations

While the personal relationships existing between masters and servants may have been extremely varied, they were, above all, legal relationships involving mutual responsibilities. Courts acted to enforce these responsibilities for relationships governed by employment agreements, either oral or written, but in all cases witnessed.

A. Indentures
1. Obligations of the Servant

Notarial contracts were the standard mode of setting out the conditions of long-term labour relationships, although witnessed verbal agreements were also commonly enforced. Notarial contracts were prepared by, and signed in the presence of, notaries practicing in the city and its outskirts, and the terms of these documents blended elements common to those found in England and France.[104] After a servant was bound by such a document, he or she was commonly referred to

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[104] Hamilton, *supra* note 25 at 1. For a comparative analysis of these documents and those found in England, France and colonial America, see generally *ibid.* In colonial England, for instance, municipal laws ensured that indentures were legally-binding, and negligent apprentices as well as masters were subject to legal sanction. In colonial America, indentures were often registered in Mayors' offices, so that a record would be available in the event of legal proceedings. *Ibid.* at 19.

as "indentured."[105] These documents were most commonly used to provide for apprenticeships, but variants were common for many forms of servile relationships.[106]

The language of apprenticeship indentures, however, tended to contain more detailed stipulations of responsibilities on the parts of both apprentices and masters. The apprentice was generally obliged to serve and obey and to avoid any damage to his master's interests during his service.[107] The indenture binding Cornelius Kelly as an apprentice hatter to William Gettes, a master who figures prominently in the records of this period, stated in pertinent part:

> Mary Haron promises that her said Son shall apply himself and work day by day...without loss of time, Shall do all and every such work as shall be given him to do by his said master...relative to said art and trade, shall attend and work without loss of time day by day[,] also shall colour wash and clean skins, obey the lawful commands of his said master...shall not absent himself from the employment of his said master either by day or by night without leave[,] not waste or lend his masters goods or bring in any spirituous liquors in any part of the said Wm Gettes' premises

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[105] It should be noted that servants bound by notarial contracts were often referred to by the rather more-painful sounding term, "indented." This latter term was commonly in use in the 1830's, but seemingly was largely replaced by "indentured" in the 1840's. These contracts were known by a multiplicity of names. In English, they were commonly referred to as "indentures", "engagements", "agreements" or "articles of apprenticeship." In French, they were referred to as "brevets", "brevets d'apprentissage" or "engagements." In addition, contracts binding apprentices to notaries were commonly referred to as "brevets de clericature." For the sake of simplicity, hereinafter the term "indenture" is used.

[106] For a discussion of indentures for domestic servants, see *e.g.* Lacelle, *supra* note 8 at 35-39; Hogg, *supra* note 8 at 37-66; Palmer, *supra* note 44 at 28. For a discussion of indentures in general in Montreal, see generally Hamilton, *supra* note 25.

[107] Ruddell, *supra* note 42 at 17. The period of service for Montreal apprentices was typically four to six years, and apprentices were usually between fourteen and sixteen years of age when indentured. Hamilton, *ibid.* at 33.

or see it done by others without giving him notice thereof, [and] shall not divulge the secrets of any of the affairs and transactions of his said master....[108]

As is the case in Kelly's indenture, these documents commonly stipulated specific employment obligations (e.g., the coloring and washing of skins), as well as general obligations common to virtually all indentured servants (e.g., working without loss of time).

Some masters or mistresses demanded apprentice fees, although such fees were far from the norm.[109] Fees were usually demanded for highly sought-after professions, such as medicine or law. Punitive clauses were often inserted, wherein the apprentice or a relative was responsible for the payment of a substantial sum should the term of service not be fulfilled.[110] Furthermore, parents or tutors were often obligated to return servants should they desert.[111] In addition, some indentures

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[108] See Appendix A, p.189, *below*. For the view that many of these provisions were antiquated, see *infra*, note 353 at 140..

[109] For example, one indenture for an apprentice milliner provided for the payment of "ten pounds remuneration fee for the trouble she may have in instructing the said [apprentice] in her said Trade." ANQM, Notarial File of George Dorland Arnoldi, indenture of Ellen Gannon to Mary Goodhue (18 October 1830).

[110] The apprenticeship indenture of Terrance Duffy called for a penalty of ten pounds if the agreement was not fulfilled, payable by the apprentice's brother and a third party. ANQM, Notarial File of James Dorland Arnoldi, indenture of Terrance Duffy to James Herecourt (2 June 1832). For an example of a prosecution wherein an apprentice was condemned to pay ten dollars to his master under the terms of his indenture, see p.99, *below*. See also Audet, *supra* note 41 at 148; Hamilton, *supra* note 25 at 95. Audet states that such clauses were more common in French-language indentures and that indentures "with a punitive clause allowed masters and apprentices a certain amount of freedom, and perhaps accounts for the lack of disputes between French-Canadian masters and their apprentices." *Ibid.* at 155.

[111] Hamilton, *ibid.* at 151-152. Hamilton states that a majority of indentures in Montreal obligated

provided for a probationary period of service.[112] Indentures tended to evince English and French-language variations. For example, English-language indentures tended to list rules of conduct which apprentices were to obey. Among the most common rules was that apprentices were frequently required to make up time lost or to "return all the time which he may lose by his fault and negligence."[113] Such indentures also tended to show a great concern for moral behavior, requiring them not to absent themselves or to frequent taverns and houses of ill-repute.[114] French-language indentures frequently required that servants (other than domestics) assist with household chores after normal working hours.[115] Provision was also often made for servants' religious instruction in the

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parents to search for and return runaway apprentices, in marked contrast to indentures in colonial America. *Ibid.* at 166-167.

[112] Hamilton, *ibid.* at 78-81. For discussion of probationary periods in the context of desertion prosecutions, see p.142-143, *below*.

[113]See Appendix A, p.189, *below*. See also Ruddell, *supra* note 42 at 18.

[114] Kelly's indenture obligated him to "not play at cards[,] dice, or any other unlawful games" in addition to the prohibitions against desertion or consuming liquor. See Appendix A, *ibid.* See also Audet, *supra* note 41 at 17; Hamilton, *supra* note 25 at 19.

[115] Ruddell, *supra* note 42 at 18. Hamilton suggests that few apprentice indentures prohibited work unrelated to the master's craft, therefore implying that such work was a required part of an apprentice's duties. Hamilton, *ibid.* at 90. Hogg, however, points out that many indentures forbade assigning domestic chores to apprentices, presumably as such work was beneath their social station. Hogg, *supra* note 8 at 24-25.

Catholic Church and their first communion; this included allowing servants to attend mass and observe religious holidays.[116]

2. Obligations of the Master

In both English and French-language indentures, masters were required to provide instruction in all the mysteries of the craft, and usually to provide food, lodging, and clothing. If clothing was not provided, a clothing allowance was often specified. Mistresses were sometimes obligated to wash and mend the apprentice's clothing.[117] Typically, at the end of the term of engagement, apprentices received a sum of money, a suit of clothes, or the tools of the trade.[118] Indentures often contained provisions regarding education in reading and writing, or ciphering, provided either by masters or

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[116] See *e.g.* Ruddell, *ibid.* at 19; Audet, *supra* note 41 at 17-18. A rare example of an English-language indenture requiring religious instruction is that of a domestic servant which stipulated that she be "taught the catechism of the Church of England and confirmed in the same as soon as can be." ANQM, Notarial File of George Dorland Arnoldi, Indenture of Letitia Glass to William Lindsay (12 March 1830).

[117] For example, James Clarke's apprenticeship indenture to Joseph Page, brush manufacturer, provided for a clothing allowance of three, five, six, seven, eight and nine pounds, respectively, for the seven years of his term. The indenture continued by stating "it being, however, understood and agreed that should it appear to the said Joseph Page that the said James Clarke is not sufficiently and properly clothed, he the said Joseph Page shall have the right and be at liberty to furnish such clothing as may be requisite for the said James Clarke and to deduct whatever sums he may advance for that purpose, from the said sums so to be annually allowed as aforesaid." ANQM, Notarial File of George Dorland Arnoldi, indenture of James Clarke to Joseph Page (27 June 1836).

[118] See *e.g.* Ruddell, *supra* note 42 at 18. These payments, often referred to as "freedom dues", were dictated by municipal law in colonial America. Hamilton, *supra* note 25 at 17.

through enrollment in night school. Such provisions were more common in English-language indentures.[119]

Perhaps most interestingly, French-language indentures frequently contained obligations to treat servants "doucement et humainement" or similar provisions.[120] An excellent example is Pierre Giroux's indenture, which carefully spelled out a long list of obligations on the master's part, stressing that he was to treat him as a good father would treat his own son.[121] English-language indentures rarely seem to contain such stipulations, leaving open the question as to whether French-Canadian parents were more concerned about possible ill-treatment. Cornelius Kelly, an apprentice who sued his master for abusive conduct during this period, was bound by an indenture that contained no such language.[122]

As Canadian legal historian Jeremy Webber has observed, apprenticeship often served a dual function, namely, to provide life-skills as well as care and upkeep. Parents in financial straits therefore resorted to apprenticeship as a form of *de facto* foster care or adoption for parents in

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[119] Audet, *supra* note 41 at 18.

[120] Ruddell, *supra* note 42 at 19.

[121] ANQM, Notarial File of Antoine Euseby Bardy, Engagement de David Giroux à Etienne Guillot (18 November 1833). See Appendix B, p.191, *below*.

[122] See Appendix A, p.189, *below*, for Kelly's indenture. For discussion of this case, see pp.165-166, *below*.

financial straits.[123] A similar practice was the indenturing of minors as domestic servants until they reached the age of majority.[124]

3. Transfer and Continuance of Indentures

The very existence of indentures demonstrates that masters had a strong interest in securing a steady and cooperative source of labour. Traditionally, masters were largely unhampered in their ability to transfer indentures (and, by extension, servants) to other masters as they saw fit. To many servants, this would have been inconvenient at best. During the years 1830 to 1845, many indentures allowed for transfer only if the servant or guardian consented, while other indentures categorically

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[123] Webber, *supra* note 81 at 127. In such agreements, parents contracted for their child to be apprenticed at a very young age until the age of majority. Unlike apprenticeship indentures, however, these documents frequently did not specify skills or crafts in which the child was to be trained, and the child was usually bound for much longer periods than was typical for apprenticeship. Some of these agreements also contain language not to be found in other contracts, such as guarantees to treat the child as part of the master's family. The language of one such indenture reads, in pertinent part:

> Lesquels ont par ces présentes engagé à Pierre Précourt de St. Athanas Michel Sullivan leur enfant âgé de quatre ans et demis [sic] pour et jusqu'à sa majorité et promettent aujourd'hui le jamais inquiéter à cet effet, et sa part le dit Pierre Precourt promet nourrir, entretenir le dit Michel Sullivan dans la religion Catholique et généralement se comporter avec lui censure il le ferait pour son propre fait enfant le se prendre et corriger quand il sera nécessaire, ce à quoi les dits premiers comparaissant promis [sic] acquiescer car afin et mais dans le cas où le petit enfant lorsqu'il aura un certain moment laisser sa maison ou qu'il la laisserait à son absence alors le dit Pierre Precourt n'entend pas être responsable mais promet faire son possible pour la ramener.

ANQM, Notarial File of Antoine Eusebe Bardy, engagement par John Sullivan et son espouse à Pierre Précourt (6 February 1832).

[124] While beyond the scope of this thesis, these "quasi-adoption" indentures would appear to present a fruitful area of further study. For a discussion of such quasi-adoptions in the context of domestic servant indentures, see generally Hegg, *supra* note 8 at 48-50.

prohibited it. Similarly, many agreements made provisions for a master's move to another locale.[125] In certain situations the parties agreed to continue the terms of service, despite the occurrence of events which would otherwise lead to cancellation. For example, Richard Moore, son to the paymaster of His Majesty's Thirty-Second Regiment of Foot, was bound as a student and apprentice to the regimental surgeon for the term of five years. Four years later, the surgeon was given orders to leave the province and the parties transferred the indenture to another surgeon of the same regiment, so as to allow Moore to continue his studies uninterrupted.[126]

4. Termination and Cancellation of Notarial Contracts

A common feature of such indentures, particularly those drafted in French, were provisions for termination. If the master died prior to the end of the term of service, some stipulated that the indenture was terminated, others that the master's family was to reimburse some portion of monies received as apprentice fees.[127]

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[125] See *e.g.* ANQM, Notarial File of George Dorland Arnoldi, indenture of Patrick Dunn to James Wilson (6 January 1832) (prohibiting the master from taking his apprentice brush maker with him in the event he left the province, without first obtaining the permission of the apprentice's father). See also Ruddell, *supra* note 42 at 20; Audet, *supra* note 41 at 147-149; Hamilton, *supra* note 25 at 94.

[126] ANQM, Notarial File of George Dorland Arnoldi, indenture of Henry Moore to Richard Poole (23 October 1835) and transfer engagement of Henry Moore to Duncan McGregor (14 August 1839). Another intriguing example is that of John Lauder, apprentice engraver, indentured to John Rannie by notarial contract in Ireland in 1829. Two years later, Lauder accompanied his master to Montreal, and they entered into another notarial contract, agreeing to continue the apprenticeship on the same terms. ANQM, Notarial File of George Dorland Arnoldi, indenture of John Lauder to John Rannie (4 November 1831).

[127] Ruddell, *supra* note 42 at 20.

When the term of service had expired, masters were occasionally required to grant proof of discharge or good conduct. Pierre Audet, in his work on apprenticeship in Montreal between 1790 and 1812, identified only one case of an apprentice having received certification of completion of his service.[128] Such certification does not appear to have been quite so rare during the period examined in this thesis. An example of an indenture containing such a stipulation is that of William Lang, bound in 1830 to a merchant by name of Joseph Shuter. The notation on the agreement stated that "whereas the said Engagement terminated and was completed...to the entire satisfaction of the said Joseph Shuter, they the said appearers do now therefore cancel the same and mutually discharge each other of all claims which either party may or can have the one upon the other...."[129] Indentures could also be canceled, usually at the master's behest.[130] Cancellation was commonly recorded with the original indenture, either by notion on the document itself or by attaching a codicil to the

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[128] Audet, *supra* note 41 at 145. For discussion of proof of discharge in other jurisdictions, see Ruddell, *ibid.* at 19; Hamilton, *supra* note 25 at 73. For example, Hamilton notes that the Boston Mechanic's Society gave certificates of completion to apprentices following successful termination of their terms of apprenticeship. *Ibid.* at 16.

[129] ANQM, Notarial File of George Dorland Arnoldi, indenture of William Lang to Joseph Shuter (12 March 1830). The importance put on certificates of good conduct and the like, however, suggests that such certification was probably more prevalent (if less formal) than these indentures suggest. It is likely, as Hamilton posits, that notation of successful completion were usually entered on servants' copies of their indentures. Hamilton, *ibid.* at 163. This would also account for why so few notations are found on indentures in the notarial files.

[130] Hamilton finds a fifteen percent cancellation rate of Montreal apprenticeship indentures during the period covered by her thesis. Hamilton, *ibid.* at 97. For discussion of annulment and abrogation of indentures, see generally *ibid.* at 169-208. Indentures that provided for probationary periods were less likely to be annulled, suggesting that masters were frequently uncertain about the productivity they could expect from their apprentices, and accordingly dismissed those which did not meet their expectations. *Ibid.* at 207.

document. Most frequently no reasons for the cancellation were recorded, leaving as a matter of some speculation the most common grounds thereof.[131] For instance, in January 1835, a domestic servant was indentured to a Montreal shoemaker for the period of three years. Five weeks later, the notary recorded on the indenture that "for certain good causes the [parties] have agreed to cancel and by these presents do cancel the said Engagement and release each other of and from all obligations resulting therefrom."[132] As Audet suggests, one of the most common grounds for cancellation was probably dissatisfaction, usually on the master's part.[133] Servants had less leeway to seek cancellation, but such events did occur, as witnessed by the case of Cornelius Kelly, whose indenture was canceled in court proceedings brought by him against his master.[134]

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[131] Ruddell has provided an example of a clause in an indenture which allowed for cancellation in case of ill-treatment: "en cas de mauvais traitement, de sa part, le présent engagement demeura nul et résilié de plein droit et sera le dit apprentis déchargé de présent engagement sans depens [ou] dommages...." Ruddell, *supra* note 42 at 30-31. Audet identified the following as among the most common grounds for cancellation: illness, accident, or insanity; disputes between the parties; parents' buying time remaining on the contract; damages to master's property by the servant; and desertion. Audet, *supra* note 41 at 151. See also *ibid.* at 25-31.

[132] ANQM, Notarial File of George Dorland Arnoldi, indenture of Margaret Hutson to Richard Adams (9 January 1835).

[133] The cancellation of James Clark's indenture as an apprentice brush-maker to Joseph Page was apparently due to mutual dissatisfaction. While no explicit reasons were given, the notarial file contains a terse note from Joseph Page, dated less than two months after the contract date, which stated, "I am Agreeable to Break[ing] James Clark['s] indenter [sic] with pleasure therefore you will [do] what is requested", suggesting that Page was responding to a request by Clark that his indenture be cancelled. ANQM, Notarial File of George Dorland Arnoldi, indenture of James Clark to Joseph Page (27 June 1836).

[134] For a copy of Kelly's indenture, see Appendix A, p.189, *below*. See pp.162-168, *below*, for discussion of this and other cases wherein servants sought cancellation of their indentures.

To many servants, indentures were galling chains of bondage which tied them to their masters for long periods of time, and there is little doubt that their primary purpose was to protect the socio-economic interests of masters.[135] However, it must also be emphasized that indentures served to protect servants. By setting out the obligations of the principal party to the labour relationship, indentures afforded servants legally cognizable claims on their superiors. Indentures also set out the social parameters of the relationship, especially important when the servants were orphans or emigrants.[136] As such, servants bound by indentures often enjoyed greater legal protection than their counterparts who were not so bound.

B. The Law of Master and Servant

Meaningful discussion of labour relations during this period necessitates at least a cursory exposition of the nature and sources of master-servant law. It should be stressed, however, that to do so is no easy task. First, debate over whether French or English law was controlling in Quebec

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[135] For an in-depth examination of the role of apprenticeship indentures in protecting masters' interests in Montreal, see generally Hamilton, *supra* note 25. Hamilton notes that there were several contractual enforcement mechanisms available to masters to dissuade apprentices from deserting, including contingent end payments, clauses requiring parents or guardians to return runaways, and increasing compensation over the life of the indenture. Discussion of Hamilton's work is not possible here, but it is worth emphasizing that regardless of the enforcement mechanisms available to masters, servants (including many apprentices) clearly deserted in impressive numbers during the period 1830 to 1845. A clearer understanding of the efficacy of such enforcement mechanisms would entail the mammoth task of comparing indentures against judicial records.

[136] See *e.g.* Parr, *supra* note 72 at 84-91. Parr points out that "formal apprenticeship indentures did more to define the rights of British immigrant children than to extinguish their liberties." Indentures were legally binding on masters, set out the market value of the child's services, and provided potential legal redress against the master. *Ibid.* at 84. But these contracts were not without costs: Parr notes that in the process they "destroyed the illusion, the warm and welcome of being 'like family', which every child immigrant must have at some time entertained." *Ibid.* at 91.

raged from the time of the Conquest to the second half of the nineteenth-century.[137] Second, no definitive or comprehensive source detailing master-servant law exists for this time period. Third (and related to the previous point), most labour disputes were heard before Justices of the Peace sitting singly or in pairs and, as was mentioned earlier, these were not generally courts of record.[138] Existing judicial records are virtually silent on what specific legal principles were implicated. Discussions of relevant evidentiary or procedural rules were extremely summary, and appear exclusively in statutes governing master-servant law. Therefore, only general observations about the law of this period can be made, and then only with trepidation.[139]

The terms "master-servant law" or "labour law" refer to the corpus of primarily statutory law which pertained to employment relationships. As Douglas Hay and Paul Craven have stated,

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[137] For a discussion of the conflicts in the eighteenth- and nineteenth-century over whether French or English law should be controlling in Lower Canada (i.e., the "reception debate"), see generally Webber, *supra* note 81; Hogg, *supra* note 8 at 22-36; Craven, *supra* note 81 at 183. As this issue falls outside the parameters of this thesis, it is not addressed herein.

[138] A similar situation existed in nineteenth-century Upper Canada and Ontario. See Hay & Craven, *supra* note 6 at 180. See also Webber, *ibid.* at 107. Hay & Craven point out that the informal nature of these proceedings accounts for why "the striking recurrence of this policy in widely dispersed times and places has not received the attention it deserves from lawyers or historians." They also point out that these laws were associated with the restriction of union activity: "[d]octrinally, the notion that a collective suspension of work was a criminal conspiracy may have flowed in part from the idea that an individual worker's disobedience or desertion should be treated as a crime." *Ibid.* For examples of such cases, see pp.175-177, *below*.

[139] I have attempted to recreate the law in this area as far as possible. I emphasize, however, that our modern conceptions of an ordered judicial system, and systematic codification or compilation of statutory authority and precedent, simply did not exist during this period. Most prosecutions were brought privately, and the historical or legal value of preserving and compiling them for posterity was largely unappreciated. If for no other reason, I hope this analysis will prove helpful by providing the impetus for future dialogue on this subject.

English-based labour law differed from jurisdiction to jurisdiction, but shared three common attributes: it applied to contractual employment relationships; it imposed sanctions for contractual breach; and it was enforced and administered at the local level by Magistrates and Justices of the Peace.[140] Statutory law was often supplemented by other local legislative enactments, as was the case in Montreal.

The corpus of master-servant law, then, shared a common genesis but was uniquely a local creation. It was neither strictly the offspring of the English common law (which, it should be noted, did not emerge as a coherent classification until later in the century) nor of the Custom of Paris (which was virtually silent on contractual relationships). Labour law in Montreal developed as a mélange--influenced heavily, to be sure, by English and French law, but exhibiting local variants. Analysis of judicial records indicates that two main sources of written law were applied: provincial statutory enactments, and local legislative enactments, referred to in Montreal as the "Police Regulations."[141] However, a third source must also be mentioned: legal principles applied by

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[140] Hay & Craven, *supra* note 6 at 180. For discussion of master-servant law in nineteenth-century Ontario, see generally Palmer, *supra* note 44; Webber, *supra* note 81; Craven, *supra* note 81.

[141] Explicit reference to these bodies of law sometimes appear in the records of the lower courts. See *e.g.* ANQM, WSS(R) p. 197, *John Kemp v. William Eamon* (1 May 1832) (charge of "neglecting and refusing to enter the service and employ of...the Prosecutor to whom he is engaged, the whole in contravention to the Provincial Statute passed in the 57th Geo. III chap. 16 and to the Rules and Regulations respecting apprentices and hired or Indentured servants in such case made and provided."); WSS(R) p.309, 313, *Benjamin Workman v. Margaret Cathers* (21, 28 August 1832): (charge of acting "in contravention to the Provincial Statute and to the Rules and Regulations of Police in such case made and provided.").

Justices of the Peace, or "Justice-made" labour law. As different legislative enactments were controlling for the city itself, versus the greater district of Montreal, these will be addressed in turn.

Numerous statutory enactments concerning master-servant disputes law were promulgated during the eighteenth and nineteenth-centuries in Quebec.[142] During the period 1830 to 1845, the main legislative enactment was a provincial statute enacted by the Assembly on March 22, 1817 and applicable in Montreal, Quebec City and Trois-Rivières.[143] For present purposes, the most important aspect of this statute was that it authorized Justices of the Peace in the Court of Quarter Sessions (upon approval by the Court of King's Bench) to make regulations respecting master-servant relations, subject to certain limitations: masters or mistresses could not be subjected to a fine exceeding ten pounds current money of the province; nor could servants be fined in excess of the same amount or given prison terms longer than two months for any violation.[144] The statute accorded Justices of the Peace the authority to hear complaints that servants had deserted or secreted themselves, or were preparing to desert or secrete themselves, and to hold them in prison for up to forty-eight hours until the matter was heard.[145] In addition, the statute provided for fines of five

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[142] As these statutory enactments were frequently superceded by later enactments, only those statutes in force during the period covered by this thesis will be discussed.

[143] *57 George III chapter 16*. For the relevant text, see Appendix C, p.193, *below*. For purposes of discussion, this statute is referred to as the "statute of 1817." This statute was renewed by successive statutory enactments. See *e.g. 4 George IV chapter 33*; *9 George IV chapter 37*; *10 & 11 George IV chapter 1*.

[144] See Appendix C, *ibid.*

[145] *Ibid.* Extensions could be granted to either party, and were probably liberally granted to

to twenty shillings for servants who engaged in "gaming", in default of which they were subject to imprisonment for eight days.[146]

Eventually the Justices of the Peace enacted a more comprehensive set of regulations, entitled "Regulations Respecting Apprentices and Hired or Indented Servants", otherwise known as the "Police Regulations."[147] These regulations gave two or more Justices of the Peace, sitting in Weekly or Special Sessions, the authority to determine all master-servant disputes. They further explicated the varieties of possible offenses committed by servants: desertion; refusal or neglect of their lawful duties; refusal to obey their master's commands; or any "fault or misdemeanor" while in service.[148] Furthermore, the regulations required that all servants by-the-month or longer give fifteen days advance notice of their intention to leave their master's employment, or else be adjudged to have deserted. Masters were likewise bound to the same period. However, masters could summarily discharge a servant provided they paid all wages that would have been due if the servant finished his

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masters, as defendants were often jailed for longer than forty-eight hours.

[146] *Ibid.*

[147] See *e.g. Compilation of the Bye-Laws and Police Regulations in Force in the City of Montreal* (Montreal: James Starke & Company, 1842) 117-120 [hereinafter *Police Regulations*]. See also *The Canadian Courant* (4 September 1833). For the relevant text, see Appendix D, p.195, *below.* Following the incorporation of the city of Montreal in 1841, the power to make rules and regulations with respect to servants was transferred to the corporation. *3 & 4 Victoria chapter 35*, "An Ordinance to Incorporate the City and Town of Quebec", a statute also applicable to Montreal.

[148] See Appendix D, *ibid.*

term. The regulations also provided fines of up to five pounds for parties who harbored runaways or enticed servants to desert.[149]

While it is clear that the Police Regulations were embellishments on the provincial statute, the interplay between these two sources of law is not clearly discernable. For example, the provincial statute provides that all apprentices, domestics, hired servants and journeymen were subject to fines of up to ten pounds currency or two months' imprisonment in the House of Corrections.[150] The Police Regulations, in turn, stated that "all apprentices to any trade or mechanical art whatever, engaged by written agreement, or servants verbally engaged before witnesses" shall be subject to the "fine and punishment" set out in the provincial statute.[151] The Police Regulations then explicitly state that all "domestics, servants, journeymen or labourers by the month or longer" are subject to fines no greater than twenty shillings.[152] The careful distinctions drawn among these groups of servants in the Police Regulations therefore suggests that all indentured apprentices or servants bound verbally could be imprisoned up to two months and fined ten pounds, while other servants (i.e., domestics, servants, journeymen and labourers) were subject to fines of up to twenty shillings. At

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[149] *Ibid.* For discussion of such cases, see pp.120-124, *below.*

[150] See Appendix C, p.192, *below.*

[151] See Appendix D, p.195, *below.*

[152] *Ibid.*

first glance, these distinctions seem counter-intuitive.[153] However, it may have been felt that indentured apprentices and verbally-bound servants needed greater dissuasion, perhaps as these two categories of servants were most likely to desert.[154]

In 1836 another statute was passed, designed to govern master-servant disputes outside of the city limits, entitled "An Act For the More Easy and Less Expensive Decision of Differences Between Masters and Mistresses and Their Servants, Apprentices, and Labourers, in the Country Parts of this Province."[155] As the statute of 1836 itself states, the parishes of Quebec, Montreal and Trois-Rivières were specifically excepted from the statute's authority. This statute governed apprentices, male or female servants and journeymen, and provided as much detail as the statute of 1817 and the Police Regulations combined although the specific provisions were dissimilar. The statute of 1836 listed the applicable offences as "ill behaviour, refractory conduct, idleness, absence without leave, or dissipating his or her Master's, Mistresses or Employer's effects, or of any

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[153]Analysis of the dispositions from the judicial records consulted in this thesis does not contradict the existence of this dichotomy. However, the sparsity of detail about the exact status of servants appearing in these records (i.e., whether they were verbally bound, journeymen, etc.) prevents a determination with any degree of certainty.

[154] It may be that, as was said earlier, apprentices bound by indentures were more likely to flee from service to seek employment as journeymen, and hence posed a greater economic loss to the typical master. Conversely, verbally-bound servants may have been more common than those bound by indentures, or may have been more likely to deny the existence of an employment agreement if it served their interest to do so.

[155] *6 William IV, chapter 27.* For the relevant text, see Appendix E, p.197, *below.* For purposes of discussion, this statute is referred to as the "statute of 1836." Taylor's Justice of the Peace manual outlines the principles of labour law as applicable in the "Country parishes", obviously referring to this statute. Hugh Taylor, *Manual of the Office, Duties, and Liabilities of a Justice of the Peace* (Montreal: 1843) 280-285. This statute was rendered permanent by *3 Victoria chapter 6* in 1840.

unlawful act that may affect the interest, or disturb the domestic arrangements" of a servant's superior.

Unlike the statute of 1817 and the Police Regulations, the statute of 1836 specified that fines could not exceed two pounds ten shillings or fifteen days' imprisonment for default of payment.[156] The statute of 1836 also provided for suits against masters for mistreatment, inadequate food or the like, subjecting them to the same fine although making no provision for imprisonment. Still, at least a pretense of equality can be gleaned from this statute, as continued violations of the "ordinary and established duties of the parties" on either side could result in annulment of verbal or written contracts. Masters were also prohibited from taking servants or apprentices outside of the district without their consent or that of their parents or guardians, and both masters and servants were required to give fifteen days' notice prior to termination of the employment relationship. Third parties remained liable for employment offenses: harbouring a runaway was punishable by a fine of two pounds ten shillings, while enticing an apprentice to desert was punishable by the same fine or incarceration for one month.[157]

While the language of the statute of 1836 makes it evident that it was not to apply within city limits, it should be emphasized that this did not preclude the possibility that Justices in Montreal may have nevertheless chosen to apply it. For example, the records of a successful lawsuit brought

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[156] Appendix E, *ibid.*

[157] *Ibid.* While the language of the 1836 statute suggests that masters could also be subject to imprisonment for default of payment of penalties imposed against them, it seems unlikely that this would occur, if for no other reason than the fact that the 1817 statute explicitly foreclosed the possibility of jailing masters.

by an apprentice hatter named Cornelius Kelly against his master on grounds of ill-treatment clearly indicates that the statute of 1836 was applied, despite the fact that the case was heard before a Montreal court, involving parties who were domiciled in Montreal, on the basis of an indenture drafted before a Montreal notary.[158] While Justices of the Peace were themselves "servants of the law", it is equally true that they had varying degrees of legal education, and higher court review of master-servant disputes was a rarity.[159] Justices therefore utilized whatever legal sources were available to them. In situations such as Kelly's case, the Justice undoubtedly chose to apply the 1836 statute as it provided the most explicit legislative basis for allowing servants to prosecute masters for ill-treatment.

While local and provincial legislative enactments were an integral element of Montreal labour law of this period, "Justice-made" law was an equally important component. These legislative enactments were far from exhaustive, and Justices (and, by extension, the courts they constituted) enjoyed wide latitude in their discretionary and interpretive functions. Justices often applied basic legal principles in resolving disputes, derived primarily from English and local law compiled in Justice of the Peace manuals.[160]

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[158] The court register discloses that the charge was "illtreating the def[endant] his apprentice by virtue of 6th Will[iam] 4th ch.27 page 230." WSS(R) [unpaginated], *Cornelius Kelly v. William Geddes* (20 October 1843).

[159] For discussion of the backgrounds of Justices of the Peace in Montreal, see generally Fyson, *Justices, supra* note 13.

[160] It is a daunting task to recreate the sources used by Justices of the Peace or other jurists in any part of British North America during this period. However, the McGill law library contains a superlative collection of English, French, and American eighteenth- and nineteenth-century (and

Examination of a number of these contemporary manuals used by Justices in Montreal during this time reveals a dizzying array of often-conflicting legal precepts related to the law of master and servant. A dominant principle was that deserting servants were to make up the time lost through their misbehavior, although there were variants on this rule.[161] This principle mirrors the law as specified in the statute of 1836, and it is therefore doubly surprising that this was included in relatively few court dispositions.[162]

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older) legal materials in its Canadiana collection, many of which were owned and used by local Justices. See G. Blaine Baker *et al.*, *Sources in the Law Library of McGill University for the Reconstruction of the Legal Culture of Quebec, 1760-1890* (Montreal: McGill University Faculty of Law & The Montreal Business History Project, 1987). Among the relevant materials circa 1845 are John Frederick Archbold, *The Justice of the Peace* (London: 1845, 3d edition); Edward Carter, *A Treatise on the Law and Practice on Summary Convictions and Orders by Justices of the Peace* (Montreal: 1856); W.C. Keele, *The Provincial Justice, or Magistrate's Manual, Being a Complete Digest of the Criminal Laws of Canada* (Toronto: 1843; 2d edition); John George Marshall, *The Justice of the Peace, and County and Township Officer, In the Province of Nova Scotia* (Halifax: Gossip & Coade, 1837); Taylor, *supra* note 155; *Acts Relating to the Powers and Duties and Protection of Justices of the Peace in Lower Canada* (Quebec: S. Derbishire & G. Desbarats, 1853). For a discussion of Justice of the Peace manuals used in other jurisdictions, see *e.g.* John A. Conley, "Doing it by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America", (1985) 6 J.Leg.Hist. 257. For the related topic of early nineteenth-century Quebec law reporting, see *e.g.* Eric Whan *et al.*, "Stating the Case: Law Reporting in Nineteenth-Century Quebec", in Donald Fyson *et al.*, eds., *Class, Gender and the Law in Eighteenth- and Nineteenth-Century Quebec; Sources and Perspectives* (Montreal: Montreal History Group, 1993); Raymond Crête *et al.*, "Law Reporting in Nineteenth Century Quebec", (1995) 16 Leg. Hist. 147.

[161] See Keele, *ibid.* at 28 (make up time lost or provide financial satisfaction); Marshall, *ibid.* at 445-446 (make up time lost, but if during harvest time or the like, make up double time); Archbold, *ibid.* at 108-109 (make up time lost); Taylor, *ibid.* at 281 (make up time lost or face imprisonment of up to fifteen days).

[162] Given the rarity of such recorded dispositions, even before Justices of the Peace outside the city limits (where this disposition appeared with greater frequency), it appears unlikely that this rule was generally followed. See pp.97-98, *below*, for discussion of such cases.

Another principle set out in these manuals was that masters were deemed to have taken their servants "in sickness and in health", and discharging an ill servant was legally impermissible.[163] This rule, if followed, clearly conflicts with what has been assumed about the lack of job security enjoyed by servants during this period.[164] These manuals also exhibit a number of regional variations which were likely not applied in Montreal.[165] Regardless of the efficacy of these manuals, however, the wide latitute given to Justices undoubtedly accounts for aberrant dispositions which seemingly do not conform with legislative enactments.[166]

As mentioned earlier, master-servant law in Montreal during this period exhibited a disparity between the remedies available to masters and servants. The remedies available to servants were

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[163] See *e.g.* Keele, *supra* note 160 at 29 (no discharge for sickness); Marshall, *supra* note 160 at 443 (same); Archbold, *supra* note 160 at 106 (same).

[164] Examination of court records did not disclose any specific cases wherein servants alleged they had been discharged due to illness. Note, however, that in the case of John Edmundstone the court records disclose that an apprentice stricken with typhus fever was lodged and treated at his master's house. See pp.109-112, *below*.

[165]Two of the most intriguing examples are found in Marshall's Nova Scotia manual: requiring certificates of discharge for all servants bound for six months or longer, with masters who hired servants without certificates liable to a ten pound fine; and requiring female servants to finish their term if they married while in service. Marshall, *supra* note 160 at 442 & 447-448. For an example of a Montreal case in which the latter rule was emphatically rejected, see pp.138-139, *below*. Conversely, Taylor's manual for Montreal contains another seemingly-regional variation, stating that masters were not allowed to take their servants out of the district without the servant's consent, or that of their guardian or tutor. Taylor, *supra* note 155 at 283. This principle was often reflected in indentures, see pp.48-49, *above*, and also appeared in the statute of 1836. See Appendix E, p.197, *below*.

[166] For an example, see the case of Regis Villeneuve, at pp.112-113, *below*.

limited to fines, while servants themselves were subject to imprisonment.[167] This incongruity was roundly attacked by labour reformers of the nineteenth-century and defended equally vigorously by its supporters, who argued that while masters had property to answer for their misdeeds, servants had

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[167] For a discussion of this dichotomy in nineteenth century Upper Canada, see Webber, *supra* note 81 at 137. Some social historians have conceptualized this division as meaning that masters could choose to bring breach of contract claims before civil courts, or claims of violations of labour regulations before criminal courts. See *e.g.* Hogg & Shulman, *supra* note 24 at 129; Hogg, *supra* note 8 at 33. I disagree with this description for several reasons. First, the lower courts retained the same mixed jurisdiction inherent to Justices of the Peace, who had authority to try both civil and criminal matters in the modern sense of those terms. A pronounced dichotomy between civil and criminal jurisdiction simply did not exist in the courts where the vast majority of master-servant disputes were tried in Montreal and, at any rate, it is doubtful that such a dichotomy would have been recognized by jurists or lay-people of the period. See *e.g.* Lewthwaite, *supra* note 89 at 363-364. Justices of the Peace, for example, tended to conceptualize the dichotomy as between "private" and "public" suits. Second, and related to the first point, the notion of "breach of contract" could only have existed on an abstract level. Prosecutions were generally worded in terms such as "having left, quit and abandoned the service without just cause or permission, having been duly engaged as a servant" or as "having left the employ of the prosecutor to whom he is engaged in the capacity of servant, in contravention to the Provincial Statute and the Rules and Regulations respecting apprentices and hired or indentured servants", and I have found no evidence suggesting that there was a tangible distinction between them. Indeed, all master-servant relationships were contractual, by virtue of indentures or oral agreements before witnesses, and the absence of either was an absolute defense insofar as it refuted the existence of a master-servant relationship. The offenses enumerated in the Police Regulations included behavior typically proscribed by the indentures themselves. Third, the peculiar nature of master-servant relations also meant that the dispositions rendered by courts were neither purely civil or criminal as we understand those terms today. Indeed, the concept of criminality was a fluid concept during this period, although it seems clear that desertion would have been considered a criminal offense in nineteenth-century parlance. See *e.g.* Fyson, *Justices, supra* note 13 at 43-46. If modern-day terminology needs to be applied, at the risk of presentism, I believe that the term "quasi-criminal" is a more accurate description of breach of service cases than "tort", the term which Fyson employs. Tort or delict actions are private civil causes of action seeking damages against a defendant for violation of a duty owed to the plaintiff. Courts did not award damages in desertion prosecutions, and any fines imposed reverted to the Treasury (or to informers). Furthermore, having servants return to service was usually the paramount goal of desertion suits, and servants were subject to imprisonment for non-compliance.

only their liberty.[168] However, it is important to accentuate that the law offered protections to both masters and servants, although the protections accorded servants were not as expansive as those accorded to masters.[169]

The existence of these legislative enactments indicates a concerted attempt at providing a coherent set of laws which contemplated local realities.[170] This fact, coupled with the dispositions rendered by courts, suggests that master-servant law in Montreal of this period was fairly homogeneous.[171] Earlier periods no doubt exhibited a greater tension as to whether English or French legal precepts were controlling. By the 1830's however, one can say that labour law was applied by Justices of the Peace (an eminently English institution) to regulate labour relationships which were based primarily on English models, by applying procedural rules and remedies that, in

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[168] Webber, *supra* note 81 at 137.

[169] For the view that the law heavily favored masters, see generally Hogg & Shulman, *supra* note 24; Hogg, *supra* note 8. As I have argued throughout, I believe the legal system allowed greater reciprocity and mutual legal protection than these scholars believe.

[170] Hogg & Shulman, *ibid.* at 129, conclude that the law in this area was "deliberately encouraged to develop in this muddy fashion, because it suited the class aims of masters, mistresses and employers." I am unconvinced by the notion that the employing class was best served by an ambiguous system of law, and furthermore doubt that they had the foresight or the inclination to devise a haphazard system of law, even were that possible.

[171] As has been stated previously, the law applied outside the city limits differed. Furthermore, throughout this work other dispositions are discussed that do not fit within the parameters stipulated in the relevant legislative enactments. This serves as a potent reminder that while master-servant law may have been relatively homogeneous, it was not necessarily uniform. Given a fairly unsophisticated legal system of mainly local justice, enforced by Justices of the Peace possessing considerable discretionary powers, without a limited system of precedent and higher court review--to mention but a few of its characteristics--this is to be expected.

turn, were largely English in origin. While Montreal master-servant law was a uniquely local creation, its structure and application indicates that the paramountcy of English principles of labour law was well established by this period.

The very existence of these legislative enactments demonstrates that there was a perceived need to regulate the master-servant relationship and to set out the parameters of available legal remedies. As shall be discussed, both masters and servants sought legal recourse before courts to enforce these provisions, and courts generally protected the interests of both groups during this period.

Chapter IV.
Promoting Masters' Interests

A. Servants and Employment Offenses
1. Desertion

As the previous section has shown, the regulations governing master-servant relations inherently favored the prerogatives and privileges of masters, although the regulations (like indentures) provided for responsibilities on both sides. This chapter will discuss the manner in which courts adjudicated suits brought by masters against their servants for violations of the law, and the remedies afforded to masters by courts during this period.

As the language of Article 2 of the Police Regulations illustrates, the primary employment offenses involved desertion, absenteeism, negligence, refusal to perform one's job duties or refusal to obey orders.[172] Of these, desertion was the most common employment offense. Perennial shortages of skilled labour ensured that many servants were in high demand, and also that they often had a powerful financial incentive to desert their masters before expiration of their terms of employment in search of more lucrative opportunities. This was particularly true of apprentices, who stood to gain by learning the art of their trade as soon as possible and venturing out to pursue greater remuneration as journeymen. Furthermore, as was mentioned previously, the ties that bound masters and apprentices had been discernibly unraveling with each successive decade. While servants deserted most commonly with the intent of improving their job prospects, they were not always driven by mere opportunism. Many servants fled to escape domineering, exploitative, or abusive

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[172] See Appendix D, p.195, *below*. Analysis of judicial records suggests that all of the above offenses were often subsumed under the general rubric of "desertion."

masters, or were motivated by home-sickness or a desire to be closer to loved ones.[173] In so doing, runaways either sought to escape, most commonly via outbound ships, or enlisted in the armed forces during periods of conflict.[174] In any case, deserting servants ran risks by taking to their heels: if caught, they were subject to fines or imprisonment. Servants would often be returned to their masters to finish their terms of service, exacerbating already strained relationships.[175]

When servants deserted from service, masters typically had a narrow range of options. For instance, the master could choose not to take any action whatsoever. Alternatively, if the master knew where the servant was secreted, or was willing to bear the expense and trouble of locating him, he could have him arrested and prosecuted before the next session of the appropriate court. Most often, however, the servant absconded to destinations unknown and was therefore beyond the immediate reach of the law. In such situations, masters who were unwilling to let their servants desert without recrimination often took advantage of the only means readily available: newspaper advertisements.

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[173] Salinger, *supra* note 47 at 103. Salinger notes that women were far more likely to desert in order to join spouses or lovers than were men. *Ibid.* at 108.

[174] Salinger, *ibid.* at 103. Opportunities to join His Majesty's service would likely have been most frequent during the Rebellions of 1837-1838.

[175] *Ibid.* at 108. There were other disadvantages and risks to desertion, among them the risk of unemployment, mobility loss, the possibility of having to repeat training, loss of reputation, and the like. Hamilton, *supra* note 25 at 143-144.

2. Legal Remedies For Desertion
(a). Newspaper Advertisements

Desertion advertisements appeared in North American newspapers throughout the seventeenth and eighteenth-century and well into the nineteenth. In earlier times in the Canadian context, similar advertisements were placed for runaway slaves and, unhappily, continued to appear in American newspapers in slave-holding states during this period.[176] In Montreal, masters commonly placed advertisements as notices that employees had been discharged or had left employment,[177] and fathers renounced claims against their sons' earnings by publishing advertisements to that effect.[178] Advertisements also publicized employment opportunities,[179] and

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[176] See p.73, *below*, for an example utilizing a runaway slave graphic. Social historians appear to have given advertisements for runaway servants relatively short thrift. For discussions of such advertisements, see *e.g.* Palmer, *supra* note 44 at 28 (concerning advertisements in nineteenth-century Upper Canada); Salinger, *supra* note 47 at 103 (concerning advertisements in seventeenth- and eighteenth-century Pennsylvania).

[177] These advertisements were typically short on detail, such as "NOTICE--ISAAC AARON is no longer in the employ of the undersigned. JOHN JONES." As such, they do not allow for meaningful analysis. Interestingly, however, this particular advertisement triggered a response by Aaron. Advertising his new auction house, he stated that the records with respect to Jones' accounting contained a deficit, and Jones refused to give him the opportunity for a proper account. In rebuttal, Jones placed an advertisement stating "[s]ince Mr. ISAAC AARON has thought proper to come before you in such a questionable shape, I must beg leave to state that his MISTAKES alluded to, are in CASH received by him not accounted for to me." *The Montreal Gazette* (11 January 1834). Jones thereafter placed a further advertisement, stating that he would allow his books to be balanced by a third party if Aaron would pay his expenses and give security of one-half of the deficit. *The Montreal Gazette* (16 January 1834).

[178] An advertisement evidencing a strict concern for legal formality is found in *The Montreal Transcript* (23 June 1840):

> NOTICE is hereby given, that I, John Vandike, do this day give my Son ISAAC his time, and shall not ask of him, nor demand of others any of his earnings, or of

were placed by unemployed servants seeking positions.[180] Most relevant for the purposes of this thesis, however, were the multitude of advertisements placed by masters during this period regarding servants who had absconded from their service.[181]

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moneys due him from others, in any manner whatsoever, after this date. I also forbid all persons harbouring or trusting him on my account, as I will pay no debts of his contracting, after this date.

his
John X Vandike Sturbridge East, May 6, 1840
mark Attest--Wm. H. Gordon

As this language suggests, money earned by children in the nineteenth-century was commonly considered to be familial property, and an ethic of children contributing to their family's upkeep strongly permeated Victorian society. See *e.g.* Michael J. Childs, *Working-Class Lads in Late Victorian and Edwardian England* (Montreal: McGill-Queen's Press, 1992) 15.

[179] These were not examined as they are beyond the scope of this thesis. In theory, however, analysis of these advertisements could be used as a means of analyzing demands for labour during this period, although their utility seems limited. See Hogg, *supra* note 8 at 20 (describing them as "repetitive and uninformative."). While I have not discussed such advertisements, an exceptional example is worth noting in which a mistress sought employment for her servant, appearing in *The Montreal Gazette* (30 May 1845) ("A LADY is desirous to procure Situation as COOK or THOROUGH SERVANT for a GIRL, who has been some time with her, and perfectly understands her business in either capacity...[and can] give most exceptionable and satisfactory references.").

[180] See *e.g. The Montreal Gazette* (15 September 1840) (advertisement by woman seeking a position as servant "to wait upon a Lady or a Family of Children about to cross the Atlantic.").

[181] But see Audet, *supra* note 41 at 157. Audet states that "[d]esertion from the service of the master appears to have been a problem peculiar to British-Canadian masters....[a]ds in the newspapers of Montreal were placed by British-Canadian masters." While advertisements during the period examined in this thesis were placed much more often by English-Canadian masters, examination of a greater range of newspapers indicates that they were also placed by French-Canadian masters in French language newspapers. See *infra*, note 183 at 69. It should be observed that a considerably larger number of English language newspapers existed in Montreal during this period, but that French-Canadian masters were well represented in desertion prosecutions.

Newspaper advertisements are an intriguing source of intelligence on labour relations for several reasons: first, they provide an additional source of information on the prevalence of desertion, especially as few of the servants appearing therein were identified as later having been prosecuted; second, they often provide information on the capacity in which the servant was employed; and third, they represent a quasi-legal tool used by masters to enforce their interests.[182]

For the years 1830 to 1845, advertisements of this kind were found in seven out of the ten Montreal newspapers examined.[183] Analysis of these papers identified seventy-two servants who had deserted their master's service, as shown in *Figure I.*[184] Of these, nearly two-thirds were for

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[182] For example, Quimby concludes that the law in colonial Pennsylvania "was no great deterrent [as evidenced by] numerous advertisments in the newspapers for runaways." Ian M.G. Quimby, *Apprenticeship in Colonial Philadelphia* (New York: Garland Publishing Company, 1985) 85.

The insights offered by these advertisements are not limited to the enumerated categories discussed herein. While not pertinent to this thesis, advertisements offer information on the attire worn by servants of the time. See Audet, *ibid.* at 91-92. They also provide a glimpse into some of the disgust felt by masters towards runaways, as servants were described as "good-for-nothing", "of sulky aspect" and "as shabby in appearance as he has proved to be in character." See also Salinger, *supra* note 47 at 109 (noting that in the context of colonial Pennsylvania the language used to describe runaway female servants was often insulting). Salinger suggests that this may have "allowed masters to underscore their servants' inferiority while legitimizing their own positions of authority." *Ibid.* Descriptions used in Montreal ads were intended primarily to aid detection, such as "out-mouthed [with] large teeth", possessing a "large drooping nose" or "pock-pitted", with a mouth that "stands all awry."

[183] Advertisements were located in *L'ami Du Peuple* (1832-1840), *The Canadian Courant* (1830-1834), *La Minerve* (1830-1837, 1842-1845) *The Montreal Gazette* (1830-1845), *The Montreal Herald* (1836-1837), *The Montreal Transcript* (1837-1845) and *The Vindicator* (1830-1837). The greater frequency of ads for 1830-1836 mirrors the greater number of newspaper issues available for those years.

[184] As a point of comparison, see Ruddell, *supra* note 42 at 170-171 (approximately fifty deserting apprentices advertised in Quebec from 1790 to 1812); Audet, *supra* note 41 at 157 (twenty-three advertisments for deserting apprentices in Montreal from 1790 to 1812); Hamilton, *supra* note 25

apprentices. These advertisements also provide data on the professions in which these servants were employed.[185] A variety of explanations may be forwarded as to why apprentices appeared so often. Apprenticeship as a form of work-study meant that masters had (at least in theory) invested considerable time and effort in teaching their apprentices the mysteries of their chosen craft, much more so than would have been the case for domestic servants, labourers, or journeymen. As a result, masters were generally unwilling to idly accept their apprentices' desertion without attempting to secure their return. Furthermore, apprentices often had a vested interest in terminating their periods of apprenticeship as soon as possible, so as to join the mobile and better-paid class of journeymen. Apprentices were almost always minors and hence more vulnerable to mistreatment and exploitation than their adult peers, and desertion may have been their most immediate recourse. As such, it is no

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at 129 (ten advertisements in *The Montreal Gazette* for deserting apprentices in Montreal from 1791-1807). As a further point of comparison, Salinger's research indicates that the *Pennsylvania Gazette* ran advertisements for eighty-seven urban servants (and three hundred sixty-five rural servants) for the period 1744 to 1751. Salinger, *supra* note 47 at 104. The advertisements in Montreal newspapers were placed overwhelmingly by urban masters. Montreal masters typically advertised runaways in only one newspaper, so missing issues foreclose the opportunity to identify other advertisements from this period.

[185] Apprentice printers were by far the most common servants identified in these advertisements. While myriad explanations may account for this, many of these servants were apprenticed to the newspapers in which these advertisements appeared, leading to the conclusion that such advertisements were placed more frequently as printers obviously had readier (and cheaper) access to newspapers. Ludger Dunvernay, proprietor of *La Minerve*, advertised five runaways in four separate advertisments between January 1832 and August 1836: See *La Minerve* (2 January 1832); *The Vindicator* (20 August 1833); *La Minerve* (27 August 1835); and *La Minerve* (4 August 1836). Advertisements for runaway apprentice printers also ran for longer periods of time than typical advertisments. The last of the advertisements mentioned above, for a "garçon-imprimeur", appeared for eight months. Among the other most common occupations of runaways were apprentice and journeymen painters, domestic servants, and apprentice joiners, tinsmiths and black-smiths.

Advertisements for Runaway Servants
In Montreal Newspapers, 1830-1845

Year	Apprentices	Misc. Servants	Journeymen	N/I	Total
1830	4	1	2	2	9
1831	2	1	-	3	6
1832	3	-	1	1	5
1833	6	1	-	2	9
1834	2	-	1	1	4
1835	8	1	-	3	12
1836	8	-	1	2	11
1837	2	-	-	-	2
1838	3	-	-	-	3
1839	-	1	1	-	2
1840	2	1	-	-	3
1841	-	-	-	-	0
1842	1	-	-	-	1
1843	2	-	-	-	2
1844	1	-	-	-	1
1845	2	-	-	-	2
Total	46	6	6	14	72
% of Total	63.8%	8.3%	8.3%	19.4%	

Figure I.

surprise that apprentices appear in newspaper advertisements, as well as desertion prosecutions, as often as they do.

It may also have been more feasible to publish advertisements regarding apprentices as they left more of a 'paper trail', not only by virtue of being indentured, but also as minors would still require a guardian's permission to become indentured again. As apprentices were typically paid infrequently--often near the end of their terms of service--they may also have been more dependent

on credit and the assistance of third parties, or unable to travel as far as their non-apprentice brethren. Still, very few of these advertised apprentices appear within the court records.[186]

Typically, these advertisements provided the name and physical description of the runaway; the date of desertion; a claim that the master would not be responsible for any debts contracted by the servant from the date of the notice; as well as a reminder that it was illegal to aid or employ a runaway. Some advertisements offered rewards of varying amounts to those who apprehended the servants. For example, a tinsmith by the name of John George--a master who was uncommonly troubled by deserting servants--placed the following advertisement in 1836:

> ONE PENNY REWARD--Run away from the Subscriber, on 31st July, JOHN WILLIAMS and ALEXANDER JOHNSTON, two indented apprentices to the Tin Smith Trade. All persons are forbid employing or harbouring them on any account whatever. Whoever shall bring them back will receive the above reward. JOHN GEORGE. Montreal, August 9, 1836.[187]

One unusual advertisement revealed both a strained employment and family relationship, stating that a son had left his employ "without any just provocation" and that his father "forbid[s] all

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[186] Salinger, in the context of advertisements for runaway servants in seventeenth and eighteenth-century Pennsylvania, stated that:

> The supposition that the newspapers did not contain records for all of the colony's runaways is supported by the fact that runaways who appeared in court often did not have a corresponding newspaper advertisement. Some servants may have been recovered quickly and advertisements were unnecessary. Also, masters may not have had the funds to buy an ad. Presumably, city owners would have been more likely to advertise since they had greater access to the newspapers.

Salinger, *supra* note 47 at 103 note 113.

[187] *The Montreal Gazette* (9 August 1836).

persons harbouring him or trusting him on my account."[188] Other masters placed advertisements replete with vivid graphics:

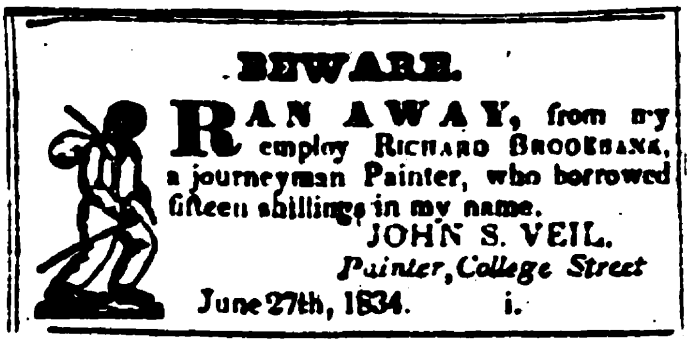

Figure II.

What is most striking about the advertisement in *Figure II* is its similarity to those used in the United States during this period to advertise for runaway slaves. This graphic, in fact, appears to have been formerly used in Montreal for precisely that purpose.[189]

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[188] *The Canadian Courant* (6 March 1830).

[189] *The Vindicator* (27 June 1834). This graphic appeared frequently in this paper (along with the other graphics of runaways), which is the more intriguing considering this was a pro-labour newspaper. Perhaps it was a matter of convenience--or even a subtle comment on the state of master-servant relations!

The most common reward, when one was offered, was one or two pence.[190] On rare occasions, much higher rewards were advertised; one master in 1830 offered a reward of ten dollars for the arrest of his female apprentice servant.[191] Such advertisements for female servants were exceedingly rare, and it can only be a matter of speculation as to why her master offered such a significant reward. In other advertisements offering large rewards, the servant was usually alleged to have left with his master's property, thus implicating both desertion and theft.[192]

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[190] See *e.g. La Minerve* (17 August 1835):

> DEUX SOLS DE RÉCOMPENSE. DÉSERTÉ, du service du sous-signé, vendredi dernier, le nommé LOUIS GABOURIE, apprenti peintre, dûment engagé. La sousdite récompense sera payée à ceux qui lui donneront des nouvelles; défence est faite à personne de logeur [sic] ou employer le dit apprenti. MICHEL MOSES, peintre, Montreal, 17 aôut.

Occasionally other rewards were offered, such as a "Brummagem-half penny." *The Montreal Gazette* (10 January 1835). A variety of coinage was legal tender in Montreal during this period, including English, American, French, Spanish, and local or Halifax currency, of which the above is an example. In the context of this thesis, the currency units referred to in indentures, court judgments, and colonial legislation were primarily local currency (often referred to as "the current money of the province" or "cours courant"), or British currency (explicitly referred to as "pounds Sterling"). See *e.g.* Fyson, *supra* note 11 at 5. Local newspapers routinely published valuations for numerous types of currency in common use.

[191] *The Montreal Gazette* (30 September 1830). The phrase "apprentice servant", as well as her minority and gender, suggest she was an apprentice domestic servant.

[192] See *e.g. The Vindicator* (29 January 1836):

> TEN POUNDS REWARD. The Subscriber having been robbed on the night of the 15th November last, of about one hundred and five pounds in silver and gold, and whereas he had good grounds of suspicion that the aforesaid robbery was committed by one ANTHONY BYRNES, a carpenter by trade, who when last seen, was on his way to New York, in company with GEORGE CARROLL, a runaway apprentice to the Printing Business. Whoever will arrest the said BYRNES and CARROLL, will

Another variety of advertisement simply announced that the servant had been discharged without offering any explanation. John George advertised one of his numerous deserting servants in this way: "CAUTION.--JOHN WILLIAMS, an indented apprentice to the Tinsmith trade, is discharged from my employment. Persons are forbid crediting or harbouring him on my account...."[193]

Several general conclusions may be drawn from these advertisements. First, these advertisements commonly forbade "crediting or harbouring" the servant or use similar language. Given the limited financial means of the average servant and the prevalence of credit transactions in the Montreal economy at the time, masters had a double incentive to place such advertisements, both to protect themselves against any debts contracted in their name, as well as to foreclose possible sources of credit.

Second, these advertisements were designed to impede a servant's ability to flee the locale, and served as a reminder to others that the master had a justiciable property interest in his servant.[194] Third, such advertisements--especially those which make it clear that the master was not seeking

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be entitled to the above reward. JOHN MORGAN. Bleury Street, 29th Jan. 1836.

In one advertisement, a concerned employer offered ten pounds for information about his employee, unsure whether he had deserted or taken ill, and wishing to provide medical care if needed. *The Canadian Courant* (21 April 1832).

[193] *The Montreal Gazette* (10 June 1834).

[194] Masters had the right to prosecute third parties for harboring, enticing, or forcibly detaining servants. For examples of third-party prosecutions, see pp.120-124, *below*.

return of his wayward servant--served a social function.[195] Masters, faced with intransigent servants, a shortage of skilled labour, and the knowledge that they could readily reestablish themselves in other communities, may have sought to warn potential employers of the untrustworthy or peripatetic nature of these runaways.[196] Masters may also have sought to take a stand against the pernicious

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[195] For instance, *The Montreal Transcript* (2 December 1837) noted that "[a] cart load of shavings and *no thanks* are offered by a man in Illinois for the apprehension of a runaway apprentice!" Some advertisements, however, suggest that the master was actively seeking apprehension of his runaway servant. See *e.g. The Canadian Courant* (20 July 1831) (advertisement offering reward "to any Person or Persons, who will apprehend and lodge the Runaway in the Jail of Montreal or Quebec."); *The Vindicator* (3 April 1835) (advertisement stating that "[a]ny communication respecting [the runaway apprentice] will be thankfully received.").

[196] Some advertisements were explicit negative character references. See *e.g. The Vindicator* (14 December 1830) (advertisement for runaway apprentice printer stated that "the sole cause for his absconding arised from the contagion of Idle and Dissolute Company, and a Propensity to Gambling...."); *The Canadian Courant* (31 December 1830) ("I CAUTION any person from hiring a man of the name of DANIEL DEEGAN...without enquiring his character from MAJOR COLCLOUGH, Dorvillier....").

An interesting variant appeared in *The Vindicator* (13 August 1830), placed by a master which stated that his journeyman printer "having returned to his duty, has given such an explanation of his late conduct towards ourselves and others as tends greatly to remove the unfavorable impression previously entertained of him." One apprentice even went so far as to advertise in order to refute a charge of desertion made against him:

> NOTICE. WHEREAS, MR. JAMES ROBB...has advertised me as an absconded apprentice, threatening prosecution if found in anothers [sic] employ. This is therefore to announce that I left the said JAMES ROBB'S employ, because he failed to pay me my stipulated wages, neglected to instruct me, and from his being too often incapable of doing so, owing to habits of intoxication. I have not absconded; but may be found by Mr. ROBB or any other person, at the residence of my parents....

The Canadian Courant (13 March 1833). While the advertisement placed by Robb was not located, the rejoinder above is particularly illuminating, as publicly casting dispersions on a master's character was a courageous move. Such "dueling ads" were not uncommon in eighteenth- and nineteenth-century America. See Rorabaugh, *supra* note 44 at 49-50. For an analogous situation between an ex-employee and his employer, see *infra,* note 177 at 67.

phenomenon of desertion, as the language of some advertisements explicitly states, or even been prompted by mere malevolence.[197]

The "social function" aspect to these advertisements is further supported by the majority of advertisements which do offer rewards, as a penny was merely a token reward.[198] Offering token rewards was most probably reflective of the fact that an unwilling servant who had deserted once would likely remain an uncooperative employee, and hence some masters would not have desired the return of runaway servants or the trouble of seeking legal redress.[199]

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[197] See *e.g. The Vindicator* (7 October 1836) (advertising two runaway printer apprentices, stating "we would caution Printers not to harbour them, as they thereby encourage similar conduct for others; besides that they know very little of the Printing Business.").

[198]To put this amount into perspective, *The Montreal Transcript and General Advertiser*, Lower Canada's first penny newspaper, appeared on October 4, 1836. For an amusing reference to a miserly reward offered for a runaway apprentice in Toronto, see *The Montreal Gazette* (26 March 1844):

> Mrs. Dunlop...advertises, under the heading, "Catch the Thief," the absquatulation of her apprentice, James Wilkie by name, and offers the sum of one farthing for the discovery of his whereabouts. Fie, Mrs. Dunlop!....We know several ladies who would give a much larger sum for a worse specimen of the genus homo than James Wilkins can possibly be, even were he a perfect Caliban. Oh fie, Mrs. Dunlop! Pray, how old may you be, if you will allow us to ask so bold a question?

Offering rewards for runaway apprentices was also largely unnecessary, as informers in successful prosecutions would be awarded one-half of the fine levied by the court. For examples see p.100, *below*.

[199] Webber reached similar conclusions regarding the purpose of such advertisements, in the context of nineteenth-century Ontario. See Webber, *supra* note 81 at 148-149.

(b). Judicial Proceedings

Masters always had the option of prosecuting wayward servants for violations of the relevant regulations if the absconded servant had been apprehended or his location otherwise ascertained. Advertisements no doubt played a part in the apprehension of fugitive servants. While it is safe to assume that a significant percentage--perhaps even the majority--of deserters were never prosecuted, judicial records reveal that employment offenses constituted a large part of the business before lower courts. Indeed, prosecutions were the primary means available to masters to combat desertion or other breaches of the employment relationship.[200] This section will discuss the manner in which these proceedings offered redress to masters wronged by wayward servants.[201]

It should be emphasized that desertion prosecutions would generally have been inconvenient and uncertain. Their utility would also have been questionable in many instances, as a resolute servant would merely flee further the next time.[202] It is therefore surprising how many prosecutions were identified during this period. One hundred and eight cases were identified in the records of the Justices of the Peace, eighty-nine cases before the Police Court, one hundred thirty-three cases before the Court of Weekly and Special Sessions, and seventy-six cases before Justices of the Court of

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[200] Besides prosecutions and newspaper advertisments, the terms of indentures could themselves play a part in combating desertion, although legal proceedings were needed to enforce them. See generally Hamilton, *supra* note 25.

[201] For discussions of apprentice misbehavior and prosecutions for employment offenses, see Audet, *supra* note 41 at 101-103; Ruddell, *supra* note 42 at 164-169.

[202] In addition, prosecutions could antagonize neighbors and other members of the community. Webber, *supra* note 81 at 131.

Desertion Prosecutions Before the Courts of Weekly and Special Sessions 1832-1835 and 1838-1843

Year	Apprentices	Journeymen & Labourers	Misc. Servants	Domestic Servants	N/I	Total
1832	1	4	2	-	1	8
1833	5	4	1	-	-	10
1834	4	1	1	-	2	8
1835	8	4	5	1	5	23
1838	5	4	1	2	4	16
1839	5	5	4	2	4	20
1840	1	3	3	2	2	11
1841	6	5	6	2	4	23
1842	5	4	-	2	-	11
1843	-	-	1	2	-	3
Total	40	34	24	13	22	133
% of Total	30.1	25.6	18.0	9.8	16.5	N/A

Figure III.

Quarter Sessions. Coupled with an additional seventy-two runaway servants identified only in newspaper advertisements, a total of four hundred seventy-eight breach of service cases were documented.[203]

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[203] Undoubtedly these figures are far from complete, but are as accurate as the vagaries of these records allow. As a point of comparison, in Quebec City two hundred and two apprentices were identified as having deserted during the period 1800 to 1815, not including other varieties of servants. See generally Jean-Pierre Hardy & David-Thiery Ruddell, *Les Apprentis Artisans À Québec 1660-1815* (Les Presses de l'université du Québec: Montréal, 1977). In Massachusetts, the criminal provisions of state labour statutes were invoked against apprentices and minor servants before the Boston Police Court sixty-one times for desertion, and nineteen times for disobedience, during the period 1822-1859. Furthermore, a few ambiguous cases were found which implied courts were willing to use criminal sanctions against adult servants. Tomlins, *supra* note 32 at 212. Adult servants in Massachusetts (except for seamen, African and Native Americans and indentured

Desertion Complaints Filed For Summary Resolution Before Justices of the Court of Quarter Sessions 1830-1840

Year	Journeymen & Labourers	Apprentices	Domestic Servants	Misc. Servants	N/I	Total
1830	3	3	-	1	1	8
1831	3	4	1	-	-	8
1832	3	3	-	-	-	6
1833	1	2	1	-	-	4
1834	4	3	-	-	1	8
1835	3	1	1	1	1	7
1836	2	6	3	-	-	11
1837	5	3	-	-	-	8
1838	2	5	-	-	1	8
1839	6	1	-	-	-	7
1840	-	-	-	1	-	1
Total	32	31	6	3	4	76
% of Total	42.1	40.8	7.9	3.9	5.3	

Figure IV.

While the dispositions of cases heard before courts were frequently published in local newspapers, desertion proceedings were sufficiently recurrent so as to rarely merit attention. Newspapers did, however, occasionally publish information on such cases in a manner which indicates they were intended as a public service. The editor of the *Montreal Gazette* published the account of a servant convicted of desertion and condemned to pay fifteen shillings and costs, or face six weeks' imprisonment, under the less-than-subtle admonition "A WARNING TO

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servants) were disciplined through civil suits brought for breach of contract. *Ibid.* at 217. Unlike the situation in Montreal, in Boston there was a dichotomy between remedies available against adult servants, and apprentices or minor servants.

SERVANTS!"[204] The Montreal Transcript included a similar account (reprinted from another local newspaper) which they published in an extremely eye-catching manner, stating that it "may prove of use to Masters and Apprentices in this city":

> SPECIAL SESSION,
> THURSDAY, February 10,
> BEFORE THE POLICE MAGISTRATES.
> Clarke Fitts & al. of Montreal, Baker,
> vs.
> Jean Baptiste Hupé, of the same place, Apprentice Baker. The defendant, convicted of having deserted the service of the prosecutor, whose indented Apprentice he is, and having absented himself therefrom for the last fifteen days, was condemned to two months' imprisonment in the House of Correction, and to pay costs.[205]

As these newspaper accounts indicate, the sentences imposed by courts for desertion varied widely. However much a fifteen shilling fine may have stung, a two month term of imprisonment was infinitely worse.[206] The records of the proceedings before these courts allow for systematic

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[204] *The Montreal Gazette* (22 January 1835). Newspapers did occasionally publish dispositions of desertion cases, most commonly in French-language newspapers, although these were far from frequent. For examples, see *infra*, notes 235 at 94-95 & 241 at 96.

[205] *The Montreal Transcript* (15 February 1842) (citing the *Morning Courier and Commercial Messenger*).

[206] While this observation would be true under virtually any circumstances, prison conditions in Montreal of this time were abysmal: overcrowding, vermin, inadequate heat, and diets of bread and water (except on Sundays and holidays, when meat was provided) were common fare. See *e.g.* Poutanen, *supra* note 43 at 109. Frequent reference to the appalling prison conditions were made in newspapers of this period. For an example of the conditions, see *e.g. L'Ami Du Peuple* (12 December 1835) (coroner's inquest of prisoner incarcerated for vagabondage disclosed that "il est mort de froid, d'inanition et misère. Il n'avait dans sa prison ni hardes pour se vêtir, ni lit pour se coucher, ni couverture pour se préserver du froid, pas même de paille sur son plancher pour s'y reposer."); *The Montreal Gazette* (29 October 1845) (describing conditions in the prison as "shocking to humanity."). Despite the harsh conditions, prostitutes and the homeless often sought imprisonment

analysis of the variety of dispositions used to enforce masters' interests in situations where servants breached the terms of their service. As the records for the Court of Weekly and Special Sessions were both the most voluminous and the most detailed they constitute the primary, but not exclusive, source used for this analysis.

(i). The Police Court

Many desertion proceedings in Montreal were initiated before the Police Court. While the relevant records of the Police Court intersect with the period under examination in this thesis for only a relatively short time--July 1838 to January 1842--these records allow for another layer of analysis of the manner in which the law responded to breaches of the employment relationship. The Police Magistrate presiding over this Court issued arrest warrants for deserting servants and processed arrests based on these warrants,[207] releasing servants on bail or imprisoning them pending appearances before the Courts of Weekly and Special Sessions, or the Justices of the Court of Quarter Sessions.[208]

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to escape exposure to the harsh winter, often intentionally committing petty crimes so as to be arrested. Poutanen, *ibid.* at 108-109.

[207] Many arrests were based on suspicion of desertion, but in all likelihood this virtually always pertained exclusively to seamen. Such cases are therefore excluded from analysis, as are cases which explicitly identify defendants as seamen or voyagers, or those which were so identified through cross-indexing.

[208] It is unclear why a small minority of cases were sent directly to the petty sessions of the Court of Quarter Sessions rather than to other courts, although it is likely that these cases were sent to courts based on the timing of their next session. The records (and the jurisdiction) of the Police Court essentially overlapped with the Courts of Weekly and Special Sessions. As the newspaper account on p.81 *above*, indicates, Police Magistrates also sat as members of the Courts of Weekly and Special Sessions, as they had essentially the same jurisdiction as Justices of the Peace. Thus, on many occasions a defendant was arrested and brought before the Police Court and the case was heard

These records occasionally offer picturesque glimpses into the world of master-servant relations which are unavailable elsewhere. The most notable example of this appears in the Police Court register for December 2, 1840, wherein an apprentice was arrested by the police for "[f]orcing his master's door at midnight", most likely as he had slinked outdoors during the night. For this offence he was admonished by the Police Magistrate and then discharged.[209] These records are more valuable, however, by virtue of the information they provide on desertion prosecutions. It is clear from these records that successful prosecutions were frequently labourous processes, especially if defendants and/or their masters were not entirely cooperative in appearing in court. For example, on September 25, 1838 John Fullum swore out an affidavit charging Olivier Mailloux with desertion, and the Police Magistrate accordingly issued an arrest warrant.[210] On October 9th, Mailloux and his master both defaulted on their scheduled court appearance and the Police Magistrate issued another

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the same day before the Court of Weekly or Special Sessions. The disposition of many cases before these Courts appear in the records of the Police Court. Records on cases sent before these courts and the Court of Quarter Sessions which has not otherwise survived can therefore be gleaned from the Police Court registers. These cases have been compiled in *Figure VI* at p.87, *below*. It is also important to note that Justices had the power to act alone to "resolve" cases by virtue of their ministerial function, even though they would not have had the authority to impose formal judgments. In some instances, this made little difference, as Justices could require defendants to provide bail or surety, and could summarily imprison them for default. Fyson, *Justices*, *supra* note 13 at 35.

[209] ANQM, PC(R) p.34, *Dominus Rex v. John Smith* (2 December 1840).

[210] ANQM, PC(R) p.120, *Queen v. Olivier Mailloux* (25 September 1838). It is a striking element of the judicial processes of this period (and evidence of the class biases that often permeated them) that courts always issued arrest warrants for malefactory servants, rather than summons to appear in court. See *e.g.* Fyson, *Justices*, *supra* note 13 at 313.

arrest warrant.[211] Mailloux was arrested and released on bail for his appearance at the following Court of Weekly Sessions.[212] On October 16th, both Mailloux and his master again defaulted on their court appearance;[213] the Police Magistrate therefore issued another warrant of arrest.[214] Mailloux was finally tried on October 23rd, and fined twenty shillings and costs.[215]

As Mailloux's case suggests, servants arrested for desertion were either released on bail or imprisoned to await trial. Insofar as many servants were of limited means, it is no surprise that a considerable number were imprisoned prior to trial, although the majority were released on bail.[216] As a result, some servants who were later acquitted spent fairly lengthy periods of time in prison. By way of example, a journeyman carriagemaker to Hypolite St. Amour in the summer of 1841 was

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[211] ANQM, WSS(R) p.247, *John Fullum v. Olivier Mailloux* (9 October 1838).

[212] ANQM, PC(R) p.138, *Queen v. Olivier Mailloux* (9 October 1838).

[213] ANQM, WSS(R) p.254, *John Fullum v. Olivier Mailloux* (16 October 1838).

[214] ANQM, PC(R) p.143, *Queen v. Olivier Mailloux* (16 October 1838).

[215] ANQM, WSS(R) p.257, *John Fullum v. Olivier Mailloux* (23 October 1838). Unfortunately, no information exists on why Fullum himself defaulted on his court appearance on two occasions, nor why the Police Magistrate continued to issue arrest warrants for Mailloux. It may be that once the original affidavit by Fullum was filed, this provided sufficient grounds to issue successive warrants--however, as Fullum himself defaulted, one would assume these warrants would not have been issued except at Fullum's request. Perhaps Fullum was incapacitated or otherwise not able to appear in court prior to October 23rd, but filed written complaints before the Police Court by proxy.

[216] One such example involved a servant charged with assaulting his master before the Police Court, who was "committed for want of bail." ANQM, PC(R) p.152, *Dominus Rex v. William Griffits* (11 May 1840).

arrested and bound over to the Court of Special Sessions, spending four days in prison before charges were dismissed against him.[217] Another servant was incarcerated for a week before being acquitted on the grounds that he had not entered into the prosecutor's service.[218] These cases were not unusual, and even lengthier periods of pre-trial incarceration were no doubt endured by other servants.

For undisclosed reasons, a very small number of prosecutions were referred to the Court of Quarter Sessions for summary disposition. Only four such cases were identified, three of which clearly intersected with an ongoing session of this Court. The one ambiguous case involved a servant arrested and admitted to bail on July 20, 1838 to appear at the next Court of Quarter Sessions.[219] Curiously, the records of this Court contain a recognizance in the servant's name dated eight months later, perhaps for a separate offense or as the original case had been postponed.[220]

During the period July 1838 to January 1842, the Police Magistrate issued no fewer than one hundred thirty-four arrest warrants for servants. While the registers of the Police Court suffer from limitations, they allow for limited extrapolation on the efficacy of the Montreal police at arresting

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[217] ANQM, PC(R) p.200, *Dominus Rex v. Andre Moses* (7 June 1841); ANQM, WSS(R) p.153, *Hypolite St. Amour v. Andre Moses* (11 June 1841) (dismissed with costs).

[218] ANQM, PC(R) p.288, *Dominus Rex v. Charles Rique dit Lalonde* (29 October 1839); ANQM, WSS(R) p.617, *Isidore Charlebois v. Charles Rique dit Lalonde* (5 November 1839).

[219] ANQM, PC(R) p.29, *Queen v. Etienne Beneche dit Lavietoire* (20 July 1838).

[220] ANQM, QS(F), *Augustin Lamorte v. Etienne B. Lavietoire* (28 March 1839).

runaway servants. *Figure V*, below, indicates that approximately seventy-two percent of warrants resulted in arrests:

Total Number of Proceedings Against Servants Before the Police Court 1838-1842

Year	No. of Warrants Issued	No. of Arrests Made	% of Warrants Leading To Arrests
1838	15	9	60.0
1839	25	19	76.0
1840	33	26	78.8
1841	56	38	67.9
1842	5	5	100.0
Total	134	97	72.4

Figure V.

Thirty-six of these warrants concerned servants for which no other records were found. In addition, records of fifty-three other prosecutions were found within the annals of the Police Court which have not survived in other judicial records; the majority of these prosecutions were most likely heard before the Courts of Weekly and Special Sessions. *Figure VI*, below, sets out the dispositions of these cases, as well as the distribution by year of the warrants issued for servants who do not appear elsewhere in Montreal court records:

Desertion Prosecutions in the Records of the Police Court 1838-1842

Year	Warrant	Settle	Held For Trial	Return	Jail	Disc From Serv	Dismiss	Dismiss From Jail
1838 n=5	2	-	1	-	-	1	-	1
1839 n=16	6	1	5	1	-	2	-	1
1840 n=27	11	3	3	4	5	-	1	-
1841 n=37	17	13	3	2	-	-	2	-
1842 n=4	-	2	2	-	-	-	-	-
TOTAL	36	19	14	7	5	3	3	2
% of Arrests	N/A	35.8	26.4	13.2	9.4	5.7	5.7	3.8

Figure VI.

As shown, over one-quarter of these fifty-three prosecutions resulted in the defendant being held for trial, although no other information was found on what disposition (if any) resulted. Another one-third of the cases were settled before the Police Magistrate, prior to a formal court proceeding having commenced. Such as the case brought by Thomas Albert Martin against one of his apprentice painters.[221] A disproportionately-large number of these settled cases occurred in 1841, suggesting that during that time the presiding Police Magistrate may have taken greater pains to encourage the

[221] ANQM, PC(R) (Proceedings Under 2d Victoria) p.45, *Dominus Rex v. Samuel Jackson* (30 March 1842). This was one of only three desertion cases found at the very beginning of this register, most likely as the preceding Police Court register was full. Thomas Albert Martin also twice prosecuted another of his apprentices, Robert Bruce McIntosh, a year prior to this proceeding. See p.113-114, *below*.

parties to settle rather than continuing with the adversarial (and often protracted) process of litigation.

Furthermore, fifteen percent of these cases were either dismissed or resulted in the servant being discharged from prison or service. For example, a warrant of arrest was issued against a domestic servant for "refusing to enter [her master's] service after being duly engaged", but following her arrest and examination the case was dismissed.[222] The Police Magistrate also dismissed three servants from service, presumably at their master's behest. One notation states simply that "Denis Carty, being absent since yesterday morning without leave is dismissed from the tenth instant inclusive."[223]

In other instances masters requested their servants be discharged from prison prior to trial, perhaps as they felt pre-trial incarceration had been sufficient punishment. A servant by the name of Lewis Wickman was arrested and committed to trial for desertion in 1838, but was discharged from prison at his master's request.[224] Another servant was arrested for desertion and discharged, yet was rearrested the following day.[225] What accounts for the master's change of heart cannot be

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[222] ANQM, PC(R) p.49, *Dominus Rex v. Elizabeth Bissette* (16 December 1840).

[223] See *e.g.* ANQM, PC(R) p.15, *Queen v. Denis Carty* (11 July 1838).

[224] ANQM, PC(R) p.135, *Queen v. Lewis Wickman* (6 October 1838); ANQM, PC(R) p.137, *Queen v. Lewis Wickman* (8 October 1838) ("the prisoner was discharged from the Common Goal, at the request of the private prosecutor Henry Walmsley.").

[225] ANQM, PC(R) p.283, *Queen v. Theophile Lafontaine* (8 February 1839) (arrested for desertion, "discharged by consent of his Master"); ANQM, PC(R) p.284, *Queen v. Theophile Lafontaine* (9 February 1839) ("on charge of desertion on the affidavit of Andrew Watt committed

ascertained from the record, but one possible explanation is that the servant was discharged from prison with the understanding that he return to service, yet failed to do so. In all cases involving imprisonment of servants, it is essential to note that servants could be released at any time prior to trial or expiration of their sentence if they consented to return to service.[226]

(ii). Justices of the Peace for the District of Montreal and the Courts of Weekly and Special Sessions

As previously mentioned, desertion prosecutions commenced in the Police Court were primarily adjudicated by the Courts of Weekly and Special Sessions. The Weekly and Special Sessions, in fact, disposed of the preponderance of desertion cases during this period. The records of these Courts indicate that dispositions of desertion cases encompassed every conceivable judgment from acquittal to lengthy incarceration. To illustrate the scope of the judgments rendered, a few representative examples of sentences imposed upon conviction will be discussed. *Figure VII* shows the overall disposition rates for all desertion prosecutions before the Court of Weekly and Special Sessions:[227]

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for trial.").

[226] This point is made in Fyson, *Justices, supra* note 13 at 358 note 794. The number of cases in which servants were discharged from prison before their sentences were completed can only be ascertained by examination of the relevant records of the Montreal Gaol.

[227] These dispositions are as follows: conviction; dismissed prosecutions; prosecutor's default; defendant's default and conviction; settled prosecutions; discontinued prosecutions; and dispositions which could not be identified.

Dispositions Of Desertion Prosecutions By Percentage Before the Courts of Weekly and Special Sessions 1832-1835 and 1838-1843

Year	Convict	Dismiss	Pros. Default	Def. Default & Conv.	Settle	Pros. Disc.	Def. Default & Acquit	N/I
1832	100.0	-	-	-	-	-	-	-
1833	70.0	20.0	10.0	-	-	-	-	-
1834	50.0	25.0	-	-	12.5	-	-	12.5
1835	65.2	17.4	4.3	-	-	4.3	4.3	4.3
1838	31.3	18.8	18.8	6.3	-	-	-	25.0
1839	70.0	10.0	-	5.0	-	5.0	-	10.0
1840	90.9	-	-	9.1	-	-	-	-
1841	39.1	39.1	-	-	4.3	-	-	17.4
1842	54.5	36.4	-	-	-	-	-	9.1
1843	66.6	33.3	-	-	-	-	-	-
Total No.	80	27	5	3	2	2	1	13
% of Total	60.2	20.3	3.8	2.3	1.5	1.5	.08	9.8

Figure VII.

As *Figure VII* indicates, servants appearing before the Courts of Weekly and Special Sessions were convicted in approximately sixty percent of the cases. In an additional two percent of cases, defendants were convicted by virtue of having defaulted in making their scheduled court appearances and were tried and convicted in absentia. These records also suggest that the overall conviction rate for the years 1838 to 1843 was markedly lower than that during the years 1832 to

1835, with a concomitant rise in the rate of dismissed cases.[228] In the cases which resulted in conviction, the sentence imposed by courts varied widely. *Figure VIII* and *Figure IX*, below, detail the percentage of cases in which each disposition was imposed, both for Justices of the Peace and the Court of Weekly and Special Sessions.[229]

Upon conviction the Court of Weekly and Special Sessions most often imposed costs, imprisoned the defendants, ordered them to return or imposed a fine. Justices of the Peace outside the city often ordered servants to return and complete their terms of service, and were much more likely to require them to make up the time lost. The Courts of Weekly and Special Sessions imprisoned defendants much more often than did Justices of the Peace outside the city; only three servants were imprisoned outright by the latter.[230] All other servants imprisoned by Justices of the

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[228] For discussion, see pp.133-137, *below*.

[229] All occurrences of a particular disposition are recorded; most cases involved two or more dispositions. Figures therefore do not add up to one hundred percent. Cases in which there were more than one defendant are categorized as separate prosecutions.

[230] Two of these prosecutions were before a Justice of the Peace in St. Martin: ANQM, JP(QR) (St. Martin), *Michel Brunette v. Anasthea Armand* (11 October 1841) (twenty-four hours' imprisonment); ANQM, JP(QR) (St. Martin), *J.B. Cousineau v. Joqueline Digniu* (11 October 1841) (ten days' imprisonment). See also ANQM, JP(QR) (Grenville), *James Thompson v. Christopher Hill* (12 January 1842) (fifteen days' imprisonment and costs of seven shillings and sixpence).

Disposition of Desertion Prosecutions By Percentage Before Justices of the Peace for the District of Montreal 1839-1843

Year	Costs	Fine	Return	Make Up Time	Return Volun.	Settle	Acquit	Jailed For Default	Jailed Outright
1839 n=9	100.0	55.6	55.6	-	-	-	-	-	-
1840 n=37	73.0	56.8	24.3	8.1	8.1	2.7	3.7	-	3.7
1841 n=31	45.2	32.3	19.4	9.7	9.7	3.2	-	6.5	3.2
1842 n=24	58.3	25.0	37.5	20.8	4.2	8.3	8.3	4.2	
1843 n=7	57.1	-	71.4	-	-	14.3	14.3	-	-
Total No.	65	42	34	11	7	5	4	3	2
% of Total	60.2	38.9	31.5	10.2	6.5	4.6	3.7	2.7	1.9

Figure VIII.

Dispositions of Desertion Convictions By Percentage Before the Court of Weekly and Special Sessions 1832-1835 and 1838-1843

Year	Costs	Fine	Return	Jailed	Make Up Time	Waive Sentence	Postpone Judgment
1832	85.7	57.1	57.1	14.3	14.3	-	-
1833	85.7	57.1	71.4	-	-	-	-
1834	100.0	50.0	75.0	-	-	-	-
1835	100.0	33.3	73.3	6.7	-	6.7	-
1838	85.7	85.7	14.3	-	-	-	-
1839	80.0	40.0	33.3	26.7	-	-	-
1840	34.5	36.4	36.4	36.4	9.1	-	-
1841	44.5	33.3	22.2	44.4	-	11.1	-
1842	83.3	66.7	-	16.7	-	-	16.7
1843	50.0	50.0	-	50.0	-	-	-
Total No..	65	39	35	14	2	2	1
% of Total	78.3	47.0	42.2	16.9	2.4	2.4	1.2

Figure IX.

Peace had previously defaulted on fines.[231] Approximately one-third of the defendants appearing before Justices of the Peace returned to service; typically, apprentices or other servants indentured for substantial periods of time were ordered to return, while journeyman or labourers were not. The number of acquittals and settled cases (as a percentage of the total prosecutions) appeared to increase, whereas the number of fines levied against unsuccessful defendants exhibits a substantial decrease. While fines can be expected to decrease as acquittals and settlements increase, examination of the entries for these years suggests that for the years 1841 to 1843, the Justices of the Peace imposed fines upon conviction less often than in previous years. For the years 1839 and 1840, the records indicate that Justices frequently imposed fines, usually in the amount of five to ten shillings. Thereafter, the records suggest that the Justices imposed fines, most frequently in the amount of fifty shillings, to be paid in the event the defendant did not return to service. This may indicate a shift in the use of fines from a strictly punitive to a persuasive tool, or it may indicate that the court used these elevated fines as inducement for a certain narrow class of defendants (such as journeymen) who coincidentally were reflected in more lawsuits in the later years of this sample.

Before the Court of Weekly and Special Sessions, over forty percent of defendants were ordered to return to service within a specified length of time upon pain of imprisonment; they might also be ordered to pay costs, a fine, or both. As shown in *Figure IX,* in approximately one-sixth of convictions servants were incarcerated outright. Costs were assessed against servants in seventy-

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[231] See *e.g.* ANQM, JP(QR) (Petite Nation), *Alanson Cooke v. Joseph Lipine* (14 July 1841) (defaulted on fine of two pounds ten shillings and jailed for fifteen days); ANQM, JP(QR) (St. Armand), *James Liddell v. George Sarty* (15 April 1840) (defaulted on fine of one pound five shillings and jailed for fifteen days); ANQM, JP (QR) (Chambly) *Rev. Braithwaite v. Charles Cox* (15 April 1841) (defaulted on fine of two pounds ten shillings and jailed for unspecified duration).

eight percent of cases, while fines were imposed in nearly fifty percent. The length of threatened prison terms in case of default differed dramatically. An apprentice shoemaker was ordered to return within three days or face fifteen days in prison,[232] while an apprentice tailor faced one months' imprisonment but was ordered to pay only half costs, implying that the Court felt both parties were culpable.[233]

Joseph Gratton, one of many servants who appeared within the annals of employment prosecutions for having deserted the service of Henry Talon *dit* Lesperance, shipwright and boatbuilder, was fined twenty shillings and costs. However, the Justices postponed further judgment to decide whether they could order Gratton to return to service, and concluded they could, imposing the sentence of one month in jail for default.[234] Apprentice John Edmundstone, who deserted from Workman and Bowman Printers, faced two months' incarceration if he failed to "forthright return" to his master.[235]

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[232] ANQM, WSS(R) p. 251-252, *Elie Chassé v. Joseph Lacroix* (25 August 1835); ANQM, WSS(R) p. 121-122, *John & William Molson v. Thomas Hodges* (26 May 1835) (malster ordered to return "immediately to accomplish his time", in default of which to serve fifteen days' imprisonment, and fined twenty shillings and costs).

[233] ANQM, WSS(R) p. 331, *Charles Mudford v. John Carroll* (3 November 1835). See also ANQM, WSS(R) p. 310, *James McEwans v. John Harden* (13 October 1835).

[234] ANQM, WSS(R) p. 81, 87, *Henry Lesperance v. Joseph Gratton* (3 March & 7 April 1835). The particular circumstances of this case were, unfortunately, not recorded.

[235] ANQM, WSS(R) p.309, 313, 322, 329-334, *Benjamin Workman v. John Edmundstone* (21, 28 August & 4, 11 September 1832). See also *La Minerve* (30 August 1832) (account of François Xavier Beauchamp's trial before the Court of Weekly Sessions: "[c]onvainen d'avoir laissé, sans permission, le service de son maître condamné à retourner sous trois jours au service de son maître,

In a few instances, however, courts ordered servants to return to service on the pain of paying a fine, rather than on pain of imprisonment. For instance, a servant was condemned to pay costs of seventeen shillings plus an additional penalty of two pounds ten shillings if he failed to finish his term of engagement.[236] Likewise, an apprentice tailor was ordered to pay costs and return to service under pain of a penalty of ten pounds, an unusually large potential fine, especially for an apprentice. One possible explanation for this amount was the testimony of another apprentice, who testified that the defendant had wanted to be discharged as he was offered the sum of ten pounds to enter another master's service.[237] Alternately, for other unknown reasons the Court or the master may have been reluctant to threaten imprisonment. It is unlikely that this sum was stipulated in the apprentice's indenture as a penalty clause, both as it was not mentioned in the Court's judgment and as the clause presumably would have already been triggered by virtue of his desertion.[238]

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faute de quoi, à etre confiné dans le prison durant deux mois.") and ANQM, WSS(R), p.321, *Charles Couvrette v. François X. Beauchamp* (28 August 1832). In Terrebonne, a Justice of the Peace sentenced a servant to a ten shilling fine and costs of sixteen shillings ninepence, plus "fifteen days of work or eight days in prison." The most probable explanation underlying this unusual disposition is that the Court ordered the defendant to complete the fifteen days remaining in his term of service. For the case of a servant before the Court of Weekly Sessions who was imprisoned until he returned to service, see *infra*, note 241 at 96.

[236] ANQM, JP(QR) (St. Hyacinthe), *Queen v. Theophile Chartier* (30 June 1843).

[237] ANQM, WSS(R) p.374-378, *George Fox v. John Riley* (23 July 1833).

[238] See p.99, *below*, for an example of a court applying such a provision. It should be noted that default of payment of fines could result in imprisonment, so the fact that some dispositions did not explicitly mention this penalty for default does not preclude the possibility that these servants could nevertheless have been jailed. However, the fact that in some cases courts did not mention penalties for defaulting on payment of fines suggests that the prosecutor or the court itself was loathe to have the servant in question imprisoned.

Courts also sporadically ordered servants back to service without the threat of a fine or imprisonment in case of default. In these cases, they frequently assessed a fine of five, ten, or twenty shillings. For example, Joseph Sanford, employed as a journeyman to Henry Talon *dit* Lesperance, alleged that he was not provided "good and sufficient board and lodging" and claimed a shortage of food, "[e]specially of bread", but was nevertheless ordered to return and fined twenty shillings and costs.[239] Other servants were merely sent back to service upon paying the costs of the prosecution, as was the case with an apprentice baker.[240] Examples were also found in which courts released servants from prison at their master's entreaty or at such time as they agreed to return to service.[241] That so many defendants were returned to service is powerful evidence that one of the primary reasons masters brought suit for breach of service was to persuade or compel servants to complete their terms of employment.

In some instances, a master had to pursue legal action on more than one occasion to effectuate a servant's return. For example, a labourer bound for one year named Alexander McPherson deserted in 1835, was convicted by the Court of Weekly Sessions and ordered to return

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[239] ANQM, WSS(R) p.834, *Henry Talon dit Lesperance v. Joseph Sanford* (14 April 1834).

[240] ANQM, WSS(R) p.453-454, *Alexander Bourne v. Henry Pophain* (17 June 1839).

[241] These cases occurred most often before the Police Court or Justices of the Peace outside the city. See pp.88-89, *above*. For another example, see *e.g. La Minerve* (22 November 1832) (stating that before the Court of Weekly Sessions, "Michel Bourguoin, pour avoir quitté et abandonné le service de son maître, condamné à être emprisonné jusqu'à ce qu'il retourne au service de son dit maître."). The corresponding judicial record has not survived.

with twenty-four hours or face one month in prison, plus pay costs.[242] Two days later, McPherson still failed to return, so his master filed a complaint before the Justices of the Court of Quarter Sessions, seeking his arrest and incarceration.[243]

In a handful of cases, defendants were sent to service and explicitly ordered to make up the time lost through their desertion.[244] While the reasons for this disposition were very seldom discussed in the records, it is likely that the terms of the contract contained such a clause or that the disposition was specifically requested by the master, or that it was required by the nature of the service itself. For example, the Court of Weekly Sessions condemned a journeyman furrier to pay a fine of ten shillings, pay costs, return to service or face two months in jail, and make up the time;[245] similarly, an apprentice tinsmith who pleaded guilty was ordered to return, pay costs, and

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[242] ANQM, WSS(R) p.144, *Alexander Grant v. Alexander McPherson* (23 June 1835).

[243] ANQM, QS(F), *Alexander Grant v. Alexander McPherson* (25 June 1835). The complaint read, in pertinent part:

> [T]he said Alexander McPherson has not yet returned to the service of this deponent, and as the deponent verily believes [he] does to intend to return to his service...the deponent prays that the said Alexander McPherson may be arrested and confined in the said Gaol according to the Judgment rendered and further that justice may be done on the premises.

[244] In colonial New York, for example, courts usually ordered runaway apprentices to serve twice the time they missed, if the absence was of at least a day's duration and registered with local authorities. Hamilton, *supra* note 25 at 20. For further discussion of this principle in Montreal, see pp.60-61, *above*.

[245] ANQM, WSS(R) p.517, *Samuel Davis v. François Xavier Defresne* (11 December 1832).

"endemnify [the master] for his time lost."[246] Another servant was ordered to "return and make good the time lost according to contract" and pay costs, indicating that the disposition was based on the language of his indenture.[247]

Many servants were ordered to pay fines but not sent back to service, perhaps as they had already entered the service of another master. These fines ranged from one shilling to ten pounds, and default commonly subjected the servants to imprisonment. In giving representative examples of the fines imposed, it should be emphasized that there was seemingly no relationship between the fine and the length of the prison term imposed for default. A servant who admitted his engagement but denied he was ever in the prosecutor's service was convicted and fined five shillings and costs or one month in prison,[248] while an apprentice caster by the month was fined five pounds ten

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[246] ANQM, WSS(R) p.907-908, *Jean Baptiste Asselin v. Jean Pensier* (18 September 1840).

[247] ANQM, JP(QR) (Stanbridge), *Edward B. Ross v. William Snyder* (14 October 1842). In another instance, a defendant was convicted of "having deserted his service and employ without leave and without giving notice" and was ordered to "return to his employ and to make good the time lost and continue for one month if required." ANQM, JP(QR) (Sorel), *George Tait v. Louis Harpie* (15 October 1841).

[248] ANQM, WSS(R) p.281, *Arthur Webster v. John Dredge* (18 December 1838) (half the fine remitted to informer and half to Road Treasurer). As has been mentioned previously, many servants were bound by verbal rather than written contract. As an example of a case involving a verbally-bound servant, a servant hired for one year to a Montreal trader and coal merchant was convicted of desertion in 1834. During the proceedings, two witnesses for the prosecution testified that they had first-hand knowledge of the servant being verbally bound to the prosecutor's service and that he had subsequently left without permission. ANQM, WSS(R) p.863-864, *William Manuel v. William Haldenby* (13 May 1834).

shillings or a fortnight's imprisonment.[249] Another indentured servant was fined one shilling and costs or two months in jail for default,[250] while the identical term of imprisonment was faced by a servant fined five pounds and costs.[251]

The largest fine levied outright during this period was the sum of ten pounds and costs (the statutory maximum) imposed against a servant engaged for one year who unsuccessfully filed a doctor's certificate to justify his desertion. Interestingly, no prison term was threatened in the event he failed to pay.[252] In a singular case before Justices of the Peace, charges against a servant were dismissed but he was ordered to pay costs of eight shillings and ninepence, "having undertaken to pay a penalty of ten dollars to his master according to a previous private agreement between them for such breach of contract."[253] This essentially amounted to a liquidated damages provision, included by some masters in indentures both to dissuade servants from deserting and as a means

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[249] ANQM, WSS(R) p.181-182, *Alexis Gariepy v. Isidore Routier* (5 July 1841).

[250] ANQM, WSS(R) p.463, 471, *George Gray v. Joseph Warwick* (25, 27 June 1839). Another was fined twenty-five shillings or eight days in prison. ANQM, JP(QR) (Terrebonne), *Joseph Alfred Turgeon v. Louis Larase* (4 January 1841).

[251] ANQM, WSS(R) p.803, 804, *Charles Grant v. George Sweeny* (2 June 1840). See also *L'Ami Du Peuple* (10 June 1840).

[252] ANQM, WSS(R) (Proces Verbaux D'Audiences), *John Cochran & Elizabeth Bland v. David Moses* (28 November 1842).

[253] ANQM, JP(QR) (St. Joseph De Chambly), *Queen v. Seguien Demess dit Cheneville* (4 July 1842).

of recouping their losses. Whether the master in this case also accepted the wayward servant back into his service or merely sought "satisfaction" is not known.

Analysis of these prosecutions also indicates that informers occasionally played a part in suits for breach of service. Placing advertisements had obvious utility as a means of identifying runaway servants, but the token rewards offered by masters (when they were offered at all) could not have been a powerful inducement for third parties not already inclined to apprehend runaway servants. However, the provincial statute provided that informers be awarded one-half the fines collected in any prosecution in which they were involved and they appear intermittently in prosecutions during this period.[254] For example, in one case wherein a labourer was fined five pounds or two months in prison, half the fine was remitted to an informant and the other half to the Road Treasurer.[255]

As these sentences make clear, imprisonment was commonly used as a mechanism for ensuring obedience to judicial rulings. Courts were also not adverse to imprisoning some servants outright, but the nature of the records leaves no explicit indication as to why courts chose to do so in some cases and not in others. The records suggest that imprisonment was generally imposed on defendants who were recidivists or whose desertion posed the greatest actual or potential pecuniary

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[254] See Appendix C, p.192, *below*. For a discussion of the role of informers in apprenticeship prosecutions in sixteenth and seventeenth-century England, see Margaret Gay Davies, *The Enforcement of English Apprenticeship, A Study in Applied Mercantilism 1563-1642* (Cambridge: Harvard University Press, 1956) 40-76.

[255] ANQM, WSS(R) p.803-804, *Charles Grant v. George Sweeny* (2 June 1840). See also ANQM, WSS(R) p.805, *Edward Maitland v. Samuel Williamson* (5 June 1840) (fine of two pounds and costs; half to informer and half to Road Treasurer). See also *infra*, note 248 at 98.

loss or inconvenience to their masters. The extreme heterogeneity of sentences also suggests that no standardized guidelines were used other than those imposed by legislative parameters, and the legal principle that defendants who pleaded guilty generally received lesser sentences.

The range of sentences imposed was quite dramatic. The shortest period of incarceration for desertion was twenty-four hours, ordered by a Justice of the Peace in 1841 against a female domestic servant.[256] A misbehaving servant sentenced before the Court of Special Sessions received eight days in prison,[257] while another female domestic convicted of disobeying orders was imprisoned for ten days before the Court of Weekly Sessions.[258] Sentences of approximately two weeks' imprisonment appear to have been the norm, as experienced by a servant in 1841 who defaulted on his court appearance and was convicted *in absentia*.[259] Another servant was convicted, also *in absentia*, but sentenced to two months in prison, with a warrant for his arrest issued by the Court.[260]

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[256] ANQM, JP(QR) (St. Martin Isle Jesus), *Michel Brunette v. Anasthea Armand* (11 October 1841).

[257] ANQM, WSS(CM), *Bartholomew Conrad [Gugy] v. Oliver Purvis* (27 November 1843).

[258] ANQM, WSS(R) p. 844, *John Richard Fraser v. Mary Kennedy* (21 July 1840).

[259] ANQM, WSS(R) p.1001, *Hezekial Rice Cushing v. Joseph Allarie* (2 December 1840). Numerous other defendants also received sentence of two weeks' incarceration.

[260] ANQM, WSS(R) p.443, *Robert Handyside v. Thomas Higgens* (11 June 1839). See also ANQM, WSS(R) p.516-517, *John Molson v. Michael Doran* (15 August 1839) (iron caster pleaded guilty, sentenced to two months' incarceration and five pounds fine plus costs). Doran's case, in light of his plea and the heavy sentence imposed, suggests that his desertion may have had an adverse

B. Servants and Related Employment Offenses

1. Refusal to Obey, Refusal to Work or Enter Service, and Negligence

While desertion was the most flagrant manifestation of disobedience on the part of servants, courts also imposed sentences for offenses which encompassed other varieties of misbehavior, such as refusal to obey a master's lawful commands, refusal to work or to enter a master's service, and misconduct or neglect of duty. These offenses all possessed the commonality of implicating a failure on the part of servants to comply with the accepted norms of service during this period.

Refusal to obey the lawful commands of one's master was the most common of these related offenses, and conviction often resulted in imprisonment. In 1835 a cook defended herself against this charge by claiming that her time of service had expired and therefore "she was not bound to obey the orders of the complainant." The court record discloses that her husband was moving to the United States and, in her words, it would be "a hard case to separate husband and wife." Her master testified that she had acted belligerently, refused to work and demanded her wages. The Justices, fully cognizant that sending her back to service would have been futile, imprisoned her for one month and fined her twenty shillings.[261] A domestic servant named Mary Kennedy was sentenced to ten days in prison for the same infraction,[262] while another servant was

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effect on his master's business, although his master's social status may also have been a factor.

[261] ANQM, WSS(R) p.89, *Edward A. Clarke v. Mary Rudd* (10 April 1835).

[262] ANQM, WSS(R) p.844, *John Richard Fraser v. Mary Kennedy* (21 July 1840).

sentenced to three days' imprisonment for refusal to obey his master and the unusual misdeed of attempted desertion.[263]

Refusal to work or to enter one's service were other discernable breaches of employment, and such charges were often brought in conjunction with others. Refusal to work was an accusation made most often against seamen, but servants were also charged and convicted of this offense. In the town of Saint Charles a servant was fined, made to pay costs, and ordered to continue working for his master for six months following his conviction for refusing to work,[264] while in Saint. Edouard a servant was punished for having "négligé et refusé de faire...les travaux."[265] In one case brought before the Court of Weekly Sessions, a hired servant was charged with having "neglecting and refusing to enter the service and employ of the...prosecutor to whom he is engaged before witnesses in the capacity of a servant and a milk man for and during the space of One Year...."[266] This complaint indicates that some servants were prosecuted for failure to commence, rather than to complete, their terms of service.

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[263] ANQM, WSS(R) p.136, *Daniel Ryland v. Charles Catton* (5 June 1841). A defendant before a Justice of the Peace was therefore fortunate to only be fined ten shillings for refusal to obey his master's orders. ANQM, JP(QR) (St. Hyacinthe), *Queen v. Francis Gagnon* (1 July 1842).

[264] ANQM, JP(QR) (St. Charles), *Louis Duvert v. Antoine Chaume* (20 August 1839).

[265] ANQM, JP(QR) (St. Edouard), *Larence McGhee v. Camille Pinsonnault* (24 October 1839) (fine of five shillings and costs of fourteen shillings). See also ANQM, JP(QR) (St. Edouard) *Larence McGhee v. J.B. Laporte* (8 November 1839) (fine of five shillings and costs of fifteen shillings).

[266] ANQM, WSS(R) p.197, *John Kemp v. William Eamon* (1 May 1832).

One of the most picturesque prosecutions of this period was of Mary Ann McDonough, a wet nurse, servant and chamber maid, who was convicted of a veritable laundry-list of faults in 1842. McDonough was accused of having:

> refused and neglected to perform her just duties and to obey the lawful commands of the said Prosecutor and his wife her Master and Mistress and...having been guilty of divers faults and misdemeanors in the service of the said Prosecutor by illegally taking in her possession and wearing divers articles of wearing apparel belonging to her said Mistress....[267]

Following her conviction, the Court of Special Sessions ordered her to pay fines and costs amounting to one pound eighteen shillings and elevenpence. McDonough's is a particularly interesting case in light of the number of employment offenses enumerated therein. Furthermore, it also vividly illustrates the quasi-criminal nature of such prosecutions, insofar as "illegally taking in her possession and wearing" her mistress' clothing was subsumed under the rubric of breach of service rather than, for example, a criminal prosecution for larceny. The charge of committing "divers faults and misdemeanors" also reflects the manner in which these employment offenses are best thought of as hybrids, neither purely civil nor criminal in the modern conception of these terms.[268]

Another discernable category was that of misconduct or negligence. One servant convicted of having "got[ten] drunk and misbehaved himself as a servant in the Employ of the said

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[267] ANQM, WSS(R) p.536-537, *Charles Lindsay v. Mary Ann McDonough* (27 May 1842).

[268] For discussion, see *infra*, note 167 at 62. This language, it should be noted, is found verbatim in the relevant Police Regulations. See Appendix D, p.195, *below*.

Prosecutor" was sentenced to eight days in prison and costs,[269] while a boy servant in 1841 received the identical sentence for misconduct and negligence upon evidence that he was a habitual inebriate and had allowed his master's horse to escape.[270] A servant outside the city was convicted of "refractory conduct" and fined five shillings and costs of eight shillings and ninepence in 1841,[271] while another was convicted of "mauvais conduite, lui avoir manqué de respect, et s'être absenté frequement le soir sans sa permission."[272] The Statute of 1836 also allowed for prosecutions for dissipating an employer's property, but only one such case was found to have been brought during this period, in which a servant was convicted of having "dissipé les effets de son maître."[273]

C. Employment Offenses and the State of Master-Servant Relations

1. Unsuccessful Defenses

As these cases demonstrate, courts often imposed the weight of the law in order to enforce masters' interests. However, any discussion of judicial responses to employment breaches would

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[269] ANQM, WSS(R) (Proces Verbaux D'Audiences), *Bartholomew C. Gugy v. Olivier Purvis* (27 November 1843).

[270] ANQM, WSS(R) p.30-31, *John Trimble v. Charles Lunn* (12 February 1841).

[271] ANQM, JP(QR) (St. John the Evangelist), *William Gorman v. Louis Cameron* (15 October 1841).

[272] ANQM, JP(QR) (St. Eustache), *Jean Baptiste Beautron dit Major v. Antoine St. Jean dit Lagarde* (11 March 1840) (fined ten shillings and costs).

[273] ANQM, JP(QR) (Laprairie), *Richard Phoebe v. Toussaint LaFontaine* (15 October 1842) (fined fifteen shillings and costs of eighteen shillings). In contrast, embezzlement cases were fairly numerous, and larceny and other cases were commonplace during this period.

be incomplete without at least a cursory examination of the most common defenses proffered by servants and rejected by courts, as analysis of these defenses offers a penetrating glimpse into social mores and judicial attitudes of this period. In discussing such offenses, it must be noted that servants often pleaded "justification", but what form this took in individual cases was usually not recorded. Of the defenses proffered by servants, the three most common were ill-treatment, unlawful withholding of wages due and violation of the terms of employment. The cases which discuss ill-treatment as a defense are among the most exhaustively recorded accounts and hence are the most illuminating.

The plight of servants at the hands of abusive masters surfaced sporadically as a matter of public concern during this period. For example, a letter to the editor of the *Montreal Gazette* in 1841 painted a poignant picture of an unfortunate female servant caught up within the machinations of an unsympathetic judicial system, offering a penetrating, if prolix, account of the draconian enforcement of labour law by some courts:

> A case came before the Magistrates of Sorel, on the 27th January, brought by one of the Magistrates there, against his servant girl, for leaving his service on the 25th of said month. He deposed that she had left his service, and had not since returned, "and further this deponent saith not." The girl admitted the fact of her having left her service, but offered to prove that her mistress had told her three weeks before she left, that she would get another to do her work. On that account, the girl gave her mistress a fortnight's warning to get another servant, as she could stop no longer with her, on account of the bad usage she had received from both master and mistress--her master having threatened her severely, struck her in the face with his clenched fist, and otherwise abused her. All this, on the Justices asking her if she would go back to her service, she offered to prove by sufficient evidence, but the poor girl's evidence could not be taken, nor the proof admitted, because the Justices said they had nothing to do with her statement, and would not hear the evidence in her favour, telling her they would fine her ten dollars, if she did not return to her service. The girl, in answer, said she was afraid of her life to go back. She was, accordingly, fined the sum of £2 10s. and 3s.9d. of expenses, or fifteen days in [prison]....A person present told the girl to appeal to a higher Court, but was told by

> the Justices of the borough of Sorel, that there was no appeal from their decision. The girl has an excellent character; she is respectable but poor; and her master keeping her wages from her, deprived her of the means to pay the fine imposed on her. This induced a number of respectable inhabitants to look into the case, when they raised a subscription at once, and paid the fine and expenses.[274]

This account not only offers a trenchant, contemporary criticism of labour law during this period, but it also demonstrates the "incestuousness" which could pervade these courts. In the above example, a suit brought by a Justice of the Peace was tried before his colleagues, who were naturally more inclined to commiserate with him than with his servant. As this account confirms, a master who was also a Justice of the Peace could have virtual *carte blanche* to treat his servants as he saw fit, using the law as a robust weapon while simultaneously enjoying virtual immunity from its coercive powers. Some masters who were prominent members of the community would likewise have enjoyed the legal benefits that their social standing would bring, as the justices hearing such cases would have shared similar concerns over intemperate or undisciplined

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[274] *The Montreal Gazette* (6 March 1841). This account is facially confirmed by analysis of the returns of the Justices of the Peace for Sorel in 1841. Edward H. Carter brought suit against his hired servant, Sarah Wright, on charges that she had absented herself without permission and had not returned. ANQM, JP(QR), *Edward H. Carter v. Sarah Wright* (15 April 1841). She was condemned to pay the identical amount in fines and costs as mentioned above. Furthermore, Carter was indeed a Justice of the Peace for Sorel during this time, as I have ascertained through examination of a list of Justices of the Peace serendipitously discovered among the court records of the Court of Weekly Sessions. As this account also shows, members of communities who felt a defendant was unjustly convicted and fined by a court often took up collections for their benefit. See *e.g.* Lewthwaite, *supra* note 89 at 369-370. For another example of a suit brought by a Justice of the Peace and heard before other Justices of the Peace, see ANQM, JP(QR) (St. John the Evangelist), *Judge Burton v. Levi Larrivierre* (9 January 1841) (fine of sixteen shillings and costs of eleven shillings and threepence).

servants.[275] Justices may have been "servants of the law", but they could also dictate what the law was and use it to their own benefit.[276] This case also provides further evidence of the unpleasant working conditions which some servants faced during this period.

Abuse as alleged by servants encompassed treatment which ranged from simple neglect to physical abuse. While it is difficult to extrapolate with much surety from these records, it appears that courts were generally reluctant to inquire too rigorously into behavior on the part of masters when they sued their servants, tending to take a narrow view of the contractual relationship. Failure of the master to abide by the financial terms of the agreement was more readily seen as grounds for desertion than was neglect, for instance, and allegations of poor food and mistreatment appear throughout the court records but were rarely successful as defenses. For example, a labourer indentured for one year pleaded justification based on improper treatment and "want of proper nourishment", but was nevertheless fined five pounds and costs.[277]

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[275] For a contemporary example of this phenomenon, see *infra*, note 396 at 156.

[276] See *e.g.* Webber, *supra* note 81 at 112-113:

> Many complaints concerned partiality or arbitrary behaviour....It was virtually inevitable that magistrates would rule on matters affecting their friends. Occasionally they even acted on matters in which they themselves had an interest....[and] the simple fact that they were men of standing in the community--often merchants, almost always employers--meant that they had a natural inclination to value discipline and obedience, especially in employment relations.

For discussion of conflicts of interest among Justices of the Peace, see generally Fyson, *Justices*, *supra* note 13.

[277] ANQM, WSS(R) p.803-804, *Charles Grant v. George Sweeny* (2 June 1840).

Cases involving more explicit instances of physical abuse were far from infrequent, and they indicate that beating or whipping a servant was generally viewed as a natural extension of a master's authority. Two such examples are given in their substantial entirety, so as to illustrate the nature of the evidence presented before these courts, as well as to depict the interplay between the prosecution and the defense. It should be noted that defendants often did not call witnesses on their behalf.

The first such example is that of John Edmundstone, apprentice printer to the firm of Workman and Bowman, who was prosecuted for desertion in 1832.[278] Edmundstone's trial is intriguing for many reasons, not the least of which is that his trial was one of the most involved and lengthy desertion trials of this period. Over the course of four days of testimony, nine witnesses were called before the Court. Edmundstone, a minor, appeared in court with an attorney, thereby giving him an implicit advantage over countless other servants who appeared without counsel or were represented (in the case of minors) by their male relatives untrained in the law. Edmundstone's attorney answered the complaint by alleging that Edmundstone was a minor and "not bound to answer this complaint, and that he is not legally before this Court", but these arguments were dismissed by the Court.[279] Edmundstone thereafter entered a plea of not guilty.

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[278] ANQM, WSS(R) p.309, 313, 322, 329-334, *Benjamin Workman v. John Edmundstone* (21, 28 August; 4, 11 September 1832). As the dates of this prosecution attest, courts which met on a weekly basis were ill-suited for lengthier proceedings.

[279] *Ibid.* Minority could be a successful defense if it was shown that the employment contract was not entered into with the aid of an adult parent or guardian. See pp.136-137, *below*.

Edmundstone alleged, *inter alia,* that he had been mistreated, served inadequate food, and made to sleep with a boy suffering from typhus fever (reference to which was underlined throughout the court clerk's transcription of the evidence). The first witness to confirm that Edmundstone had been subjected to corporal punishment was an employee, who testified on cross-examination that:

> [there had been] some difficulty between the Complainant and the said Def[endant] and [he] saw Mr. Workman push [the Defendant]...and that in consequence whereof his head came in contact with the partition; that said Def[endant] slept at his mothers in consequence of another boy having the Typhus fever, that he saw one dish of victuals served three times successively, that he heard Mr. Bowman tell the foreman to beat the Defendant, which was done till the foreman's arms ached, saw [him] beat[en] chiefly on the head.[280]

Another employee testified that he lived with the prosecutor for six years, was always well-fed, and "saw beds put up after the boy had got the Typhus fever." On cross-examination, he further stated that he "never complained of the food served to him, except of its being too fat." It was the testimony of two other apprentices, however, that provided the most detail of the method of correction the defendant endured. One apprentice testified on direct examination that:

> he did not see Mr. Bowman beat the said Def[endant]; that a sick boy was placed in the Defend[ant's] bed; that he the deponent left the Complainants also, that he knows that the Def[endant] slept at his mother's, that bad food was given to the boys, can't say how often, that said food once smelt bad, that he has seen the foreman at Complainant's beat the Defend[ant]; cannot say whether this Occurred from Mr. Bowman's Orders, that the Def[endant] was flogged with a Whip.

Similarly, another apprentice testified that:

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[280] *Benjamin Workman v. John Edmundstone, supra* note 276.

> [o]nce he heard the said Mr. Bowman give directions to the foreman, to beat the Defendant, and heard the foreman say to Mr. Bowman that he had effectively followed the Orders given so much that the [foreman's] Arms Ached, that a Whip was used to effect this. That Mr. Bowman at times gave the boys good food and sometimes to the Contrary, that he [had] seen bad food served several times, that he was not there when some difficulty took place.

On cross examination, he admitted to having been present when the foreman beat Edmundstone but did not hear him "[p]ut the foreman to defiance", and further added that "when the boys could not get sufficient food, they used to procure bread and butter."

This evidence was further supported by yet another employee who "saw the foreman give the Def[endant] a thrashing", and testified that he saw the foreman kick the defendant on one occasion, and that the food served was sometimes wholesome and sometimes "middling." A previous witness for the prosecution, Mr. Milholland, was recalled to the stand and bolstered the prosecution's case by elaborating that "[o]ccasionally it was absolutely necessary to correct the Def[endant]; the whip was used as a father might legally correct his children with."

This last assertion, while not comforting from a modern perspective, apparently swayed the Court. While there appeared to be uncontroverted evidence that the foreman had ill-used Edmundstone, the Court nonetheless ordered him to return to service and pay costs, or be imprisoned for two months. Edmundstone's life did not improve following his return; two months later he utilized the most viable option remaining to him and deserted once again, as evidenced by an advertisement placed by his master.[281]

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[281] *The Canadian Courant* (1 December 1832). Edmundstone's second attempt may have been successful, as his name was not identified in any subsequent desertion prosecutions.

The saga of John Edmundstone is not unique, being merely one of many similar stories during this period. Servants often deserted in order to escape unpleasant working environments, and a considerable number were prosecuted and convicted. Even in the face of this, many servants persisted in their belief that the benefits of desertion outweighed the hazards of uncertain justice, even if they themselves had been previously convicted. One such servant, an apprentice named Regis Villeneuve, was prosecuted in 1833 along with a fellow apprentice, Michel Racicot.[282] Racicot admitted the existence of his indenture but claimed it had been cancelled by a subsequent written agreement, and after hearing evidence the Court dismissed the charges against him. Villeneuve admitted having deserted but nonetheless entered a plea of not guilty.[283] The court register reflects a similar litany of complaints about inadequate nourishment and ill-treatment:

> Jean B[aptis]te Parent de Montréal après serment duement prêté dépose et dit qu'à sa connaissance le poursuivant à bâtir et maltraite le Défendeur Regis Villeneuve, Qu'il l'a frappé à coup de pieds et qu'il a pris le dit Défendeur Regis Villeneuve par le bras et l'a jeté au moins à douze pieds de distance dans la rue[.] Que cinq ou six fois ils ont eu de très mauvais nourriture[;] Quelque point de pain ou très peu.
>
> The Court then called Michel Racicot to the stand:
>
> Michel Racicot après serment duement prêté dépose et dit que Samedi dernier en sa présence le poursuivant a battu et maltraité Regis Villeneuve son apprentis--à coup de pieds--dit que le poursuivant a pour habitude de boire des boissons fortes[.] Que le poursuivant est souvent absent de sa maison.

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[282] ANQM, WSS(R) p.424-427, *Pierre Alexander Trudeau v. Michel Racicot & Regis Villeneuve* (13 August 1833).

[283] As was evidenced by numerous prosecutions during this period, confessing to an offense did not foreclose the option of pleading not guilty in court. See *e.g.* p.125, *below*.

These two witnesses were the only witnesses heard by the Court and, at least facially, seemed to buttress Villeneuve's defense. However, the Court ordered that Villeneuve:

> retourne immédiatement au service du Poursuivant pour parachever son Engagement et a défaut de ce faire que le dit Regis Villeneuve payer une Amende de six Livres Courant. Autrement que le dit Regis Villeneuve soit confiné dans la prison Commune de ce District durant l'espace de trois mois. En Autre la Cour condamne le dit Regis Villeneuve le défendeur en cette cause à payer les frais encourus dans cette poursuite.

Thus, if the facts as Villeneuve alleged them were accurate, he faced a Hobson's choice: return to service, or be fined six pounds or spend three months in prison. Villeneuve chose to return but deserted again the following year.[284]

Robert McIntosh, it may be remembered, had also run afoul of the law. McIntosh had deserted early in January 1841, two months after the start of his service, prompting Thomas Albert Martin to secure an arrest warrant before a Police Magistrate.[285] McIntosh was promptly arrested and tried the next day; upon his plea of guilty the Court sentenced him to fifteen days in prison and required him to return to service immediately thereafter.[286]

McIntosh apparently found the possibility of further prosecution less odious than the prospect of returning to his master. On the day of his release from prison, McIntosh's master once again obtained an arrest warrant on the grounds that he had failed to return to service, having been

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[284] ANQM, WSS(CM), *Pierre Alexander Trudeau v. Regis Villeneuve* (22 July 1834). This is yet another example of a term of incarceration for default which exceeded the statutory maximum.

[285] ANQM, PC(R) p.85, *[Thomas] Albert Martin v. Robert Bruce McIntosh* (10 January 1841).

[286] ANQM, WSS(R) p.3-4, *Thomas Albert Martin v. Robert Bruce McIntosh* (11 January 1841).

secreted by his mother.[287] McIntosh was apprehended and brought before the Court of Weekly Sessions. McIntosh attempted a more elaborate defense on this occasion, first claiming that his indenture "was null though signed by [his] mother because she was not legally authorized to bind h[im]." The Court rejected this claim, and McIntosh asserted ill-treatment as an alternative defense. Among the testimony given was that of another of Martin's apprentices, named Samuel Jackson, who asserted that Martin had struck McIntosh "five or six times" but that he "was not stunned by the blows." The Court once again found in favour of his master, and McIntosh was sentenced to two months' imprisonment.[288]

As accounts such as these demonstrate, courts were not very sympathetic to allegations of ill-treatment, assuming that masters had the right to inflict moderate chastisement on unruly servants. However, while claims of ill-treatment did not avail servants like Robert McIntosh or Regis Villeneuve, it is an intriguing reality that desertion cases in which ill-treatment was alleged tended to be among the most thorough and lengthy proceedings. This suggests that while courts took claims of ill-treatment seriously enough to warrant careful inquiry, they nevertheless exhibited considerable deference to masters with respect to disciplining servants. It is possible that courts felt ill-treatment did not justify desertion, as the law provided mechanisms of servants to sue their masters for cancellation of their indentures on that basis.

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[287] ANQM, WSS(R) p.322, 329, *Thomas Albert Martin v. Robert Bruce McIntosh* (26 January 1841).

[288] ANQM, WSS(R) p.39, *Thomas Albert Martin v. Robert Bruce McIntosh* (17 February 1841). No further information on McIntosh was found within the judicial archives. Jackson himself was later to desert from Martin's service. See *infra*, note 421 at 164-165.

2. Incorrigible Masters and Servants

As the stories of McIntosh and Villeneuve suggest, many servants endured unpleasant or even violent masters, and could not expect to be released from their terms of service unless they could show that the treatment inflicted by their masters exceeded accepted societal norms. It is equally true, however, that some servants were banes to their masters, deserting recurrently based on personal foibles. Prosecutions for employment offenses offer telling evidence of the existence of both incorrigible masters as well as servants during this period.

With respect to the former, the impressive number of servants who deserted from the service of a handful of masters suggests, at the very least, that these masters were difficult to work for.[289] One such master, a Montreal tinsmith named John George, was beset with a disproportionate amount of labour strife between 1834 and 1842, involving no fewer than six apprentices. George first appears in the prosecution of Antoine Charbonneau in 1834 which, while successful, culminated in a judgment requiring George's brother to provide surety for good conduct towards the defendant.[290] Thereafter, George brought suit against William McLellan for neglect, refusal to perform his "just duties" and failure to obey his master's lawful commands, which was dismissed with costs.[291] In June 1834, George announced that John Williams was discharged from his

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[289] Salinger arrives at the identical conclusion when noting the frequency with which certain masters appeared in advertisements. Salinger, *supra* note 47 at 104.

[290] ANQM, WSS(R) p.1241-1244, *John George v. Antoine Charbonneau* (4 December 1834). See pp.146-147, *below*, for discussion of this case.

[291] ANQM, WSS(R) p.544-545, 547, 558-559, *John George v. William McLellan* (7, 14, 21 June 1842).

employment.[292] Approximately two years later, George advertised that two more of his apprentices had deserted; enigmatically, John Williams was again mentioned.[293] In May of 1838, John Fraser deserted George's service;[294] and in June of 1840 Joseph Monaraque did likewise.[295] In light of the evidence presented at Charbonneau's trial, the disposition of the prosecution of McLellan, and the impressive number of apprentices which left George's service within the span of eight years, it seems reasonable to infer that George (or at least his brother) provided a working environment deemed unsatisfactory by many of his apprentices.[296]

Henry Talon *dit* Lesperance is another case in point. Lesperance, a Montreal Shipwright and Boatbuilder, was identified as a plaintiff in six desertion prosecutions, and at least one prosecution for assault with intent to murder. In April 1832, Lesperance brought desertion charges against an

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[292] *The Montreal Gazette* (10 June 1834).

[293] *The Montreal Gazette* (8 August 1836). Presumably, Williams was allowed to return to service following his discharge.

[294] *The Montreal Gazette* (10 May 1838).

[295] *The Montreal Gazette* (20 June 1840).

[296] Another tinsmith had four apprentices desert within the span of less than two years. ANQM, WSS(R) p.529, *Jean Baptiste Asselin v. Charles Douds* (10 September 1835) (prosecution dismissed); ANQM, WSS(R) p.534, *Jean Baptiste Asselin v. Charles Boyte* (14 September 1835) (fined twenty-five shillings and costs or two months' imprisonment); ANQM, PC(R) p.314, *Jean Baptiste Asselin v. Jean Pensier* (14 September 1840); ANQM, PC(R) p.162, *Jean Baptiste Asselin v. Joseph Cadorette* (22 April 1841).

apprentice before the Court of Quarter Sessions on charges of desertion.[297] Approximately a year later, he likewise prosecuted a servant named James Roddam, who had been employed for four weeks prior to signing a written agreement of employment. Roddam alleged that he had not been paid his wages due after that date, "his family suffer[ing] by reason of non-payment."[298] In April of the following year, Lesperance prosecuted a journeyman boatbuilder who argued unsuccessfully that his desertion was justified on the grounds that he was not provided "good and sufficient board and lodging" as there was a constant shortage of food, "[e]specially of bread."[299] Thereafter, Lesperance prosecuted Maxime Lefrenière twice, although once Lefrenière was identified as a journeyman and once as a domestic, thereby leaving open the question of whether this was a clerical error or whether these were different (but perhaps related) defendants.[300] Joseph Gratton, who had been convicted before the Court of Weekly Sessions, reappeared in the files of the Court of Quarter Sessions for failing to comply with the earlier judgment.[301]

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[297] ANQM, QS(F), *Henry Lesperance v. Germain Couture* (24 April 1832).

[298] Roddam was ordered to return to service and pay costs, or face two months' imprisonment. ANQM, WSS(R) p.116-119, *Henry Lesperance v. James Roddam* (6 March 1833).

[299] Sanford was ordered to return and pay twenty shillings fine and costs. ANQM, WSS(R) p.83, *Henry Talon dit Lesperance v. Joseph Sanford* (15 April 1834).

[300] ANQM, QS(F), *Henry Talon dit Lesperance v. Maxime Lafrenière* (26 September 1834); ANQM, QS(F), *Henry Talon dit Lesperance v. Maxime Lafrenière* (14 March 1835).

[301] ANQM, WSS(R) p.81, *Henry Lesperance v. Joseph Gratton* (3 March 1835); ANQM, QS(F), *Henry Lesperance v. Joseph Gratton* (14 March 1835). For the assault with intent to murder prosecution, see p.178, *below*.

William Gettes, for his part, had at least four apprentices desert between January 1838 and December 1840.[302] Interestingly, in one advertisement Gettes stated that all persons were "advised not to harbour or employ" his apprentice Louis Maxwell, "as much for example as respect to justice." Gettes went on to state that "[h]is parents can assign no other reason for his running away, than for being too well used by his Master", the only such statement found in an advertisement for this period.[303] It may be unfair to state that Gettes did 'protest too much', but he bears the further distinction of having been successfully sued by another apprentice, Cornelius Kelly, for ill-treatment in 1843.[304]

Prosecutions such as these demonstrate that many servants worked under trying conditions. But it is equally evident that some servants were incorrigible deserters who switched jobs when better prospects presented themselves, or deserted repeatedly because of personal failings such as chronic drunkenness. Of the incorrigible deserters with colourful résumés identified during this period, one example in particular serves to illustrate the difficulties facing some masters in securing good sources of labour. Jacques Roy, a journeyman painter, first appears in a prosecution for

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[302] ANQM, WSS(R) p.10, 14, *William Gettes v. Thomas Henan* (9 January 1838) (no disposition recorded); ANQM, QS(F), *William Gettess v. Louis Maxwell* (18 July 1838); ANQM, QS(F), *William Gettess v. John Brayer* (18 July 1838); ANQM, PC(R) p.33. *William Gettess v. Samuel Brazier* (1 December 1840).

[303] *The Montreal Transcript* (25 August 1838).

[304] ANQM, WSS(R) [unpaginated], *Cornelius Kelly v. William Geddes* (20 October 1843). See pp.165-166, *below*, for a discussion. The variant spellings of his last name--"Gettes", "Gettess" and "Geddes"--illustrate some of the attendant difficulties in analyzing primary sources of this period. I have used "Gettes" throughout this thesis as he signed it as such on Kelly's indenture.

desertion April of 1830.[305] Three years later, another master named Michel Moses brought suit against Roy on the same charge, and he was ordered to return to Moses' service and pay costs or be imprisoned for one month.[306] Moses prosecuted Roy again three months later, and Roy was fined twenty shillings and costs or one month in prison, but was not ordered to return to work.[307] Roy surfaces yet again before the Court of Special Sessions in May 1842.[308] One is left to ponder how many other masters may have had unsatisfactory experiences with Roy but chose not to prosecute, or for which the court records have not survived.

During this period, a master named Daniel Tracy had similar difficulties with one of his apprentice printers, prosecuting him on two separate occasions as well as placing an advertisement announcing his desertion. Tracy first prosecuted his apprentice in a summary proceeding for desertion before the Justices of the Court of Quarter Sessions on November 18, 1830.[309] Thereafter, Tracy placed an advertisement in *The Vindicator*, stating that the "sole cause for his [apprentice's] absconding arises from the contagion of Idle and Dissolute Company, and a Propensity to

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[305]ANQM, QS(F), *Peter Miler v. Jacques Roy* (14 April 1830).

[306] ANQM, WSS(R) p.334, *Michel Moses v. Jacques Roy* (2 July 1833). He was ordered to return and pay costs or be imprisoned for one month.

[307] ANQM, WSS(CM) p.524-526, *Michel Moses v. Jacques Roy* (22 October 1833).

[308] ANQM, WSS(CM), *Jean Leandie Coursol v. Jacques Roy* (13 May 1842) (defendant aalleged he was engaged by the day; case dismissed on insufficient evidence).

[309] ANQM, QS(F), *Daniel Tracy v. Jean Baptiste Bourtron dit Larochelle* (18 November 1830).

Gambling."[310] His apprentice was likely arrested shortly thereafter, as Tracy brought another proceeding against him on December 23, 1830.[311]

As these examples illustrate, some servants frequently absented themselves from service, refused to follow their master's orders or otherwise proved thoroughly obdurate. In many instances masters felt that levying charges against such servants would be fruitless, but others did so to vindicate their rights and/or to assist in combating desertion. When masters sought legal recourse, courts often rigorously applied master-servant law by punishing unruly servants or forcing them to complete the terms of their service. Servants who deserted from abusive masters therefore faced the reality that courts tended to uphold the right to chastisement as an intrinsic facet of masters' authority.

D. Third Parties and Employment Offenses

Given the nature of the property interests masters had in their servants, it is no surprise that the law offered redress against third parties who interfered with labour relationships. During the first half of the nineteenth-century, legal recourse was available against third parties for forcibly detaining a servant, enticing a servant to desert or harbouring a runaway.[312] Given the rather

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[310] *The Vindicator* (14 December 1830).

[311] ANQM, QS(F), *Daniel Tracy v. Jean Baptiste Bourtron dit Larochelle* (23 December 1830).

[312] See Appendix D, p.195, *below*. Similar prosecutions were brought in nineteenth-century Ontario. Webber, *supra* note 81 at 148 (stating that the common law allowed for actions against third parties for forcibly taking one's servant, enticing desertion, or employing a runaway). It is worth noting that, at least in Montreal, the offense of "enticing desertion" most commonly involved encouraging a member of His Majesty's armed forces to desert. Such prosecutions are, of course, excluded from discussion.

delicate nature of such situations, and perhaps also more practical and evidentiary obstacles, it is not surprising that such prosecutions were only sporadic. Most masters who employed runaway servants would have done so unwittingly, and the language of the legislative enactments--as well as that of the cases themselves--indicates that these suits were brought against those who willfully lured away servants, engaged in unfair labour competition, or facilitated desertion by secreting runaways.[313]

With respect to harboring runaways, it is a truism that desertion by a servant would often have necessitated obtaining the aid of sympathetic third parties. John Edmundstone's attempt to flee from his master is a case in point. In addition to prosecuting Edmundstone, his master filed suit against Margaret Cathers before the Court of Weekly Sessions for having:

> received and harboured in her house in the City of Montreal and for still continuing to harbour in her said house...one John Edmundstone, she well knowing that the said John Edmundstone was and is an Indented Apprentice Printer to the said Benjamin Workman and Ariel Bowman and has deserted their service in contravention to the Provincial Statute and to the Rules and Regulations of Police in such case made and provided.[314]

The action was dismissed by the Court with costs, a particularly interesting result in that Edmundstone had earlier been convicted of desertion, and perhaps was even apprehended at Cather's residence.[315] Unfortunately, the evidence presented was not recorded, so Cather's identity

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[313] See Appendix D, *ibid.* See also Appendix E, p.197, *below.*

[314] ANQM, WSS(R) p.309, 313, *Benjamin Workman v. Margaret Cathers* (21, 28 August 1832). Note the reference to the body of relevant master-servant law.

[315] For discussion of this case, see pp.109-111, *above.* For an example in which a suit was

and the Court's reasons for the dismissal remain purely conjectural. Other prosecutions were availing, however, as evidenced by a suit before a Justice of the Peace in Saint Marie de Monnoir, wherein a defendant was ordered to pay a fine of ten shillings as well as rather hefty court costs amounting to one pound five shillings and ninepence.[316]

When such prosecutions were initiated, more than one charge could be brought simultaneously. A third party who lured away an apprentice could legitimately be charged with, for example, having enticed the apprentice as well as harboring him. In 1841 a master bookbinder prosecuted a defendant before the Court of Special Sessions for having induced his apprentice to desert and for having forcibly detained him. The defendant denied the existence of such a right of action in law, but was overruled. Following entry of the defendant's plea of not guilty, the Court dismissed the action with costs as the testimony suggested the forcible detainment was merely a poorly-conceived jest.[317] In a case in Sorel, a defendant was fined ten shillings for "having advised

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withdrawn by the prosecutor although the prosecutor also successfully sued his servant for desertion, see ANQM, JP(QR) (Stanbridge), *Caleb R. Free v. Baptiste Lapri* (5 July 1841) (hired servant convicted of desertion, ordered to return and complete his term of service and pay costs of ten shillings); ANQM, JP(QR) (Stanbridge), *Caleb R. Free v. Richard Gage* (5 July 1841) (suit for harbouring servant withdrawn, with costs of two shillings and sixpence imposed against prosecutor). A similar unsuccessful prosecution was also found within the records of the Police Court, involving a defendant who was arrested and brought before the Police Magistrate. ANQM, PC(R) p.75, *Dominus Rex v. Joseph Rondeau* (14 January 1841) ("[a] Warrant of Arrest was Granted on the Affidavit of Fabien St. Pierre on charge of Knowing[ly] harbouring an apprentice. The Defendant was arrested [and] after Examination Case discharged.").

[316] ANQM, JP(QR) (Laprarie), *Pierre Bourassa v. Jacques Pepin* (4 January 1842) (for "harbouring a servant knowingly").

[317] ANQM, WSS(R) p.28, *Charles P. Leprohon v. Daniel Trudelle* (8 February 1841). A complaint alleging enticement to desertion was filed before the Court of Special Sessions but not returned by the grand jury. See ANQM, WSS(CM), *Joseph Homer v. François Pierre* (20 April

the Plaintiff's Apprentice to leave his Service and having harboured and lodged him in his House."[318]

Most enticement cases implicated unfair competition. In 1839, a defendant was convicted for having "knowingly seduced and enticed Antoine Menancon, baker duly engaged to the plaintiff to quit and abandon his service, and for having harboured and engaged this Antoine Menancon." Having been found guilty, the Court ordered the defendant to pay a fine of two pounds ten shillings, as well as costs of eleven shillings and threepence.[319] Similarly, in Saint Marie de Monnoir, a saddler was fined five shillings for having lodged and employed a deserting apprentice.[320] The nature of these cases intimates that they involved defendants who attempted to lure away employees from competitors. However, enticement cases did not exclusively involve apprentices and journeymen. Third parties also occasionally lured away domestic servants, as two cases before Justices of the Peace in 1843 attest. In Shefford, a defendant was convicted of enticing a servant girl

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1841).

[318] ANQM, JP(QR) (Sorel), *Louis Boivin v. Louis Barcier* (11 July 1842).

[319] ANQM, JP(QR) (William Henry), *Peter McNie v. Ambroise Peloquin dit Fiship* (29 July 1839). The only other example found of a case for enticing an apprentice to desert was not prosecuted, as the grand jury declined to indict. ANQM, WSS(F), *Joseph Homer v. François Pierre* (20 April 1841).

[320] ANQM, JP(QR) (St. Marie de Monnoir), *Francis Dubour v. Isaac Mailiette* (11 October 1842).

to leave the prosecutor's service,[321] while in Stanbridge a defendant was convicted of luring away a neighbor's domestic.[322]

Lawsuits such as these reflect the procedures used to protect master's property rights in their servants, the same rights alluded to in advertisements which prohibited "harbouring or crediting" runaways. While the number of such identified suits is fairly limited, they clearly demonstrate that courts accorded remedies to masters against third parties. Given a scarcity of skilled labour, masters had incentives to combat "raiding" of their servants, and social and economic stability demanded that steps be taken to curtail desertion. If prosecuting runaway servants was the primary (albeit imperfect) means of keeping cutthroat labour competition in check, the law recognized that masters who harbored, enticed or employed runaways were also a crucial part of the equation.

E. Servants and Property Offenses

As these cases suggest, labour relations in Montreal during this period were often troubled. Such disagreements, in turn, often led to legal proceedings, most often undertaken to vindicate the rights of masters against wayward servants. However, servants also posed more direct threats to their master's property by engaging in theft and committing acts of violence. This section will discuss the manner in which courts enforced masters' interests through prosecutions for offenses committed against property and persons.

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[321] ANQM, JP(QR) (Shefford), *Nathan Williams v. Jared Bryant* (5 July 1843) (fined twenty-five shillings).

[322] ANQM, JP(QR) (Stanbridge), *H.N. Whitman v. Nathan M. Blin* (29 December 1843) (fined fifteen shillings and costs of nineteen shillings and sixpence).

As has been previously shown, newspapers during this period were replete with accounts of servants who absconded with their master's possessions. Numerous prosecutions against servants for property offenses were brought during this period, but these identified cases represent merely a fraction of the total number of such prosecutions. The most serious charge of theft which could be made against a servant was the charge of theft of over fifteen pounds from a dwelling house, a capital crime until the 1840s, while the most minor property offense--larceny--was punishable by sentences of up to three years' imprisonment.

As many apprentices and domestics lived under their master's roofs, thereby acquiring an intimate knowledge of what valuables their employers owned and where they were kept, it is no surprise that they constituted so visible a proportion of servants charged with theft. Insofar as servants were in positions of trust, courts often considered thefts committed by servants to be especially egregious, and lengthy terms of imprisonment were freely imposed.

With respect to capital offenses, two domestic servants in 1830 were tried for having stolen approximately two hundred pounds from their master. Despite the fact that they admitted the crime under voluntary examination, both pleaded not guilty in court.[323] The jury quickly found them guilty, and the Court accordingly sentenced them to death.[324] As may be expected, this case elicited

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[323] ANQM, KB(R) p.104 (September-October 1830 term), *Dominus Rex v. Catherine McNaughton & Grace McManus*. See also *The Canadian Courant* (11 September 1830). This is another example wherein defendants confessed to a crime yet pleaded not guilty in court.

[324] *Ibid.*, p.133 ("[the Court orders that] the prisoners be taken to the Common Gaol of this District from whence they came, and from there on Friday the twenty-ninth day of October next to the Common place of Execution of this District, and that they be severally then and there hanged by the Neck until they be dead."). See also *The Canadian Courant* (18 September 1830).

a substantial degree of public interest, partially because the condemned were women, but also because many members of the public were highly critical of capital punishment being inflicted for theft. *The Canadian Courant* remarked that the case had "produced a deep feeling of sympathy in this place." The editorial went on to state, however, that "[o]f their guilt there can be not a doubt; but it is also worthy of observation, that, previous to the committal of the crime for which they are sentenced, they both maintained good characters."[325] The more conservative *Montreal Gazette*, for its part, also expressed sympathy for the two women "of decent appearance and respectable connections", but nonetheless emphasized the need for strong sanctions to deter the endemic problem of thieving servants:

> Though we are by no means disposed to have the laws severely administered, and though we are unwilling to invoke the utmost severity of the law against the two unfortunate females now in confinement, yet moderate and proportionate punishment is certainly required to prevent the almost daily occurrence of servants robbing their employers. MR. NELSON WALKER left this [city] five days ago for NEW YORK in pursuit of one of his servant girls, who carried away with her a large amount of jewellery, plate, &c. of which...she had obtained possession, and other depredations to a great extent are of daily occurrence....[326]

While property crimes of this magnitude were probably exceptional, lesser examples of theft were seemingly ubiquitous. For example, the *Montreal Pilot*, in detailing recent convictions before the Court of Quarter Sessions in 1844, emphasized that three defendants had pleaded guilty to theft

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[325] *The Canadian Courant* (22 September 1830).

[326] *The Montreal Gazette* (30 September 1830). For another example, see *The Montreal Gazette* (10, 12 March 1835) (sentence of death recorded against a servant who pleaded guilty to having stolen over fifteen pounds from his master's house).

committed "under very aggravated circumstances [having]... robbed their masters." The Court therefore sentenced them to three years in the provincial penitentiary at hard labour.[327] Among the malefactors was a domestic servant named Catherine O'Neil, who had been imprisoned four years earlier for having robbed another master.[328]

O'Neil was neither the only, nor the most colorful, servant to be prosecuted for having stolen from his master. James Welsh, it may be remembered, took advantage of the opportunity afforded by his master's family gathering around the sickbed of their son to pilfer the family silver. Although Welsh took the precaution of defacing the silver in the hopes of disguising its ownership, the jeweler to whom he offered it recognized him and alerted the police. Upon being arrested, Welsh confessed to the crime and was committed for trial to the Court of King's Bench.[329] He was convicted and the Court imposed a three year sentence.[330]

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[327] *The Montreal Pilot* (28 October 1844).

[328] *The Montreal Gazette* (3, 17 March 1840). The court acted on the jury's recommendation of mercy and sentenced her to only four months in prison. See p.152, *below,* for discussion.

[329] ANQM, KB(F), *Dominus Rex v. James Welsh* (voluntary Examination of James Welsh) (May 5, 1843): "I had been taking some beer on that day--and the devil made me take those things but I cannot deny having taken them...." See also *The Montreal Gazette* (6 October 1843); *The Montreal Transcript* (7 October 1843).

[330] *The Montreal Transcript* (14 March 1844).

Prior to 1841, a distinction was made between petty larceny and grand larceny, the former being customarily punished by three months' incarceration, the latter by six months.[331] The threshold dividing petty larceny from grand larceny was low, and a servant who pilfered even a relatively small item faced a significant prison term. For example, a domestic convicted of having purloined her master's silver snuff-box languished in the local jail for six months in 1836.[332] A young servant, tempted by his master's pocket book, removed five dollars from its contents, was confronted by his master and returned the balance he had not yet spent.[333] His master prosecuted him before the Court of King's Bench, which likewise sentenced him to six months.[334]

As many masters discovered, a relatively large number of youths charged with such infractions were apprentices bound to service by various benevolent institutions, most often

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[331] In 1841, a provincial statute was passed which amended the criminal law concerning property offenses. *4 & 5 Victoria chapter 25*, "An Act for Consolidating and Amending the Laws in this Province, Relative to Larceny and Other Offences Connected Therewith."

[332] *The Montreal Gazette* (1, 12 March 1836). It should be emphasized that she was dismissed from service prior to being seen with the item in her possession, although no information is given about what circumstances led to her being suspected. This may be an example of the frequency with which servants were accused--rightly or wrongly--of theft from their master's households. In this instance the suspicion appeared to have been well-founded.

[333] ANQM, KB(F), *Dominus Rex v. Henry Furnell* (voluntary examination of Henry Furnell) (22 December 1834). The master also accused him of stealing a fifty dollar note, which he strenuously denied.

[334] *The Montreal Gazette* (24 February, 10 March 1835). See also *The Pilot* (19 July 1845) (servant sentenced to six months' imprisonment for stealing merchandise from his master's store).

emigrant societies.[335] One such case was that of a fourteen year-old boy apprenticed by the Children's Friend Society of London, incarcerated for three months for petty larceny after having confessed to stealing a silver teaspoon from his master.[336] Another English apprentice, William Bristol, robbed his master of several silver spoons in a pathetic attempt at financing his return home. As the unsympathetic account in the *Montreal Gazette* stated, the boy "had been in the service for some weeks, but taking it into his head to return to England, left the house with all the spoons he could conveniently obtain, and was caught near the *Princess Victoria* with the articles in his possession."[337]

While the contemporary literature evinces a widespread perception that apprentices from benevolent institutions were often disposed to theft due to their socio-economic origins, Bristol apparently desired to simply secure passage back to England. No doubt some servants who were sent to the colonies from England would have been prone to homesickness, and some servants (as was the case with Bristol) took desperate or ill-conceived steps to return home. These children, far from home and perhaps faced with abusive masters, would have been in particularly desperate straits. While the consensus in England may have been that apprenticing such children abroad was

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[335] See p.28-29, *above*.

[336] ANQM, KB(R) p.75 (February-March 1836 term), *Dominus Rex v. Joseph Ford*. See also *The Montreal Gazette* (27 February, 12 March 1836). Ford's master, hearing he was headed to the United States, crossed the border and apprehended him four miles from Canada, returning him to Montreal where he was lodged in prison.

[337] *The Montreal Gazette* (28 February 1837). He was sentenced to a six month term. ANQM, KB(R) p.163-164 (February-March 1836 term).

both practical and beneficent, this is to ignore that these children were dispatched to the foreboding British colonies, far away from familiar surroundings.

It should also be noted that third parties could also be held legally responsible as accomplices to theft, much like third parties could be prosecuted for harbouring servants or enticing desertion. One unusual example involving coercion (somewhat analogous to "forcible detainment" in the employment context, as mentioned earlier) was reported in the *Montreal Gazette*:

> John Finlayson, as principal, and Ellen Mills, as accessory, on a charge of larceny having pleaded guilty, the Court [of Quarter Sessions] proceeded to pass sentence on them, and condemned them to be imprisoned in the Provincial Penitentiary during the term of three years. Finlayson had been in the employ of Benjamin & Brothers, merchants of this city, for upwards of two years. He was, about two years ago, induced by the female prisoner to give her something out of the shop of his employers, and having succeeded in this first step, afterwards compelled and coerced him to continue robbing his employers, under threats of disclosure, if he did not accede to her wishes. He was detected, and made a full confession of all that had taken place.[338]

As these prosecutions for employment and property offenses indicate, courts were not hesitant to levy harsh sanctions against servants who threatened the sanctity of the master-servant relationship by violating the terms of their employment or through committing theft. Moreover, third parties could also be held responsible for interfering with the master-servant relationship or for encouraging crime. These prosecutions indicate that courts aggressively protected masters' property rights, both in terms of their chattels and personal possessions, as well as in terms of their economic interest in securing stable sources of labour.

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[338] *The Montreal Gazette* (19 July 1845).

Chapter V.
Promoting Servants' Interests

While courts did not hesitate to enforce masters' interests, courts also did not unthinkingly apply the law as a blunt weapon against servants. Two further observations about the law of this time must be made: first, public commentary on the necessity of reforming the criminal law was both vocal and unyielding; second, courts made significant attempts at enforcing the responsibilities of masters as well as servants.

A common plaint during this period was that Montreal had inherited a draconian system of English criminal law. For example, after a sitting of the Court of King's Bench in 1832, the editor of the *Montreal Gazette* lamented that it "is a melancholy fact that...several youths, scarcely fifteen years of age, were sentenced to have their backs lacerated by the common hangman, for petty thefts; and against three children, scarcely of that age, sentence of death was recorded, but not pronounced!"[339] This was to be a common criticism, with editorials decrying the legal system with its "cruel and oppressive" laws which were "naturally injurious to the public good."[340]

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[339] *The Montreal Gazette* (22 March 1832).

[340] *The Montreal Gazette* (22 March 1832). See also *The Montreal Gazette* (27 February 1836):

> It is certainly a most painful sight to witness the youth of many of the criminals which have been brought up for trial during the present Criminal Term. On Thursday, a boy aged, as we understand, *nine*, was arraigned for robbery from the person; yesterday, another boy of about *fourteen* pleaded guilty to stealing from his master; and a youth of about *thirteen* was arraigned for the capital crime of arson. These poor children are confined in prison with the most abandoned wretches and whatever spark of honest feeling or character may be left remaining, is literally destroyed, long ere their term of punishment is expired. Yet our Legislature...continues to overlook the necessity of a reform in the administration of the Criminal Law....

Legal reform was to come, albeit haltingly and gradually. Even before widespread reform, however, there is evidence that courts during this period acted to protect the interests of servants. This phenomenon was not unique to Montreal: in mid-nineteenth-century America, for instance, courts enforced master's obligations towards their servants, ensuring that masters properly fed and clothed their apprentices if required to do so by the terms of their indenture.[331] Courts also protected servants against brutal treatment, unlawful withholding of wages due, and the like. In fact, contemporary American critics often complained that the regime of master-servant law offered servants too much protection. A commentator in New York in 1839--echoing sentiments which undoubtedly were shared by many Montreal masters--stated that when apprentices "abscond from their proper service, it is not every employer who now thinks it worth his while to take the legal measures for recovering their time."[332] A newspaper editor went so far as to remark that the law actually *favored* servants over masters, lamenting:

> [the] insufficiency of the existing laws to compel an apprentice to do his duty, and the power given to an obstinate and exasperated boy, in case of even moderate punishment, to drag his master before a court, exposing him to the degradation of unmerited punishment, or at least subjecting him to expense, loss of time and the mortifying experience of the rest of the boys that they may pursue the same course with impunity.[333]

These calls for law reform were ultimately successful, as during this period all crimes of theft were removed from the list of capital offenses, among other developments.

[331] Hamilton, *supra* note 25 at 20.

[332] *Ibid.*

[333] H.B. Rock (ed.), *The New York City Artisan 1789-1825: A Documentary History* (New York: State University of New York Press, 1989) 195-196 (quoting *The New York Observer* (7 October

Montreal courts of this period appear to have increasingly recognized the reciprocal nature of responsibilities owed to masters and servants, perhaps coinciding with the diminishing economic importance many servants--especially apprentices--had to their masters.[334] Judicial recognition of servants' interests in Montreal is evidenced through the acquittal of servants charged with breach of service and other infractions, clemency upon sentencing, and judicial nullification of offenses. Furthermore, that courts protected the interests of servants is evidenced even more explicitly by the number of successful lawsuits brought by servants against their masters.

A. Servants and Employment Offenses

1. Acquittals and Settlements

While desertion prosecutions were common during the early nineteenth-century in Montreal, it must be stressed that they did not automatically culminate in conviction. As shown earlier, conviction rates before the Court of Weekly and Special Sessions were approximately sixty percent, with twenty percent of prosecutions dismissed outright.[335] If one assumes that such prosecutions were brought with the avowed purpose of punishing servants and/or compelling them to complete their terms of service, then it is evident that masters were unsuccessful with significant frequency,

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1826)). See also Hamilton, *supra* note 25 at 21.

[334] In the context of the United States, Rorabaugh observes that courts sided with apprentices increasingly often after 1800 as their economic value to masters decreased. Rorabaugh, *supra* note 44 at 52-53.

[335] See *Figure VII*, p.90, *above*. Fyson's work shows that before the Court of Quarter Sessions for the years 1824 to 1830, there was an overall acquittal rate of twenty-eight percent for all defendants. Fyson, *Justices*, *supra* note 13 at 332. The overall acquittal rate before the Court of Weekly and Special Sessions was thirty to sixty percent. *Ibid.* at 335.

often saddled with court costs and perhaps humbled by the experience. Within the confines of a system that is commonly considered to have favored the prerogatives of the employing class and which lacked a rigorous burden of proof, this acquittal rate may be seen as surprisingly high.[336]

Moreover, included within the approximately thirty percent of identified cases before the Court of Weekly and Special Session which did not result in conviction were cases in which prosecutors defaulted (four percent), discontinued the lawsuit (one and a half percent), or in which the parties settled (one and a half percent). Under court procedures of the time, failure by the prosecutor to appear constituted default, and the case was dismissed. Should a defendant have failed to appear, he was likewise adjudged to be in default, and was summoned for a second trial date, and, if he appeared, was normally ordered to pay costs incurred in the previous court hearing. The case was then heard and decided. If the defendant failed to appear for the second trial date, the case was then heard in his absence and judgment entered.[337] For instance, a servant in 1833 was discharged from prison and proceedings dismissed when his master failed to appear in court, a not-uncommon

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[336] Analogously, Lewthwaite's work on rural justice in Upper Canada of this time shows that constables often brought prosecutions against individuals for assaulting them in the official performance of their duties, but success was far from ensured. Lewthwaite, *supra* note 89 at 364-365. Juries then, like now, could be fiercely independent and performed powerful "social levelling" functions. See also Michael S. Cross, "The Laws are Like Cobwebs: Popular Resistance to Authority in Mid-Nineteenth Century British North America", (1984) 8 Dalhousie L.J. 103 at 115 ("The jury system...could be used by communities to frustrate authority."). While desertion prosecutions were not heard before juries, it is clear that Justices did not automatically convict servants charged with such offenses.

[337] See *e.g.* Hogg, *supra* note 8 at 69-70.

occurrence.[338] Proceedings against another were dismissed after both parties failed to appear, perhaps as they had settled their dispute prior to the scheduled court date.[339]

Among the most common reasons for finding in favor of a defendant were failure to pay wages; absence of a legal employment contract; prior dismissal; defect in legal notification of the complaint; or violation of the terms of service. For example, a domestic servant by the month was acquitted of desertion on evidence that she was owed wages by her master. The Court accordingly rewarded her ten shillings and ninepence in back wages and five shillings for costs.[340] Similarly, an apprentice who alleged mistreatment and non-payment of wages as justification for desertion was successful on the grounds of non-payment:

> Alexis Verdon...father to the said apprentice appears and says that he took him away from the said Prosecutor about the 12[th] instant as far as he recalled having met him in the street, having found his clothes so torn as to render his appearance in the street indecent and likewise because the said complainant did not furnish the apprentice shoes or aprons as he was bound to do, and likewise because the complainant has not paid the sum of two pounds ten shillings payable on the third of March last, by the written agreement of apprenticeship and likewise because the apprentice works so late on Saturday night that on Sunday morning there is no persons [sic] at the Prosecutors up early enough to give him breakfast so as to enable him to go to church and from that inconvenience witness is obliged to give him his breakfast every

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[338] ANQM, WSS(R) p.350-351, *Francis Metzler v. John Kelly* (16 July 1833).

[339] ANQM, WSS(R) p.190, *Joseph N. Pacau v. Louis Bourdoin* (24 July 1838). See also ANQM, WSS(R) p.247, 254, *John Fullum v. Olivier Mailloux* (9 October 1838). The failure of both parties to appear would perhaps have been the easiest way to stop a prosecution without entailing further court costs or the inconvenience of making a court appearance.

[340] ANQM, WSS(CM), *Joseph A. Gagnon v. Julie Lacombe* (21, 23 October 1843).

> Sunday morning--and finally that the complainant permits his (complainant's) father to abuse and strike the apprentice and tear his clothes....[341]

Verdon's master admitted to being four months in arrears as to half the wages owed his apprentice, and the Court therefore dismissed the suit "in [c]onsequence of the nonpayment of the wages payable as per agreement."[342]

With respect to invalid employment contracts, an apprentice shoemaker in 1834 successfully argued through his attorney that his "engagement est nulle [sic] ayant été fait par une personne qui n'en avoit pas le droit, et que le Défendeur n'est pas tenu d'y répondre à la présente poursuite, dont il demande le renvoie."[343] A journeyman was acquitted on the grounds that he was a minor and consequently unable to enter into an employment agreement without the consent of an adult guardian or "tutor."[344] One master was unable to prove the existence of an employment contract with his cook

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[341] ANQM, WSS(R) p.210, *John Davis v. Alexis Verdon* (21 July 1841).

[342] Such defenses were not always successful. For example, James Roddam, a servant to Henry Talon *dit* Lesperance, alleged that he was unpaid for the week prior to his desertion and that his family suffered by reason of the non-payment. He was ordered to return to service and pay costs or face two months in prison. ANQM, WSS(R) p.116-119, *Henry Lesperance v. James Roddam* (6 March 1833). I believe it is likely that unsuccessful cases were often those in which non-payment was not proven or where the fifteen day period invoked in the Police Regulations had not passed.

[343] ANQM, WSS(R) p.899-900, *Jean Baptiste Choquette v. Joseph Lafrance* (31 May 1834). For an example of an apprentice who was successful in proving that his indenture had been cancelled by subsequent written agreement, see the case of Michel Racicot, pp.112-114, *below*.

[344] ANQM, WSS(R) p.541, *John Fullum v. John Desormier* (3 June 1842) ("The Court having heard the evidence adduced in this cause, and the parties therein, Dismiss the said action, on the grounds that the defendant being a minor, he could not enter into a agreement with the said Prosecutor, without being assisted in so doing by a Tutor duly elected to him."). For a case in which

and the prosecution was dismissed,[345] while another servant was acquitted as he had not entered the prosecutor's service and therefore there was no right of action.[346]

Violation of the terms and conditions of employment, or previous dismissal, was also grounds for acquittal. A cart-driver argued that he was employed only to deliver metal within the city limits, but had been required to make deliveries outside the city, albeit only for one day. The master admitted the allegation, and the court dismissed the suit with costs.[347] Similarly, a servant in Lachine was discharged from service after his master sued him for desertion, "in consequence of [the

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minority was not a successful claim, see *L'Ami Du Peuple* (31 July 1839) (discussing *Hypolite Guy v. Marcelin Courville* before the Court of Special Sessions on 30 July 1839):

> La plainte portée contre le défendeur était pour avoir refusé de remplir des devoirs comme domestique, s'être absenté sans permission, et avoir quitté le service de son maître avant l'expiration du temps pour lequel il était en engagé. Le défendeur, par exception, avait plaidé minorité, mais n'avait pas allégué la lésion. La cour, après avoir délibéré, rejeta cette exception, sur le principe qu'un mineur peut valablement contracter pour son avantage, et que lorsque son état est celui de domestique, apprenti, etc. ayant pour habitude de s'engager comme tel, son engagement, quoique fait verbalement, est aussi valable que si le mineur eut été assisté de son père ou tuteur. Sur la preuve des faits allégués par le poursuivant, la cour, vu la gravité de l'offense, condamna le défendeur, à payer une amende de 5.0.0 courant, ou de subir deux mois d'emprisonnement, et aux depuis de l'action.

As the language above suggests, minority was not a valid defense if an adult was a party to the employment agreement.

[345] ANQM, WSS(R) p.150, *Patrick Swords v. Mary Stewart* (9 June 1841).

[346] ANQM, WSS(R) p.617, *Gidore Charlebois v. Charles Riqué dit Lalonde* (5 November 1839).

[347] ANQM, WSS(R) p.150-151, *Thomas Lecompte v. Jean Lambert* (11 June 1841).

master's] exacting more work than agreed upon."[348] Proceedings against a servant were dismissed in light of evidence that the fickle physician had earlier discharged him from his service.[349]

Courts also recognized a change in legal status as a valid defense. In November of 1833 an apprentice milliner and dress maker was sued by her mistress for desertion, and acquitted on grounds of marriage. This case is of particular interest for numerous reasons, especially as this was the only desertion case of this period discussed at length in contemporary newspapers. As the *Montreal Gazette* reported:

> A case has recently been brought before our Magistrates, of rather a singular nature, and we believe, rather unprecedented in the history of our legal tribunals. The question involved in it is, 'whether a father can engage that his minor daughter shall not contract marriage during her apprenticeship.' MR. WILLIAMS, late postmaster in this city, indentured...his daughter for a term of two years and a half, to MISS BOURNE, a milliner, and in consideration of being taught her business, engaged to board, lodge and clothe his daughter. By a clause in the indenture, however, the young daughter was not to contract marriage during the apprenticeship. Last week MISS WILLIAMS was married....[she was then arrested and damages demanded by Miss Bourne] as an apprentice who had deserted from her mistress....[350]

In court, Williams' attorney admitted the existence of her indenture and that she had left her mistress, and produced the marriage certificate. Her attorney then cited various French authorities "to prove the nullity and illegality of the particular stipulation that the apprentice should not enter upon the happy state of matrimony when a desirable offer was made", arguing that she was

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[348] ANQM, JP(QR) (Lachine), *Joseph Aimond v. Charles Gauthier* (11 October 1843).

[349] ANQM, WSS(R) p.42, *Peter Buchanan v. Edmund Hackett* (10 February 1835).

[350] *The Montreal Gazette* (23 November 1833).

emancipated by virtue of marriage as much as if she had been indentured beyond the age of majority.[351] The Court concurred, and dismissed the charges.

While considering the Court's judgment to be "just, legal and equitable", the *Montreal Gazette* nevertheless lamented the lack of redress available to Williams' mistress. In its opinion, this decision would have the probable effect of "warning milliners generally against taking apprentices into their service, whose good looks, qualifications, or accomplishments render it likely that they will be sought after in marriage", thus driving milliners "to the necessity of engaging old and antiquated dames...."[352]

From a historical perspective, William's case is engaging for a variety of reasons. Unlike the vast majority of non-violent master-servant disputes, it elicited considerable public attention. That Williams' attorney successfully cited French authorities to support the view that she was

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[351] *Ibid.* The judicial register records the attorney's argument before the Court as follows:

> elle n'est point coupable en la manière et forme mentionnés en la poursuite et admettant qu'elle a quitté le service de la Poursuivante[;] elle plaide plus spécialement qu'elle était justifiable de la faire en autant que c'était pour épouser le dit Robert Deakin parti Avantageux....Que le clause dans l'engagement d'apprentissage que produit par la Poursuivante stipulant que la defenderesse ne pourroit contracter mariage avant l'expiration du temps fixé[;] au dit est une clause nulle en autant qu'elle affecte le bon sens, la justice et les bonnes moeurs, et que le mariage qu'elle a contracté avec le défendeur l'ayant émancipée elle n'est plus sous le Puissance paternelle et que...la Poursuite de la dite Poursuivante sont conséquemment illégales et vexatoires ayant été faites postérieurement a son mariage avec le Deakin. La Defenderesse ayant producé son certificate de mariage.
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> ANQM, WSS(R) p.604, 610, *Sophia Bourne v. Louisa Williams* (19 November 1833).

[352] *The Montreal Gazette* (26 November 1833).

emancipated by virtue of being married also offers an example of the bijuridical nature of the Montreal legal system. The Court's decision and ensuing commentary also indicates that anti-marriage provisions were viewed by many as antiquated and against public policy.[353]

Lastly, defects in legal process could also be grounds for dismissal. A Scottish labourer brought before the Court of Weekly Sessions for desertion was acquitted and awarded costs, having demonstrated that the prosecution "was not instituted as required by law."[354] Another desertion prosecution was deemed "illegal and unfounded" by the Court and dismissed, although regrettably the records do not elaborate further.[355]

As was previously mentioned, a considerable number of cases were settled out of court. The records of the Police Court indicate that filtering of cases took place immediately after masters commenced litigation by seeking to make complaints before the Police Magistrates, as the Magistrates often facilitated settlement of cases.[356] Once formal proceedings had progressed further,

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[353] *The Montreal Gazette* of November 23, 1833, in describing this non-marriage provision, surmised that it was:

> probably one of these orders which are still to be found in old legal form books; a legacy of the days of old, when it was considered as necessary to stipulate in articles of apprenticeship that "matrimony he shall not commit, alehouses and gambling houses he shall not frequent, his master's secrets he shall not divulge, &c. &c." as to have the several sheets of the document properly "indentured", the seals of the parties affixed, or any other of those ridiculous formalities, with which every agreement between parties was encumbered.

[354] ANQM, WSS(R) p.52, *Donald McDonald v. William Black* (3 March 1835).

[355] ANQM, WSS(R) p.110-111, *Peter Lawless v. Daniel Grawley* (5, 12 May 1835).

[356] As *Figure VI* illustrates, more than one-third of the fifty-seven cases identified solely within

however, courts still freely gave leave to parties to settle out of court. For example, a master and his servant appeared before the Court of Special Sessions in 1834 and requested permission to settle, to which the Court acceded.[357] Likewise, a suit brought against a tobacconist's servant was settled with the Court's consent. A Justice of the Peace sitting outside the city "admonished the prisoner and the parties settled their differences with...permission," suggesting that the settlement may have been at the Justice's instigation.[358] These cases and other like them indicate that courts saw one of their primary functions as facilitating amicable resolution of disputes, rather than automatically interposing the heavy hand of the law between essentially personal relationships.[359]

The outcome of many of these lawsuits are among the strongest evidence that courts were not merely tools of the employing classes during this time period. Desertion prosecutions are

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the records of the Police Court were settled. See p.86, *above.*

[357] ANQM, WSS(R) p.838, *Andre Giguere v. Pierre Delisle* (19 April 1834). In one case before Justices of the Peace, the records ambiguously state that the "parties settled the absence without leave", leaving it unclear whether the parties settled without asking the Court's permission, or whether the servant was charged with being absent without leave. The latter seems more probable, although settlement notations sometime use the phrase "settled with leave of the court." See *e.g.* ANQM, JP(QR), *Alexis Bunotian v. David Bouthellier* (4 July 1842).

[358] ANQM, JP(QR) (St. Joseph De Chambly), *Andre Cognac v. Joseph L'Amousian* (11 October 1841) (defendant ordered to pay costs of five shillings).

[359] Indeed, settling disputes in a non-adversarial manner was a common function of courts, especially in rural areas where settlement was infinitely preferable to the possible negative repercussions a court judgment might engender. See *e.g.* Lewthwaite, *supra* note 89 at 364-365. Unfortunately, it is not possible to know the conditions under which cases such as these were settled. It is worth noting, however, that these are examples of cases settled out of court after formal legal proceedings were already commenced. Many more master-servant conflicts were undoubtably settled well before they progressed to the initial stages of litigation.

particularly illuminating, as they were unique to servile relationships.[360] One might reasonably conclude that if any prosecutions involving servants were routinely decided in favor of masters, it would most likely be desertion prosecutions--and yet analysis of these cases discloses that a significant percentage of such prosecutions were unsuccessful or settled before formal disposition.

2. Suspended, Non-Coercive and Variant Dispositions

Even in those cases which did result in convictions, not infrequently the sentences were suspended, or were non-coercive or variant dispositions (e.g., did not impose fines, imprisonment or costs).

Suspended sentences were imposed in circumstances where servants were explicitly employed on a probationary basis, although courts on occasion construed terms of employment as including probationary periods. The Court of Special Sessions in 1841 heard a suit against a defendant who admitted to being engaged for one month on a trial basis ending the following week. At the prosecutor's request, the Court discharged him from service with no other recriminations.[361] In another lawsuit, after an apprentice rope-maker pleaded guilty to having "desert[ed] and secreted himself from the Complainant's house, without permission or justifiable cause," the Court postponed the judgment with the master's consent "until the said plaintiff ascertains if the defendant will behave

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[360] Desertion was *de facto* possible only by those who were of subordinate status within a hierarchal institution, whether they be servants, sailors, or members of His Majesty's armed forces.

[361] ANQM, WSS(R) p.87-88, *Francis Rasco v. George Black* (30 April 1841).

better than he has done heretofore."[362] A comparable case involved a servant sentenced to two months' incarceration and costs, in which "on motion of the Prosecution the court takes off the enprisonment (sic) and merely condemns the defendant to pay the costs of the suit."[363] These cases are somewhat unusual in that they involve situations wherein the master either explicitly or tacitly supported suspending the sentence. While the vast majority of all cases during this period were brought by private prosecution, courts certainly were not bound to adhere to masters' preferences in desertion prosecutions, even if they were articulated. It is therefore not surprising that most prosecutions which exhibit variant or non-coercive dispositions make no mention of masters' preferences at all.

Courts intermittently suspended fines imposed against servants, even if the disposition recorded against them included imprisonment in case of default. In 1840 a servant was convicted of desertion and fined twenty shillings plus fourteen shillings ninepence in costs; the Court noted that the "penalty [was] not paid the defendant not possessing the means of paying" and did not take further action.[364] In Terrebonne, the Justice of the Peace sentencing a servant ordered him to pay costs in the amount of fourteen shillings and ninepence but suspended the fine.[365] The Court of

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[362] ANQM, WSS(R) p.621-622, *John Adams v. Edward Lunnie* (1 August 1842).

[363] ANQM, WSS(R) p.79, *John Jones v. Edouard LaBrie* (28 March 1835).

[364] ANQM, JP(QR) (Petite Nation), *Michael McLean v. Basil Dejardin* (22 April 1840).

[365] ANQM, JP(QR) (Terrebonne), *Joseph Alfred Turgeon v. Gideon Banette* (31 December 1839) (noting simply "dechargé de l'amende mais condamné aux frais").

Weekly Sessions in 1838 sentenced a defendant to a fine of forty shillings or one month in the House of Correction, but then absolved him of the fine for reasons which were not recorded.[366] In still another instance, a servant who received a significant fine failed to pay but was "not committed in consequence of probability of payment and ill health."[367]

Many courts issued variant dispositions upon convicting defendant for breaches of service. Courts frequently allowed servants to return to work without imposing fines, prison terms or even costs. For example, the court records of a servant convicted of refusing to obey orders noted that he "agree[d] to go back and is delivered."[368] Likewise, the prosecution of another servant resulted in no disposition as he consented to return to his master,[369] as did the prosecution of a servant in 1835 wherein the Court "arrangé le [défendeur] retournant au service."[370] Such cases occurred in thirteen

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[366] ANQM, WSS(R) p.267-268, *William Gemmill v. Thomas Leblanc* (20, 27 November 1838). The register notation, "the Court remits the fine", is admittedly ambiguous. However, the defendant was not imprisoned and this language appears in no other notations for the Court of Weekly and Special Sessions for this period. Unlike quarterly returns by Justices of the Peace, which were "remitted" to the clerk of the court along with any fines collected, this was not the case here.

[367] ANQM, JP(QR) (Petite Nation), *Alanson Cooke v. Oliver Bousexjour* (4 July 1841) (fined two pounds ten shillings and eight shillings costs). These types of cases were seemingly more prevalent before Justices of the Peace, perhaps as the reality of rural life made enforcement an inconvenient, unattractive or even unnecessary option.

[368] ANQM, WSS(R) p.281, *Charles Williamson v. Thomas Clarke* (22 September 1841).

[369] ANQM, JP(QR) (St. Jean L'Evangeliste), *Antoine Paradis v. Joseph Grangen* (12 October 1842).

[370] ANQM, JP(QR) (St. Hyancinthe), *La Reine v. Pierre Barron* (13 April 1841).

percent of proceedings before the Police Court, and in nearly one-third of the proceedings before Justices of the Peace outside the city.[371] In other instances, servants were convicted or pleaded guilty to desertion and were allowed to return to service, with costs being imposed. Such was the case with an apprentice baker convicted by a Montreal court in 1839,[372] as well as with a servant who pleaded guilty before a Justice of the Peace for the township of Saint Jean L'Evangeliste.[373]

It is not clear from the records what circumstances distinguished these cases from others of this period. It is possible that these servants appeared particularly contrite or willing to return to their employment. Some servants, for example, may have been satisfied with the opportunity of airing their grievances in a forum where there was at least the appearance of neutrality and fairness, and were not overly intimidated from returning to the master from whom they had eloped. It is also possible that there were other mitigating factors which lessened the perceived gravity of the offenses committed in these particular cases. The nature of these proceedings suggests that masters may often have used courts as a means of humbling intransigent servants without actually seeking to have them imprisoned or fined, particularly as some servants were imprisoned prior to trial if unable to make bail. Whatever the explanation, the paramount reason many masters brought breach of service suits was to compel servants to complete their terms of employment, reflected both by the cases in which

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[371] See *Figure VI*, p.87, *above*. See also *Figure VII*, p.92, *above*.

[372] ANQM, WSS(R) p.453-454, *Alexander Boure v. Henry Popham* (17 June 1839).

[373] ANQM, JP(QR) (St. Jean L'Evangeliste), *Antoine Paradis v. Joseph Grangen* (12 October 1842).

servants returned to service (more or less) voluntarily, as well as by those in which they were ordered to do so.

A handful of cases were also found wherein courts did little more than scold unruly servants. For example, a servant in 1842 was "admonished, sentenced to make up his time to his master and pay costs of five shillings."[374] A servant named George Black, employed on a trial basis for one month in 1841, was prosecuted before the Court of Special Sessions for desertion only one day before his period of service was to end. The Court register noted that the "pros[ecutor] prays that the Court may reprimand the said defendant, and that afterwards he may be discharged and in consequence the said George Black is discharged."[375]

One of the most intriguing dispositions rendered by a court was a prosecution for desertion brought by John George, the Montreal tinsmith from whom so many apprentices fled during this period. The apprentice in question, Antoine Charbonneau, appeared with his attorney before the Court of Special Sessions in December of 1834. Charbonneau's attorney entered a plea of not guilty and admitted that the defendant was engaged to the prosecutor. The Court reporter recorded his defense as follows:

> [L]e nommé David George frère du Poursuivant demeurant comme pensionnaire chez le dit Poursuivant a sans aucune cause ni provocation assailli et jetté par terre le dit défendeur et lui a donné plusieurs coups de pied dans le corps, qu'en conséquence se ceci le défendeur qui est mineur s'est transporté chez son père pour

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[374] ANQM, JP(QR) (St. Joseph De Chambly), *Queen v. Joseph Perron* (10 April 1842). Similarly, see p.141, *below*, for the case of *Andre Cognac v. Joseph L'Amousian* (servant admonished and parties settled).

[375] ANQM, WSS(CM), *Francis Rusco v. George Black* (30 April 1841).

> lui faire rapport de ce qui s'est passé, que le trois du courant au matin le père du défendeur s'est transporté avec son fils chez le Poursuivant pour s'enquérir de ce qui s'était passé chez lui la veille et remettre son fils à son bourgeois, sur l'exposé que fit le père a cet effet de Poursuivant lui ordonna de se retirer, sur quoi le père lui dit qu'il ne lui laisserait pas son fils; le père et le défendeur lui même sont tous deux consentant que le défendeur retourne au service du Plaignant, en par lui donnant caution pour le dit David George qu'il ne commettait plus d'assaut et Batterie sur le défendeur et que cette poursuite soit renvoyée sans frais.[376]

In response, George offered to take Charbonneau back into his service and pay the costs of the prosecution. For unspecified reasons, the Court continued with the proceedings, calling four witnesses. The first of these, Marie Morion, testified that:

> qu'elle était chez le Poursuivant le deux du courant au soir, quand le défendeur est parti de la maison, et depuis le temps là il n'est revenu qu'hier au matin, Mr. George a trois apprentis...dans sa maison, n'a jamais entendu le défendeur se plaindre du Poursuivant, a toujours vu que le défendeur était bien chez Mr. George le Poursuivant n'etait pas chez lui quand le défendeur est Parti.
> [Cross Examination]: A travaillé chez Mr. George depuis environ cinq ans, Mr. George a un frère qui reste chez lui, qu'il était dans le haut de la maison le soir en question et a entendu des coups se donner, ne s'est passé le défendeur est parti pour aller se plaindre à son père --le défendeur avait insulté tous les gens de la maison.

Another apprentice to David George testified under cross-examination that he observed George's brother "beat the defendant with his fists" for abusive language directed at the prosecutor's wife, and that the initial cause of argument was the defendant's intransigence when asked to attend to the store. For the defense, one witness testified that he saw George's brother strike and knock down the defendant, prompting the defendant's father to come to the house the following day and enter into a heated discussion with George.

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[376] ANQM, WSS(R) p.1241-1244, *John George v. Antoine Charbonneau* (4 December 1834).

The Court's disposition in this case was extremely unusual. After having "mûrement délibéré", the Court chose to order Charbonneau back to service but also required that George's brother provide surety for his good behavior towards the defendant:

> [La Cour] condamne le défendeur à retorner au Service du Poursuivant sous le delai de vingt quatre heures de cette date et le condamne en outre a payer les frais, ou donne queles [sic] Poursuivant donne caution que le défendeur ne sera pas maltraité par son frère ni aucune autre de la maison, le Principal en la somme de dix livres Cours actuel de cette Province et deux cautions en la somme de cinq livres et ce pour le temps et espace de six mois et à defaut par le défendeur de retourner au service du Poursuivant qu'il suit confiné dans la prison commune du District pendant l'espace d'un mois.

It is therefore apparent that many judgments--even those which resulted in convictions of servants--were essentially benign. While the letter of the law favoured masters on its face, these cases also demonstrate that courts did not "rubber stamp" prosecutions for breaches of service. Furthermore, while filing suit against servants is not customarily conceived of as benevolent, there is even evidence that prosecutions were not always driven by punitive motives. A particularly riveting case is that of Sarah Stenson, against whom the superintendent of the Ladies Benevolent Society filed a complaint on July 31, 1838. The superintendent's affidavit to the Court of Quarter Sessions reads, in pertinent part:

> William Scoles of the City of Montreal...being duly sworn doth depose and say, that Sarah Stenson an apprentice duly indentured unto Mrs. Anne Ogden of the said City of Montreal one of the Ladies [sic] directresses of the said Society, and residing in the house of the Said institution, did on the Evening of the twenty-seventh instant abscond from the service of the said Mrs. Anne Ogden, and hath not since been heard of. That the said Sarah Stenson, is both deaf and dumb, and a minor, and deponent

doth verily believe that unless the said apprentice is arrested and brought back to her employer She will suffer harm....[377]

This particular case illustrates that in a time before means of mass communication, resorting to the police force by filing a complaint may have been the most fruitful means of locating a missing servant. Stenson's case also suggests that some masters may have been prompted by strongly paternalistic, or even beneficient, motivations when utilizing the legal mechanisms in place for regulating master-servant relations.

In general, master-servant cases which resulted in acquittals, suspended or non-coercive dispositions are powerful evidence that courts in Montreal of this period also protected servants' interests. These types of dispositions--particularly those cases which were settled--reflect that courts viewed one of their primary responsibilities as the amelioration of master-servant disputes, favoring application of the law as a precision tool rather than merely as a blunt weapon.

B. Servants and Property Offenses

1. Acquittals

Sensitivity to servants' interests is also apparent outside the realm of master-servant law, as servants prosecuted for property offenses were also acquitted with significant frequency. In contrast to breach of service prosecutions, there were no grounds which could legally justify theft; the paramount issues considered were the credibility of witnesses and the strength of the inculpatory evidence. Even when inculpatory evidence was fairly substantial, however, servants were not convicted as a matter of course. Celestin Herbert, servant to a Montreal furrier, requested and was

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[377] ANQM, QS(F), *William Scoles v. Sarah Stenson* (31 July 1838). No further information on Stenson was located.

granted a three-day leave of absence in early 1840. He failed to return but his master did not initiate legal proceedings against him for desertion. Thereafter, one of his master's employees saw Herbert on the street, wearing a cap identical to those sold in his master's store, and he was arrested, charged with theft, and tried before the Court of Quarter Sessions. Fortunately for Herbert, the cap "could not be identified by any particular mark, and it was admitted that several of the same description had been sold to country merchants" by his master. Herbert was promptly acquitted and his cap returned.[378]

The reputation of the accused or his family figured prominently in many newspaper accounts of servants charged with theft. While a reputation for respectability undoubtably was a strong (even if unarticulated) defense, it also ensured that prosecutions of respectable servants were of extraordinary interest to the public. For example, the *Montreal Gazette* devoted considerable attention to the acquittal of Joseph Rousseau, an apprentice of a "respectable family", on the charge of having stolen seven dollars.[379] Another such case, an even more vivid example of judicial clemency, occurred in 1833 before the Court of Oyer and Terminer and General Gaol Delivery:

> Louis Denis *dit* Lapierre was next put to the bar charged with horse stealing. The prisoner was the confidential servant of the owner of the animal, and during his absence, ran away with the animal to Three Rivers, and offered it there for sale at a price somewhat exceeding its value. He was there arrested. The witnesses for the Crown gave him a most-excellent character, and established the fact that he had been often promised by his Master a trip to Quebec, and it was supposed that he had now gone without leave. The prisoner called no witnesses. The jury found him Not Guilty; it is however, worthy of remark that the prisoner had originally pleaded Guilty, but

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[378] *The Montreal Transcript* (23 April 1840).

[379] *The Montreal Gazette* (1 March 1834).

was induced by the Court to withdraw that plea, and to plead Not Guilty and trust to his trial.[380]

What is most striking is that the Court allegedly convinced Lapierre to reverse his plea. The part that the master's promise of a trip to Quebec played in this result is not clear, although it appears the Court viewed the defendant's actions as implicating absenteeism rather than theft. The fact that the Crown's witnesses bore testimony to his "most-excellent" character is further evidence of the value to a defendant of a good reputation.[381]

While servants were most often charged with property offences against their masters, in one instance an apprentice and his master were jointly accused of theft before the public prosecutor dismissed the charges.[382] As one newspaper observed, this case "excited much interest, as the two defendants were really most respectable men." When the principal prosecution witness was discredited as a convicted thief, the prosecutor received "an intimation that the Judges were strongly

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[380] *The Montreal Gazette* (3 September 1833).

[381] Indeed, if this account is accurate it would appear that both the presiding Justices as well as the prosecutor provided Lapierre with a first-rate defense! While in this particular cases the Court convinced Lapierre to change his plea to not guilty, in other cases defendants confessed to crimes but nonetheless pleaded not guilty. See pp.112 & 125, *above*.

[382] ANQM, KB(R) p.10 (February-March 1842 term), *Dominus Rex v. Joseph Versailles & Antoine Mallette*. While Versailles was released on bail, Mallette was lodged in jail awaiting trial, no doubt as he could not provide surety for his appearance. See also KB(R) p.41 (verdict of not guilty).

of opinion not to cause the prisoner's counsel to enter upon the defence" and accordingly dismissed the case. The jury's satisfaction at this outcome, the newspaper reported, was palpable.[383]

2. Clemency Upon Conviction and Judicial Leniency

Courts also exhibited sensitivity to servants' interests by mitigating the severity of punishments imposed. Most often this took the form of reduced sentences for crimes such as larceny, either because defendants entered a guilty plea or because the jury made a recommendation of clemency. The March 1840 session of the Court of King's Bench contains two such examples. A servant was tried for stealing the sum of four hundred and eighty dollars from his master and when "the panel [was] called over...retracted his former plea of not guilty, and threw himself on the mercy of the Court."[384] He was accordingly sentenced to four months' imprisonment for grand larceny, rather than the six month sentence that was customarily given.[385] Likewise, a domestic named Catherine O'Neil was tried for stealing a silver watch and several articles of clothing from her master. She pleaded guilty in court, was "recommended to mercy" by the jury, and received the identical sentence.[386]

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[383] *The Montreal Gazette* (5 March 1842).

[384] *The Montreal Gazette* (3 March 1840). See also *The Montreal Transcript* (3 March 1840).

[385] *The Montreal Gazette* (17 March 1840).

[386] *The Montreal Gazette* (17 March 1840). The Court of Oyer and Terminer and General Gaol Delivery imposed the same sentence upon a fifteen year-old hotel servant who stole thirty-four dollars and a gold stamp ring from an officer in the First King's Dragoon Guards, after he confessed and gave information on where the ring could be found. *The Montreal Transcript* (8 December 1840).

There are also accounts which indicate that courts were meticulous in ensuring that the charge was commensurate with the actual offense committed. For example, before the Court of Oyer and Terminer and General Gaol Delivery in 1846, a servant boy was charged with having "feloniously and burglariously broken" out of his master's house with a watch valued at over two pounds.[387] The Court, in light of a lack of evidence that the crime was committed at night or that the boy burglariously broke out of the house, charged the jury that the boy could only be found guilty of grand larceny. He was convicted and sentenced to be imprisoned for six months.[388]

One of the most interesting examples of judicial clemency is illustrated by the saga of a hired servant named Norah Kelly. Kelly, convicted before the Court of Quarter Sessions for having stolen a pair of boots from her mistress, was sentenced to three years in the provincial penitentiary.[389] At first glance, this sentence appears not only to be a poor example of judicial clemency, but quite the opposite. However, Kelly was brought before the Court again a short time later, and as the newspaper reported:

> [H]er sentence was mitigated from three years confinement in the Penitentiary to twelve months imprisonment in the Common Gaol, the Court alledging [sic] as its reason for so doing, that when it has passed the former sentence, it was on the assumption that there was no fitting apartment in the gaol to which the prisoner could be confined.[390]

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[387] *The Montreal Transcript* (1 December 1840).

[388] *The Montreal Transcript* (8 December 1840).

[389] *The Montreal Gazette* (27 October 1845).

[390] *The Montreal Gazette* (29 October 1845).

This rather paradoxical statement is clarified elsewhere in a newspaper editorial, mentioning the disapprobation with which the sentences against Norah Kelly and several others were received by the public. As the editor of the *Montreal Gazette* explained:

> The condition of the Jail of Montreal is described as one shocking to humanity, and crowded to excess, without means of classification or personal comfort, and with the certainty of utter contamination. At the same time it appears...that three years is the shortest period for which the law allows convicts to be sent to the Provincial Penitentiary....The learned Judge has, therefore, no option, or rather he had but one, and he has chosen the best within his reach....We trust, however, that the Executive will require a report of the amount of punishment which really ought to have been inflicted, and reduce the term of imprisonment within the limits of justice.[391]

There is also evidence suggesting that some justices, faced with a legal system which they considered pitiless, sought to circumvent the harsh sanctions of the laws. For instance, some judges refused to convict first-time offenders, believing that imprisonment would virtually guarantee recidivism rather than deter it. As an editorial in the *Canadian Courant* of 1830 observed:

> In the present state of the prison it may be considered a place of rehearsal and preparation for the performance of acts of villainy outside, so soon as the prisoner shall have been set at liberty....Many are now so fully convinced of this that they prefer allowing a depredator accused of minor offenses to escape unpunished, to the alternative of shutting him up in a prison where he must be exposed to the contamination of the most profligate and abandoned....[A] boy below the age of 16, was detected in stealing from a house in which he had been a servant; the crime was palpable, the proof clear and the amount of property of considerable value. When the person who liberated the offender was afterwards accused of having acted improperly, he replied "the boy is young--it was his first offense--by sending him to Gaol I was certain he would be exposed to the company of villains that would sink

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[391] *The Montreal Gazette* (29 October 1845). The relevant register for the Court of King's Bench has not survived.

him deeper into crime, but by setting him at liberty there was some hope that he might never again be guilty of a similar crime."[392]

The records of the Police Court provide the best evidence of judicial leniency during this period. For example, in July 1840 four children were arrested for theft in Montreal by police constables, but "[t]hese persons being very young were given to their parents."[393] Approximately three weeks later, a young girl was arrested for theft and brought before the Police Court; the records likewise reveal that "this prisoner being so young was given up to her mother."[394]

Even when defendants were convicted of capital crimes, frequent reference is made to sentences of death "recorded but not pronounced", meaning that the law decreed capital punishment for the offense but courts were loathe to impose it. In these cases--recognizable either by the assertion that the sentence of death was not pronounced, or failure to include an execution date at the time of sentencing--the most likely outcome was transportation of the offender.[395]

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[392] *The Canadian Courant* (14 April 1830).

[393] ANQM, PC(R) p.225, *Dominus Rex v. Thomas Walsh, James Walsh, Michael Foley & Charles O'Neil* (6 July 1840).

[394] ANQM, PC(R) p.250, *Dominus Rex v. Sarah Nugent* (25 July 1840). During the same month, a young boy was likewise arrested on suspicion of theft, and was "kept in the Police Station until Wednesday next at the request of his father," a total of three days. ANQM, PC(R) p.233, *Dominus Rex v. Edwin Atkinson* (12 July 1840).

[395] For example, *The Montreal Transcript* (20 May 1837), records that the "persons ordered to be transported, and those who were convicted of capital crimes, but whose sentences were commuted, will leave this city for Quebec, where they will be put on board the *Sarah*, for England, and from thence probably transported to New South Wales."

C. Masters and Employment Offenses

While it is significant that courts demonstrated sensitivity to servants' interests in cases in which they were prosecuted for employment offenses, it could not be said that courts recognized the reciprocal nature of master-servant obligations to any meaningful extent unless servants also possessed legal standing to sue their masters. Analysis of this issue must be done with an appreciation of the many factors that would have militated against servants suing their masters, such as minority, financial barriers, class structures and ignorance of legal rights. Some servants who contemplated filing suits must have suspected that the sympathies of Justices, as members of the propertied class, would naturally incline towards masters.[396] These obstacles would have been even more pronounced for certain types of servants. Journeymen, as well as apprentices who were at a well-advanced stage of their apprenticeship, were servants who were often important resources to their masters, and their premature departure could prove inconvenient or even economically devastating. However, domestic servants and unskilled labourers would generally have had no such leverage, and would have been further hampered by their gender and/or lowly social status.[397]

Given the subordinate status inherent in servile positions of this period, that servants ever prosecuted their masters at all is somewhat counter-intuitive. That servants did so frequently, and

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[396] For an example of the perceived importance of social status before the courts, see Lewthwaite, *supra* note 89 at 356-357 (recounting example of a defendant charged with assaulting his domestic servant who alleged in court that she was actually his apprentice, in the hopes of elevating his perceived social station in the eyes of the Justices and the hope of thereby obtaining favorable treatment). For discussion of Justices and conflicts of interest, see p.106-108, *above*.

[397] See *e.g.* Hogg, *supra* note 8 at 75.

to considerable avail, is even more surprising.[398] Master-servant legislation clearly contemplated that labour relationships entailed rights and duties on the parts of both masters and servants. While the letter of the law (as well as its application) continued to favor masters during this period, the legal system provided significant redress to servants for breaches of the master-servant relationship. Servants brought suit against their masters for unlawful withholding of wages, wrongful termination and physical maltreatment and, moreover, were often successful.

1. Unlawful Withholding of Wages

As has been discussed, failure to pay a servant his lawful wages was a defense against desertion. It is therefore eminently reasonable to predict that nonpayment could also constitute grounds for legal proceedings, as indeed was the case.

Even cursory examination indicates that wage suits against masters were frequent. Detailed analysis of wage suits is beyond the scope of this thesis, but they represent compelling evidence that servants had recourse to the law to protect their interests. For example, Grace Laing Hogg, in her research on the legal rights of domestic servants in Montreal, uncovered one thousand one hundred and sixty-one suits brought by servants before the inferior term of the Court of King's Bench

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[398] Members of socially subordinate classes in the nineteenth-century often pursued legal remedies, although usually against members of the same socio-economic class. For example, prostitutes in Montreal during this period used the lower courts to settle disputes and brought prosecutions for such crimes as assault, rape, riot, and larceny. Poutanen, *supra* note 3 at 106-107; see also Fyson, *Justices, supra* note 13 at 394. Similarly, many members of the poor and criminal classes in Halifax did the same. See generally Jane B. Price, "'Raised in Rockhead. Died in the Poor House': Female Petty Criminals in Halifax, 1864-1890", in Philip Gerard & Jim Phillips, eds., *Essays in the History of Canadian Law*, vol. 3 (Toronto: University of Toronto, 1990) 220.

between 1816 and 1835.[399] Numerous such lawsuits were also brought before the superior term of the Court of King's Bench during the period 1830 to 1845. For example, a labourer brought suit against an innkeeper on a promissory note for the balance due him as wages. The Court awarded him fourteen pounds fourteen shillings and sevenpence in wages, as well as costs and interest on the amount until payment was received in full.[400] Likewise, two servants in different prosecutions recovered, respectively, twenty pounds two shillings and thirty pounds for wages due, both against the same Montreal lumber merchant.[401]

Of the defenses raised by masters against such suits, allegations of misfeasance on the part of their servants was the most common.[402] Under the applicable regulations, a servant who deserted before his term of service was expired could be fined twenty shillings,[403] and desertion was often considered to have voided a master's contractual obligations.[404] Masters also frequently claimed that

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[399] Hogg, *supra* note 8 at 4. For the specific period covered by her thesis, 1816-1829, there were 776 such cases. See also Hogg & Shulman, *supra* note 24.

[400] ANQM, KB(R) p.329 (superior term 1830, vol.1), *John O'Neill v. Joseph B. Bellamy.*

[401] ANQM, KB(R) p.260 (superior term 1833, vol.1), *Edouard Blass v. George Bissitt*; ANQM, KB(R) p.261-262 (superior term 1833, vol.1), *Benjamin Leveillé v. George Bissitt.*

[402] Hogg & Shulman, *supra* note 24 at 140.

[403] See Appendix D, p.195, *below.*

[404] See *e.g.* Hogg, *supra* note 8 at 85.

their servants had disobeyed their lawful commands or otherwise conducted themselves improperly during their term of service,[405] or that no agreement had been entered into.[406]

Suits brought for unpaid wages is compelling evidence that servants viewed courts as relatively impartial forums where their rights could be vindicated--but mere judicial access would have been largely meaningless if servants were rarely successful. Hogg and Shulman were able to trace the dispositions of two hundred thirty-five wage suits by servants for the years 1830 to 1835. Of these, forty-two percent were won outright, seventeen percent were settled and seven percent were lost outright. A further thirteen percent were discontinued, and twenty-one percent dismissed. Thus, fifty-nine percent of these prosecutions were successful in whole or part.[407]

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[405] *Ibid.* at 86-87. Hogg points out that, at least in some instances, it appears that masters merely used such allegations as a means of avoiding contractual liability, as otherwise they would likely have brought legal proceedings themselves for such misbehavior. *Ibid.* at 87.

[406] *Ibid.* at 88.

[407] Hogg & Shulman, *supra* note 24 at 137. In addition, some proportion of the cases discontinued were probably settled between the parties without the court's knowledge. Hogg & Shulman state, with reference to these figures, that "[i]f the legal process was not discouraging enough, the possibility of losing one's case probably dissuaded many individuals from contemplating litigation." *Ibid.* The same may be said about masters who filed suit--notably for employment offenses--but I believe that Hogg & Shulman's own figures show that servants were successful more often than not. Furthermore, Hogg traces fifty-five wage cases brought by domestic servants in Montreal during the same period. Of these fifty-five cases, in fourteen cases the servant was awarded the full amount sought as well as court costs; in two cases the full amount, without costs; in ten cases a portion of the amount sought, plus costs, was awarded; while in five cases a portion of the amount sought, without costs, were awarded. Seven cases were settled, seven dismissed with costs, and nine discontinued. Hogg, *supra* note 8 at 78. Thus, thirty-one of these cases were at least partially successful, a success rate of fifty-six percent, not counting those which were settled. Again, Hogg points out that "a significant group of seven not only lost their cases but were saddled with court costs as well." *Ibid.* at 78. However, these seven cases represent less than thirteen percent of the total sample. I believe that the success rate indicated by these figures is compelling evidence that servants

Lawsuits for wages before the lower courts were much less abundant, presumably because bringing suit over relatively small amounts would have been impractical. Not only did the lower courts in Montreal hear such disputes, however, but so did Justices of the Peace outside the city. For example, the quarterly return filed by a Justice of the Peace in 1831 for Sorel contained three such lawsuits. In the first case, a master was convicted of owing eight shillings and ninepence in back wages, and was ordered to also pay costs of six shillings and sixpence.[408] More interesting, however, are the two other cases heard before this Justice, both brought against different masters, in which the plaintiffs were unsuccessful but were awarded costs.[409] It is intriguing to contemplate why the Justice awarded court costs to these plaintiffs, as it suggests the presiding Justice was sympathetic to their claims although he nevertheless dismissed their suits. Perhaps the Justice felt bound to dismiss the complaints, but also believed the defendants had acted in bad faith. Regardless of the reason, these two cases in particular demonstrate that servants could occasionally bring unsuccessful legal proceedings against their masters and still not be penalized financially for doing so.

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were successful more often than not. Most tellingly, if servants did not feel they had a substantial chance of prevailing, surely they would not have resorted to legal proceedings nearly as often as they did.

While wage suits and desertion prosecutions are obviously dissimilar, it is worth noting that the success rate for desertion prosecutions before the Court of Weekly and Special Sessions was comparable, as masters enjoyed an approximately sixty-three percent success rate (including cases in which defendants defaulted and were convicted). See *Figure VII,* p.90, *above.*

[408] ANQM, JP(QR) (Sorel), *Louis Carré dit Laroche v. Leba Vangborn* (31 December 1831).

[409] ANQM, JP(QR) (Sorel), *Benjamin Therien v. Olivier Arieneau* (31 December 1839) (suit brought "for having refused to pay his apprentice nine pounds wages"; defendant acquitted but "unsuccessful party given costs of eight shillings."); ANQM, JP(QR) (Sorel), *Sarah Gibbs v. Edward C. Allen* (31 December 1839) (suit brought for fifteen shillings in wages; defendant acquitted but "unsuccessful party given costs of five shillings and sixpence.").

The language of some suits for this period suggests that they essentially amounted to modern-day causes of action for wrongful termination.[410] The language in these suits appears very infrequently within the courts records of this period. On April 15, 1841 before a Justice of the Peace residing in Chambly, a master was sued for "compelling the plaintiff his hired servant to quit his domicile before the end of his term", and the case was settled out of court.[411] Cornelius Kelly, in successfully suing William Gettes for ill-treatment, included the charge that Gettes had "without legal cause, provocation or inducement whatsoever" discharged Kelly from his service, forbidding him to enter his house and refusing to support him, in contravention of the terms of his indenture.[412] Similarly, in 1838 a widow sued a prominent local merchant for damages caused by his having unlawfully discharged her minor daughter from her position as a domestic servant, thereby "occasion[ing] great expense and damages to the plaintiff who is now reduced to the necessity of paying for board and lodging of said minor daughter who is without place...."[413] Such cases are best subsumed under the rubric of wage suits, as a master's failure to give his servant notice of termination at least fifteen days in advance rendered him liable for wages to which his servant would

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[410] See *e.g.* Hogg, *supra* note 8 at 92.

[411] ANQM, JP(QR) (Chambly), *Edward Coorney v. Samuel Whittaker* (15 April 1841).

[412] For discussion of this case, see pp.165-166, *below*.

[413] Hogg & Shulman, *supra* note 24 at 130 and note 7 (citing *Catherine McGuire v. A. Doyle* (17 January 1835)). This case was brought before the Court of King's Bench, inferior term.

otherwise have been entitled.[414] As such, a servant in the city who was bound by written indenture and was dismissed without proper notice being given could seek to recover the wages due him for the time remaining in his term of service.

While wage suits clearly were common during this period, it should also be emphasized that judicial records necessarily understate the extent of the phenomenon of wage disputes. Not only were many--if not most--disputes likely settled outside of the judicial arena, but some disputed amounts were probably too insignificant to justify court proceedings. As Hogg states, court proceedings are often evidence that other, non-adversarial means of settlement had failed.[415] The sheer number of identified wage cases before the courts of this period, however, indicates that when traditional forms of mediation were unavailing, servants had ready access to courts to vindicate their economic interests.

2. Non-Performance of Duty

Even more interestingly, courts of this period recognized the reciprocal nature of master-servant relations by protecting the non-economic interests of servants, manifested by suits brought for violations of a master's duties towards his servant and by prosecutions for ill-treatment. Found within the records of the Justices of the Peace for the district of Montreal were a number of prosecutions brought against masters for non-performance or negligence of duty towards their

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[414] See Appendix D, p.195, *below*. See also Appendix E, p.197, *below*.

[415] Hogg, *supra* note 8 at 71-72: ("The disputes over wages which eventually were settled through the court system, were probably the exceptional cases, and should not be perceived necessarily as a routine or normal situation....each civil suit hints at the failure of all usual methods, such as appeal to kinship, community, ethnic, social or religious ties, to resolve disputes.").

servants. These suits reflect the language of the 1836 statute, which allowed for prosecutions of both masters and servants for "repeated violations of the ordinary and established duties of the parties towards each other."[416] For example, two successful suits were brought by servants before Justices sitting in Saint Malachie de Ormstown in 1842. The quarterly return filed in July of that year discloses that the Justice ordered a master to pay "[o]ne months' wages and twenty shillings of penalty" for "negligence of duty between Master and servant."[417] Later that year, another servant successfully sued his master for "nonperformance of established duty of Master to Servant", and was awarded seven shillings and sixpence plus court costs of six shillings.[418]

The sparsity of detail in these records leaves no suggestion as to whether they implicated failure to provide adequate food and board, ill-treatment, wage disputes, or the like. It is most likely that these cases concerned issues other than non-payment of wages or ill-treatment, as such allegations appear explicitly in the language of the court documents of this period. However, it is also remarkable that the only records which contain mention of these suits are for the area of Saint Malachie de Ormstown and Beauharnois, leaving open the possibility that the Justices of the Peace for this area used the phrase "non-performance of duty" as a general descriptive term which may

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[416] See Appendix E, p.198, *below.*

[417] ANQM, JP(QR) (St. Malachie de Ormstown), *Patrick Lynch v. James [last name illegible]* (4 July 1842).

[418] ANQM, JP(QR) (St. Malachie de Ormstown/North Georgetown), *Martin Neally v. John Carrie* (11 October 1842).

have encompassed any breach of a master's obligations.[419] What is clear, however, is that unlike desertion cases in which fines were imposed by courts and reverted back to the treasury (except shares awarded to informants), in these proceedings servants who were successful were awarded damages as well as court costs.

3. Physical Mistreatment

During this period. servants could also take advantage of the legal protection accorded them by legislative enactments and sue their masters for ill-treatment. As stipulated in the Statute of 1836, Justices of the Peace could cancel indentures if masters were found to have violated their duties towards their servants.[420] While masters were only civilly liable for abusive conduct (although they could be charged with assault), courts were empowered to release servants from their terms of service, a disposition of most direct benefit to servants.[421] As discussed earlier, the right of physical

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[419] The other three such cases identified for this period were unavailing: ANQM, JP(QR) (Beauharnois), *John Currie v. Alexander Steel* (master awarded costs of five shillings and threepence) (13 April 1843) and *Michael Costello v. James Gowan* (master awarded costs of six shillings and threepence); ANQM, JP(QR) (St. Malachie de Ormstown/Beauharnois), *Colin McFadden v. George Cross* (20 October 1841) (master awarded costs of five shillings).

[420] See Appendix E, p.197, *below.*

[421] As Hamilton points out, while masters during this period were allowed to discipline apprentices (and other servants), many jurisdictions commonly allowed courts to discharge apprentices from their service or to fine masters for abuse. Hamilton, *supra* note 25 at 20. As mentioned, servants could also charge their masters with assault and battery, as an apprentice named Samuel Jackson did against Thomas Albert Martin. ANQM, PC(R) (Proceedings Under the Ordinance 2nd Victoria) p.44, *Dominus Rex v. Thomas Albert Martin* (29 March 1842) (warrant of arrest granted and Martin bound to appear at Court of Special Sessions). The following day, Martin filed suit against Samuel Jackson for desertion, for which he was arrested, although the case was settled. ANQM, PC(R) p.45, *Thomas Albert Martin v. Samuel Jackson* (30 March 1842). It is unknown how often servants brought suits for assault against their masters. Discussion of this issue

chastisement was conceptualized as being an inherent part of masters' authority during this period. However, chastisement which exceeded social norms on what constituted "moderate" as opposed to "immoderate" correction rendered masters susceptible to prosecution.

William Gettes, the hatter and furrier who had such difficulty retaining apprentices during this time period, was one example of a master successfully sued by an apprentice. Cornelius Kelly filed suit against Gettes before the Court of Special Sessions in 1843 for mistreatment and wrongful termination.[422] The charges outlined in Gettes' summons stated he was charged with:

> having frequently hitherto abused and illtreated [sic] the said Cornelius Kelly, And repeatedly violated your duties as such Master And more particularly in that, you the said Geddes...without legal cause, provocation or inducement whatsoever did discharge the said Complainant from your service and forbid him to enter your house, and that you have since refused to receive or support him....[423]

On October 20th, Gettes was brought before the Court, as recorded in the court register:

> [The] def[endant appears] in person and pleads that he is not guilty of the allegations set forth in this summons--and admits that he has discharged the def[endant] from his service and that he will not allow him to enter into his house--and moreover says that he is willing that the Indentures passed before L Guy Esquire between him and the said Pros[ecutor] and bearing date the 18 February 1841 be annulled and discharged. The Court having heard the said def[endant] annul the said agreement or Contract between him the said defendant and prosecutor and thereby discharges the said Pros[ecutor] from that said agreement or contract, and orders that the said def[endant] do pay the costs of this action.

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would entail examination of the thousands of assault and batttery cases heard before the courts of this period in order to ascertain the relationships between the parties.

[422] ANQM, WSS(R) [unpaginated], *Cornelius Kelly v. William Geddes* (20 October 1843).

[423] For the text of the summons, see Appendix F, p.200, *below*.

As indicated, the court discharged Kelly from his indenture and required Gettes to pay costs of nine shillings and threepence. Since Gettes had consented to annul the indenture, the Court was not required to adjudicate the issue of whether Gettes had, in fact, mistreated his apprentice.[424]

While there is a dearth of detail available on the other cases of this kind, it is evident that the courts hearing these prosecutions did not shy away from scrutinizing the behavior of the masters charged with ill-treatment, showing their disapprobation by releasing the prosecutors from service. Just such a situation is recorded in the quarterly returns of the Justices of the Peace for the county of Two Mountains in 1841. The records reveal that three Justices heard a suit brought by an adult named Robert McVicear on behalf of Duncan McDonald, an apprentice tailor under the age of majority, against his master on charges of "brutal treatment to the apprentice." The Court, upon hearing the evidence, convicted McDonald's master and fined him two shillings and sixpence plus ten shillings costs, while also releasing McDonald from service.[425] Unfortunately, it is not possible to ascertain from the records either the nature of the evidence presented or the relationship between McVicear and McDonald. It is interesting to contemplate, however, that a third party was willing to undertake the responsibility of prosecuting such a case in a local court.

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[424] While neither the Statute of 1817 nor the Police Regulations contained explicit provision for the cancellation of indentures due to ill-treatment, Justices of the Peace no doubt had the authority, real or perceived, to do so. As mentioned previously, the charges against Gettes were brought under the Statute of 1836, although this statute was technically inapplicable within the city limits. See p.59, *above*.

[425] ANQM, JP(QR) (Two Mountains/Argenteuil), *Robert McVicear for Duncan McDonald v. Benjamin Halebrook* (1 September 1840).

In 1843 a servant in Beauharnois likewise filed suit to "annull [sic] an engagement" on the grounds of ill-treatment. The suit was successful, and the Court annulled the indenture and imposed costs against the master of one pound four shillings.[426] J. A. Mathison, a Justice of the Peace in Vaudreuil, convicted another master for "[i]ll usage to his Servant", fined him fifteen shillings and costs of eight shillings and tenpence, and released the servant from service.[427] Mistreatment was not the only grounds for annullment, however, as evidenced by a prosecution heard in Lachine in 1843, wherein a servant seeking to be released from his terms of service was "[d]ischarged in consequence of [his master] exacting more work than agreed upon."[428] These cases indicate that servants were able to sue their masters specifically in order to have their indentures annulled, as stipulated in the statutory enactments of the period. All told, six such cases were found for the years 1830 to 1845, five of which resulted in the master's conviction.[429]

From a modern perspective, these legal proceedings may be somewhat unsatisfying--one might wish that the masters had been heavily fined, imprisoned or both. The nature of these records also precludes comprehensive analysis of the evidence presented before these courts. However, the import of these cases should nevertheless be fully appreciated. During this period, not only did

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[426] ANQM, JP(QR) (Beauharnois), *André Prevost v. Julius P. Colburn* (13 October 1843).

[427] ANQM, JP(QR) (Vaudreuil), *J.Bpte. Adams v. Andrew Braddeur* (15 October 1842).

[428] ANQM, JP(QR) (Lachine), *Joseph Aimond v. Charles Gauthier* (11 October 1843).

[429] The sole exception was a prosecution "pour mauvais traitement envers sa servante", in which the master was acquitted and awarded costs of eight shillings and ninepence. ANQM, JP(QR) (St. Marie de Monnoir), *Pauline Touchette v. Eustache Gratton* (30 June 1842).

legislative enactments stipulate that masters could be sued for ill-treatment and their servants released from service, but courts recognized the limits of moderate chastisement at the hands of masters. The fact that such cases were possible is even more striking when one considers that courts were generally constituted by employers and members of the monied class, that physical chastisement was an accepted part of paternalistic relationships, and that various social and economic factors would have acted to limit servants' flexibility of action. The judicial records of this period--especially those of the Justices of the Peace--indicates that at least some servants were able to successfully sue their masters for breach of duty. There is little doubt that what these servants ultimately sought was freedom from the restraints of their indentures and, by extension, freedom from the oppressive conduct of their masters. That they were not inhibited from seeking legal vindication is potent corroboration for the view that courts did not merely protect masters' interests within the confines of master-servant relationships.

When taken in their totality, lawsuits brought by servants seeking annullment of indentures and recovery of wages constitute compelling evidence that courts of this period acted to enforce the traditional responsibilities of masters towards their servants. This is even more apparent when desertion prosecutions are examined, as the dismissal rates clearly demonstrate that courts did not blindly advance the interests of masters at the expense of servants. Even when allegations of ill-treatment were unavailing as defenses in suits for breach of service, courts routinely inquired at length into the issues raised at trial. Moreover, while it may be somewhat incongruous to compare desertion suits to wage suits, it is nevertheless striking to contemplate that masters and servants enjoyed comparable rates of success when bringing these types of prosecutions. While it would be unreasonable to characterize the rights of masters and servants as equal during this period, it is

nevertheless evident that courts enforced mutuality of obligations of both parties in the master-servant relationship.

D. Non-Judicial Promotion of Servants' Interests

1. Ritualistic and Communal Protests

While servants had at least a qualified confidence in the efficacy and fairness of the lower courts during this period, they turned to extra-legal remedies or forms of protest when the legal system was unavailing. Communal forms of protest were, most fundamentally, ritualistic means of expressing social disapprobation of the actions of members of the community who were otherwise not reachable by legal process.[430] These ritualistic forms of protest were sometimes benign but always highly expressive, and often surfaced to remonstrate against economic injustice.[431] In many cases, the law itself was largely unable to contest these actions, and public protest therefore took on an air of legitimacy in its own right.[432]

The most common form of ritualistic protest in the province of Quebec were the chirivaris (or "shivarees", as they were known in English), which were virtually epidemic in Montreal during

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[430] A contemporary author stated that shivarees were "intended to reach delinquents not amenable to the common process of law--offenders against propriety and the public sense of honour. Ill-assorted marriages are its especial objects." Cross, *supra* note 336 at 109 (quoting J. Bigsby, *The Shoe and Canoe or Pictures of Travels in the Canadas*, vol.I (London: 1850) 34-37).

[431] For sources on communal forms of protest, see *e.g.* Bryan D. Palmer, "Discordant Music: Charivaris and Whitecapping in Nineteenth-Century North America", (1978) 3 Labour/Le Travail 5 [hereinafter *Charivaris*]; Loretta T. Johnson, "Charivari/Shivaree: A European Folk Ritual on the American Plains", (1990) 20 J.Interdisc.Hist. 371.

[432] See *e.g.* Cross, *supra* note 336 at 106 ("[l]aw in mid-nineteenth century Canada indeed seemed cobweb-like at times in its inability to contain popular protest.").

the first two decades of the nineteenth-century, and remained frequent throughout the period examined in this thesis.[433] This ritual consisted of gathering at the house of the targeted individual, most frequently at night, and producing an unearthly din by firing muskets in the air, banging pots and kettles, singing, and playing tin drums and fish horns.[434] The individual at whom the charivari was aimed was occasionally ridden on a rail, beaten or even killed.[435] Charivari-like behavior often prefaced riots by Irish canal workers during this period,[436] and charivaris were engaged in by striking workers throughout the nineteenth-century in North America.[437] As Palmer has emphasized, the charivari "even when opposed...was recognized as an established institution."[438] For example, individuals convicted of riot and assault in 1815 for beating a labourer and riding him on a rail were

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[433] Palmer, *Chiravaris, supra* note 431 at 19-20. For a contemporary account of shivarees, see Moodie, *supra* note 82 at 225-234.

[434] Palmer, *Charivaris, ibid.* at 20. See also Palmer, *supra* note 44 at 42.

[435] Palmer, *Charivaris, ibid.*

[436] Palmer, *supra* note 44 at 42.

[437] See *e.g.* Johnson, *supra* note 431 at 378. See also Palmer, *Charivaris, supra* note 431 at 34-37. Palmer includes examples such as a charivari by unskilled Lumber Mill labourers in Hull, Quebec against their employer. *Ibid.* at 36. As suggested in Cross at *infra*, note 430, chirivaris were most commonly used to condemn inter-generational or inter-racial marriages.

[438] Palmer, *Charivaris, ibid.* at 50.

given fines of five pounds each, in contrast to hefty fines and lengthy prison terms which usually awaited those convicted of the same offenses.[439]

Ritualistic acts of protest, such as the charivari, were used both to publicize as well as punish social transgressions not reflected in the legal order. As such, these actions were extra-judicial means utilized by servants to settle grievances or express censure. Whitecapping--group actions by gangs of anonymous citizens--also played a prominent part in labour conflicts throughout the nineteenth-century.[440] Related types of communal protest included the time-honored practice of tarring-and-feathering, which an angry crowd of neighbors attempted to do to a lawyer for "unlawful bestowing of affections upon a servant girl"; he was fortunate to only be beaten, thrown over a fence, and burned in effigy.[441] Other forms of group protest were used to express anger over conflicts with superiors, typically involving economic and property issues. During this period a group of journeymen shoemakers angered by wage cuts gathered at their master's house in Kingston and , smashed its windows, then coated the front of the house with human excrement.[442] In 1830, journeymen tailors in Montreal reacted strongly to a play entitled "Billy Button's Journey to Brentwood", which they felt denigrated their trade. The journeymen rioted in the streets and were

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[439] Palmer notes that "[t]he fine, although a substantial amount, indicated how gingerly early courts trod on custom, even where violence was involved." *Ibid.*

[440] *Ibid.* at 48-49.

[441] *Ibid.* at 30.

[442] *Ibid.* at 24. See also Palmer, *supra* note 44 at 42.

threatened with imprisonment if they did not return peacefully to work.[443] In a highly intriguing example of communal action, under cover of darkness a mob of irate Montreal tenants--largely consisting of labourers--tore down the house from which they had been evicted by the new owner.[444]

The offense of "riot and tumult", as well as conspiracy, was often interwoven with labour strikes. Violent protests were the norm during this period on canal construction projects, particularly in Canada,[445] and the Lachine Canal project was far from tranquil. Construction on the Lachine Canal began in January 1843 under the auspices of private contractors, and was governed by a strict regard for profit. Between thirteen hundred and sixteen hundred labourers, known as "canal navvies", were employed on the project.[446] Many of these labourers had worked on other public work projects, wandering across the United States-Canada border whenever work beckoned.

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[443] *The Vindicator* (19 July 1830) (letter from Gibb and Company, tailors). See also Poutanen, *Needle Trades, supra* note 43 at 101.

[444] *The Vindicator* (7 October 1834).

[445] For an excellent source of information on the Lachine canal strikes, see H. Clare Pentland, "The Lachine Strike of 1843", (Sept. 1948) Can.Hist.Rev. 255. For Canadian canals in general, see *e.g.* Ruth Bleasdale, "Class Conflict on the Canals of Upper Canada in the 1840's" in Michael S. Cross & Gregory S. Kealey, eds., *Pre-Industrial Canada 1760-1849* (Toronto: McClelland and Stewart Limited: 1982) 100. For discussions mainly concerned with American canal projects, see *e.g.* Peter Way, "Shovel and Shamrock: Irish Workers and Labor Violence in the Digging of the Chesapeake and Ohio Canal", (1989) 30 Labor Hist. 489 [hereinafter *Shamrock*]; Peter Way, "Evil Humors and Ardent Spirits: The Rough Culture of Canal Construction Laborers", (1993) 79 J.Amer.Hist. 1397 [hereinafter *Humors*].

[446] "Canal navvies" was an English term short for "navigator", or one who constructs navigation works. Way, *Humors, ibid.* at 1398 note 3.

The canal navvies toiled under harsh conditions, ravaged by disease, workplace accidents, malnutrition, exposure to the elements, and the like. Navvies often were involved in thefts, assaults and highway robberies, and stole provisions and tools from their employers.[447] When navvies reached the end of their endurance due to their employer's actions, they often used the most accessible form of non-legal protest available to them: like apprentices and other servants they simply deserted, or moved on to other sections of the canal.[448] However, navvies also had other extra-legal options at their disposal, such as labour strikes and violence.

As work at Lachine commenced, the labourers assumed they would be working for the customary rate of three shillings per day. However, on the first pay day, it was discovered that the contractors were paying only two shillings per day, and this obtainable solely as credit at the company store--a policy dropped soon thereafter because of the ensuing labour disturbances.[449] The labourers struck unanimously for three shillings sixpence per day, eventually reducing their demands to the usual rate of three shillings.[450] During this period, one labourer wrote an impassioned letter to the *Montreal Transcript*, stating they had not "anticipate[d]...cruelty or treatment and disrespect

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[447] *Ibid.* at 1408-09.

[448] Way, *Shamrock, supra* note 445 at 497.

[449] Pentland, *supra* note 445 at 262 (citing *The Montreal Transcript* (26 January 1843)). See also *The Montreal Transcript* (25 March 1843).

[450] Pentland, *ibid.* at 263. *The Montreal Transcript*, for example, noted on March 23, 1843 that "[t]here was an extreme 'strike' for higher wages yesterday, by the labourers on the Lachine Canal. A large number of them paraded the streets yesterday with music, who are determined not to resume work until their wages are raised. There was no breach of the peace committed."

from foremen, which subsequently we experienced at their hands, and which was connived at and sanctioned by the Contractors or those who represented them."[451] The writer concluded by stating they were "fully determined to steer clear of any infraction of the law", and the ten-day long strike was unmarred by any violent incidents.[452]

A common element to many of the disturbances on canals during this period was the merging of traditional Irish political tactics, most notably the existence of secret societies, with self-protective actions taken to protect their right to subsistence.[453] These secret societies were shadowy, loosely organized groups, bound together by common heritage and experiences, oaths of secrecy and passwords.[454] These types of disturbances often manifested themselves in outbursts of violence rather than unified strike actions.[455] The majority of these labour protests were triggered by non-payment of wages. Many contractors constantly teetered on the brink of insolvency, and contractors occasionally absconded without paying wages due.[456] Contractors often delayed payment, even for

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[451] *Palmer, supra* note 44 at 37.

[452] *Ibid.*

[453] Way, *Shamrock, supra* note 445 at 490.

[454] *Ibid.* at 501.

[455] *Ibid.*

[456] *Ibid.* at 495. See also Bleasdale, *supra* note 445 at 106. These delays in payments reduced navvies to desperate straits, forcing some to exchange title for their miserly wages to third parties in return for cash in hand. *Ibid.*

months at a time, and sometimes paid only in company store credit.[457] Not surprisingly, these company stores often engaged in price-gouging. Many contractors also fleeced their employees by overcharging for the shanties which they provided as accommodations.[458]

Navvies occasionally threatened to destroy the work already completed in the event they were not paid.[459] More commonly, their secret societies used threats, vandalism and violence (sometimes leading to death) to remove contractors and other labourers who met with their displeasure. This was often based on regional Irish rivalries, but also was used to force out abusive foremen and contractors.[460] These actions put contractors at the mercy of Irish navies at some American canal works, for instance, before eventually being suppressed by a combination of brute force and successful prosecution using paid informants.[461]

During this period in Montreal, riotous labourers on local public projects were frequently indicted or prosecuted before local courts, but these actions often proved unavailing. In 1842, for example, a contractor on the Chambly Canal filed complaints before the Court of King's Bench against nine labourers for riot and conspiracy to raise wages. In addition, a fellow labourer filed a

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[457] Palmer, *Charivaris, supra* note 431 at 37; Bleasdale, *supra* note 445 at 106-107.

[458] Palmer, *ibid.*

[459] Way, *Shamrock, supra* note 445 at 509.

[460] *Ibid.* at 503-504 (citing example of navvies' burning down a contractor's office and stable and destroying his tools, threatening further violence if he failed to leave).

[461] *Ibid.* at 505.

complaint against the ringleader for assaulting him after he refused to go on strike, but the grand jury refused to indict any of them.[462] Similarly, three Lachine Canal labourers the same year were prosecuted for assault in pursuance of a conspiracy to raise wages but were acquitted.[463]

One unsuccessful prosecution which offers considerable insight into the strike activity of Lachine Canal labourers occurred before the February session of the Court of King's Bench. Nine labourers were prosecuted for riot and tumult in leading a mass strike for wage increases.[464] All were quickly acquitted by the jury without deliberation and before the defense even called any witnesses.[465]

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[462] ANQM, KB(F), *Dominus Rex v. Lawrence Martin et al.* (26, 27 July 1842) (complaint for conspiracy); ANQM, KB(F), *Dominus Rex v. Lawrence Martin* (27 July 1842) (complaint for assault); ANQM, KB(R) p.75 (August-September 1842 term), *Dominus Rex v. Lawrence Martin et al.* (grand jury refused to indict).

[463] ANQM, QS(R), *Queen v. Richard Ennis et al.* (12 January 1843). See also *The Montreal Transcript* (3 November 1842) (noting arrest) and *ibid.* (19 January 1843) (noting acquittal).

[464] One anonymous note posted by the strikers was found in the files of the Court of King's Bench. It read as follows:

> Notice. Any person or persons who works here in the Lachine Canal under 3 shillings and 6 pence Per day may have their Coffin and bearer and the time they are to Commence in the morning is at seven o'clock and quit at 5 o'clock in the after Noon and there is no man to attempt working even when the wages is [sic] settled until the men all agrees [sic] on it for we are not to bear such a persecution any person or persons who attempts taking down this notice will get the same death as is foresaid.
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> ANQM, KB(F), *Dominus Rex v. Joseph Breene* (2 February 1843).

[465] ANQM, KB(R) p.62 (February-March 1843 term), *Dominus Rex* v. *Joseph Breene et al.*

Labour protests were, of course, not limited to canal navvies. In 1845, Montreal carpenters went on strike for higher wages and marched through the city streets:

> On Tuesday a large body of them assembled and paraded the streets with the avowed intention of intimidating those who wished to remain at their employment, and compelling them to join their number. They had, on the day previous, by threats of violence, induced the workmen employed on the new Methodist Church...and the Nun's buildings...to quit their work. The workmen of Mr. A. Laberge, builder...were, with the exception of three or four, intimidated from coming to their work on Tuesday morning. The turn-outs passed Mr. Laberge's workshop, and on his remonstrating with them, they attempted to force an entrance, and threatened to attack his premises on their return from the Bishop's Church....[466]

Unlike in rural areas or canal works, parading in city streets could be more easily routed: there were numerous witnesses, a police force was available to arrest the malefactors, and failure to take decisive action might have encouraged chaos in the city. Seven of the ringleaders were arrested, tried and convicted of "illegal combination" in local court. Perhaps because no violence had actually ensued, they were not imprisoned but only fined ten dollars and costs, with two month sentences in default of payment. Warrants were obtained against another dozen carpenters for "illegal combination and intimidating their fellow workmen."[467] Even when courts responded to such occurrences, however, the power of collective action was still apparent to members of the servile class. The very fact that carpenters brazenly protested in the streets in daylight points to a lack of apprehension on their part about possible legal recriminations.

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[466] *The Montreal Gazette* (6 March 1845).

[467] *Ibid.*

2. Personal Protests

The most effective form of non-judicial protest was no doubt collective action, having the advantage of strength in numbers. However, servants had individual recourse to stealthy and violent acts, such as assault or arson. During this period, Montreal was marked with an omnipresent, underlying element of violence, especially conspicuous in areas outside of the city limits. Many of the implements of agrarianism and labour which were in daily use could also double as lethal weapons, not to mention firearms and other armaments which were also commonplace.[468] The formal mechanisms of the law were largely undeveloped in rural areas during this period, and could provide little protection against violence.

Examination of master-servant relations during this period reveals that disputes often escalated into physical altercations. For example, a contractor on the Beauharnois Canal narrowly escaped death when he refused employment to a labourer; enraged, the labourer picked up a stone to dash against the contractor's head before he was subdued by two other workers.[469] Henry Talon *dit* Lesperance, no stranger to labour discord, prosecuted one of his servants for assault with intent to murder after a shipyard altercation.[470]

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[468] For an excellent article on the interplay between society, violence and the law in rural Upper Canada of this period, see generally Lewthwaite, *supra* note 89.

[469] ANQM, KB(F), *Dominus Rex v. Daniel Barron* (14 June 1843).

[470] ANQM, KB(F), *Dominus Rex v. Joseph Stanford* (14 August 1835). The relevant King's Bench register has not survived. No doubt prosecutions of servants by masters for assault were not uncommon. See *e.g.* ANQM, WSS (CM), *Benjamin Molson v. Robert Graham* (December 12 1843) (lawsuit charging his employee, who claimed there were "insufficent bedcloths" in his employer's house, with assault and battery; Graham was convicted and fined five shillings and costs of one

These cases, however, pale compared to the horrific nature of some of the acts of violence committed by disaffected servants. In 1837, John Dillon and his wife narrowly escaped death at the hands of their frenzied farm servant. As John Dillon's deposition stated:

> [A]bout as near as he can say two o'clock [in the morning], being asleep with his wife and young child he was awakened by the repeated blows of an axe or other sharp instrument which cut through the Bedcloths and inflicted several wounds on his legs, and that starting up in his bed, it being moonlight, he beheld the said Edward Marshall in the act of raising an axe to strike him on the head, upon which he, Dillon, succeeded in arresting the blow, receiving at the time a wound on the arm and seizing Marshall's arms took the Axe from his....Having secured Marshall without injuring him [he] found his wife Bridget out of bed in great Terror with a severe wound in her wrist and two other bodily wounds but whether received in Bed or out of Bed the said Bridget doth not know from the Terror she was in. That Dillon bound the wound on her wrist up with a Handkerchief and sent her to Joseph Smith the next [door] neighbor to obtain assistance.[471]

The neighbor returned with Dillon's wife--who had sustained wounds in the hand, side, and head--and helping secure Marshall, tended to Dillon who was lying on his bed in a pool of blood. The police were summoned and Marshall was lodged in jail to stand trial for assault and "[c]utting and Wounding [John Dillon] with an Axe with an Intent to Murder."[472]

Other masters were even less fortunate. Local newspapers carried sensational accounts of the murder of a master and his house-keeper near Toronto at the hands of two of his servants, one male

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pound eight shillings and ninepence, or eight days in prison).

[471] ANQM, KB(F), *Dominus Rex v. Edward Marshall* (1 May 1837).

[472] *Ibid.* The relevant King's Bench register has not survived. The only evidence of Marshall's motives appear in the neighbor's deposition, stating that Ash told him his intention was "to knock Dillon on the head and to get what he wanted." ANQM, KB(F), *Dominus Rex v. Edward Marshall* (deposition of Joseph Smith) (1 May 1837).

and one female. After murdering the master and house-keeper, the pair pillaged the house and fled towards the United States. Under the recurring heading of "HORRIBLE MURDER", the *Montreal Transcript* declared:

> Mr. Kinnear is represented to have been a kind and generous master. In such a case, he but ill-deserved so dread a requital, as to be butchered by the hand of his servant. The poor house-keeper, from the nature of her death [by strangulation], must have suffered a degree of agony which the spirit of demons alone could have witnessed with indifference. If the wretches were instigated by a desire to obtain money, they have evidently been disappointed, as there was but little in the house. If malice or revenge prompted the deed, may the horrors of a haunted conscience hang over their days and nights....[473]

The two servants, James McDermot and Grace Marks, were eventually apprehended traveling via their master's horse and wagon, piled to capacity with their master's belongings. Subsequent accounts of the trial leading to their convictions indicated that Marks continued to wear clothing belonging to the dead house-keeper during the trial, and that both seemed singularly unaffected by the proceedings.[474]

Discharging a servant from one's employ could have fatal results, as a master, his house-keeper and her daughter discovered in 1838.[475] Theft and violence often were coupled; the *Montreal Gazette*, for example, in 1844 published an account of a French labourer who had murdered three

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[473] *The Montreal Transcript* (3, 5 August 1843).

[474] *The Montreal Transcript* (8, 12, 17 August 1843).

[475] *The Montreal Transcript* (21 July 1838) (citing *The Nova Scotia Royal Gazette*).

of his master's daughters in order to conceal a theft.[476] Even minor-aged apprentices could be lethal, as the stories of two English apprentices in Ontario demonstrate: one murdered his master, the other his master's adopted son.[477]

A more common form of violence perpetrated by servants was directed not at the master himself but at his property, although the end result could be equally lethal. Newspapers during this period contained continual accounts of fires ravaging residences and businesses, in other cities as well as in Montreal itself. For example, in 1845 fully one-third of the city of Quebec was destroyed in a massive conflagration. In July and August of 1845, local newspapers published continual accounts of the carnage wrought in Montreal by a rash of fires, and numerous people were arrested on charges of arson. Fire was a particularly dreaded specter, as wood structures were highly flammable, fire insurance rare and fire brigades inefficient, and arson could destroy a farm, dwelling or place of business in a matter of minutes.

In most cases incendiaries were never apprehended. The motives underlying these blazes was also unclear in many instances, but it is apparent that arson was a common means of personal reprisal. For example, the *Montreal Gazette* reported that "[o]n Sunday night, a barn and stables, at Sault au Recollect, occupied by Mr. George Kidd, was set on fire and totally consumed. In this case...no doubt is entertained that the fire was willful, and originated in private revenge."[478]

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[476] *The Montreal Gazette* (28 May 1844).

[477] Parr, *supra* note 72 at 108.

[478] *The Montreal Gazette* (8 July 1845).

The primary motivation for the commission of arson by servants appears to have been a variety of labour disputes.[479] A domestic servant in 1845 was charged with intentionally setting her master's bedroom on fire after he scolded her for sloppy work, in which "[n]early all the bedding, curtains, &c., were destroyed, and the wood work of the room...burned, up to the ceiling."[480] Similarly, the *Montreal Transcript* discussed the deathbed confession of a servant to having razed his master's barn to the ground following an altercation.[481] A farmer's widow refused to continue employing the servant in charge of her farm after a large amount of hay and vegetables were stolen. Thereafter, she alleged she had seen him attempt to start a fire in a far corner of the field, and had confronted him, along with an accomplice, as they unlawfully chopped down several of her trees. When she berated him, the servant allegedly brandished an axe and threatened her life.[482]

In a nearly-fatal case of arson to a Montreal "carving, gilding, and picture establishment" and the master's adjoining house, a newspaper reported that the fire:

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[479] See *e.g.* Webber, *supra* note 81 at 132 (showing that a charge to an Ontario grand jury in 1847 cited employment disputes as one of the primary motivations behind the commission of arson.). Arson was also a common form of communal protest. See *e.g.*, Cross, *supra* note 336 at 103-104 (arson committed against school houses in Lower Canada in 1846-1857 to express displeasure with school taxes); *ibid.* at 103 (arson committed against property of government tax assessors in Trois Rivières in 1850).

[480] *The Montreal Gazette* (12 July 1845).

[481] *The Montreal Transcript* (3 June 1837).

[482] ANQM, KB(F), *Dominus Rex v. Jean Baptiste Gautier* (9 September 1830). The relevant King's Bench register has not survived.

> commenced at the foot of the staircase on the ground floor, which was speedily in flames, cutting off all communication with the upper part of the house where Mr. A. Perry, Mrs. Perry and child, and two apprentices had retired to rest for the night, and who escaped with considerable difficulty....Robert Duncan...has been arrested...[who was] until Wednesday, in the employ of the Messrs. Perry, and, on being discharged, he refused to give up some tools belonging to them which he had in his possession; their value was, of course, deducted from his wages, which irritated him to such a degree that he made use of the most violent threatening language and insinuations of impending evil. The fact of the fire occurring the same evening, and its mysterious commencement, caused suspicion to fall upon him, and he was taken into custody...by Constable Jenkins, who found him at his father's house concealed under a bed.[483]

The case of a domestic named John Ash is particularly valuable as it offers intriguing unconscious testimony about the interaction between domestic servants and their masters. As the depositions reveal, John Ash's master was entertaining a party of friends late one evening when Ash entered the room without being summoned. His mistress "order[ed] the said John Ash to go to the kitchen as that was his proper place", but Ash instead entered another room and created a disturbance. When his master told him that he was no longer needed for the night and that he should either retire or leave the house, Ash refused, stating that "he had as good a right [to be] there as anyone else." One of the revellers, Ash's former master, attempted to convince him to leave quietly, but Ash became belligerent and was swiftly ejected from the premises. Ash returned and allegedly threatened to take "revenge upon the house"; twenty minutes later the stable and five adjoining buildings were consumed by fire. Besides the corroborating testimony of the master and several

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[483] *The Montreal Gazette* (4 July 1845). See also *The Pilot* (5 July 1845). The master saved himself and the members of his household by thrusting a wooden plank through his window so they could crawl across to a neighboring building. For an example of a storeman accused of robbery and arson after his discharge for drunkenness and misconduct, see ANQM, KB(F), *Dominus Rex v. John Donogher* (11 April 1843).

guests, a neighbor deposed that Ash had awoken them a short time before the fire, apparently intoxicated, and requested to borrow matches or a candle, which they wisely (if futilely) refused.[484]

Arson was often committed by servants to eradicate evidence of theft, out of malice, or a combination thereof. A minor-aged domestic servant in 1840 was tried for robbing her master's house in his absence and setting the living room couch on fire.[485] Likewise, the *Montreal Gazette* revealed the escapades of a servant who, left in charge of the house while his master attended a family funeral, "'improved' the opportunity by dressing himself in a suit of his master's clothes and, appropriating a watch and some other property, set fire to the house and absconded."[486]

The commission of arson and other acts of violence are telling examples of power wielded by servants outside of the judicial arena. The omnipresent possibility of such fearsome acts being

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[484] ANQM, KB(F), *Dominus Rex v. John Ash* (7 October 1842). Ash was indicted for arson before the King's Bench, ANQM, KB(R) p.45 (February-March 1843 term), but the relevant register has not survived.

[485] *L'ami Du Peuple* (9 January 1840):

> VOL DOMESTIQUE--Jeudi dernier, Pierre Laviolette...porta plainte au bureau de police, qu'une jeune servante nommée Josephine Hogue, avait volé plusieurs objets, qu'elle avait mis le feu à la maison....M. Laviolette avait heureusement réussi a éteindre le feu sans aucun dommage considérable. La police fut bientôt sur pieds et le capitaine Comeau, dimanche dernier, arrêta la délinquante dans la possession de laquelle on trouva les objets volés. Elle fut mise en prison pour attendre son procès.

In her voluntary examination, Hogue admitted to having stolen numerous articles and setting fire to the couch. ANQM, KB(F), *Dominus Rex v. Josephine Hogue* (4 January 1840). She was found guilty and sentenced to six months' imprisonment. ANQM, KB(R) p.22-23, 114 (February-March 1840 term).

[486] *The Montreal Gazette* (15 February 1845) (citing *The Niagara Chronicle*).

committed by servants no doubt caused many masters to act in a circumspect manner in times of conflict. As Webber has stated in the context of farm labour in nineteenth-century Ontario, the potential for violence "constituted a powerful inducement for farmers to deal with employees in a manner the latter would tolerate", and accounted in large part for why farmers "often paid workers for all the time they had worked, even when the circumstances...may have absolved them from the legal obligation to pay."[487]

Given the possibility that servants might always resort to arson or other forms of violence, masters and society-at-large would have had a powerful incentive to ensure that servants were given a legal forum to air their grievances in a non-violent manner. Such considerations may account, in part, for the willingness of courts to hear wage suits by servants or other matters during this period. The continuing degeneration of traditional master-servant relationships into purely wage-based labour relationships undoubtedly was also implicated. Whatever the reasons, courts adjudicated numerous cases brought by servants, seemingly with impartiality. That members of the labouring class, including unskilled labourers, sought redress before courts is evidence that they generally felt these tribunals enforced mutuality of obligations in employment relationships. That servants still committed acts of violence, often with virtual impunity, is evidence that a strong sense of personal justice still pervaded society of this period. If the law was not thought to be sufficiently responsive, personal or collective forms of protest were always available to aggrieved servants.

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[487] Webber, *supra* note 81 at 132.

Conclusion

Master-servant relationships played an integral part in the economy of Montreal during the period 1830 to 1845. However, the inexorable encroachment of industrialization was taking an evident toll on labour relationships in Montreal, as it did throughout North America. Masters increasingly viewed their servants merely as wage labour, freed from the paternalistic ties which historically bound them together. This transition was most prevalent among apprentices, who in turn became increasingly dissatisfied with an institution which seemingly retained only the vestiges of its past which most favored masters.

Master-servant legislation in Montreal exhibited the approach common to most Anglo-American jurisdictions of this period, characterizing employment offenses as crimes which were punishable by fines and lengthy terms of incarceration. These laws were promulgated, in large part, as a means of protecting masters' economic and social interests. While in earlier eras masters had been content to discipline servants themselves, the gradual breakdown of the labour relationship led to a concomitant diminishment in masters' authority, and they increasingly turned to courts to discipline recalcitrant servants.

When hearing these disputes, courts not infrequently disregarded servants' complaints about mistreatment and malnourishment, incarcerating servants viewed as incorrigible or whose acts of delinquency were particularly grave. The number of cases in which servants consented or were ordered to return to service, however, indicates that many masters sought legal recourse primarily to encourage servants to complete their terms of service, rather than merely to punish them for violations of master-servant law.

While courts were a powerful tool available to masters, these tribunals did not view the master-servant relationship as only entailing duties on the part of servants. Rather, courts tended to focus on the reciprocal nature of responsibilities owed to both parties, and frequently acquitted servants charged with breach of service. Several reasons may be forwarded for this phenomenon: as labour relationships continued to break down, the economic importance of individual servants to their masters waned, and hence the threat posed by derelict servants abated as well. It was also equally evident to courts that masters were often seeking to renege on the responsibilities which traditionally constituted the master-servant relationship.

During this period servants began to more aggressively protect their interests, bolstered by shortages of skilled labour and a growing ethos of resistance to masters' authority. Servants often utilized various non-legal means to their advantage, deserting in large numbers when dissatisfied with working conditions, with the knowledge that the coercive power of justice was unwieldy and uncertain. Servants collectively organized labour protests and unions, and participated in group rituals such as shivarees in order to protect their economic interests. Aggrieved servants also threatened masters with violence against their persons or property, or committed offenses such as assault and arson. The possibility of violence at the hands of disgruntled servants prompted many masters to ensure that servants felt they were being treated fairly, especially in rural areas where legal institutions were not as firmly entrenched.

Servants, however, also frequently sought redress before the courts against their masters, bringing lawsuits alleging non-payment of wages, ill-treatment, and non-performance of the duty owed to servants by masters. The fact that so many members of the servile class brought legal proceedings indicates that they generally viewed courts as being accessible, and, moreover, that they

had considerable confidence in the willingness of courts to decide cases in a fundamentally fair manner. The success rates enjoyed by servants appeared to have been comparable to that of masters, providing further evidence that courts provided relatively impartial forums for the resolution of employment disputes. At the same time, the reality that servants always had recourse to violence provided impetus for courts and society at large to ensure that servants pursued legal channels rather than taking the law into their own hands. That servants nonetheless persisted in committing personal and collective acts of protest indicates that social inequalities still existed within the confines of master-servant law which Justices were unable, or unwilling, to alleviate in their entirety.

Labour relations during this period were therefore characterized by constant flux. While they retained vestiges of their more hierarchal, patriarchal and rigorously-enforced predecessors, master-servant relationships during this time were rapidly devolving into loosely-bound, purely economic affiliations. Masters decried the growing mercenary and independent nature of servants, but simultaneously wished to absolve themselves of the non-economic responsibilities which traditionally characterized master-servant relationships. Servants likewise exhibited a heightened tendency to demand satisfying employment relationships, and used legal and non-legal means to their advantage whenever possible. Faced with such fundamental and pervasive alterations to the very fabric of master-servant relationships, the legal system evolved to reflect these changes, but in so doing, it also assisted in cementing them.

Appendix A
Apprenticeship Indenture of Cornelius Kelly

On this Eighteenth day of the month of February in the afternoon in the Year of our Lord one thousand eight hundred and forty one,
Before the undersigned Public Notaries duly commissioned and Sworn residing in the city of Montreal in the Province of Canada
Personally appeared Mary Haron of the City of Montreal Widow of the late Cornelius Kelly in his life time of Montreal labourer who for the benefit and advantage of Cornelius Kelly her minor son adged [sic] Sixteen Years or thereabouts and with his consent and approbation did bind and engage him for the space and tim[e] of five Years to be accounted from the seventh of July last unto William Gettes of the Same place Hat Manufacturer here present and accepting the said apprentice to learn the art trade and mystery of Hatter in all its various branches that he now followeth or may hereafter follow during these presents, during which time the said Mary Haron promises that her said Son shall apply himself and work day by day at the House and workshop of the said William Gettes without loss of time, Shall do all and every such work as shall be given him to do by his said master or his representatives relative to the said art and trade, shall attend and work without loss of time day by day also shall colour wash and clean skins, obey the lawful commands of his said master or those of his representatives, shall not absent himself from the employment of his said master either by day or by night without leave not waste or lend his masters goods or bring in any spirituous liquors in any part of the said Wm Gettes premises or see it done by others without giving him notice thereof, shall not divulge the secrets of any of the affairs and transactions of his said master, Shall not frequent play houses and Taverns, Shall not play at cards[,] dice, or any other unlawful games, in a word shall behave and demean himself as a good and faithful apprentice of the Kind is bound to do, and at the expiration of these presents he shall return all the time which he may loose [sic] by his fault and negligence and the said William Gettes on his part promises and obliges himself to teach and instruct the said apprentice in the said art and trade of Hatter in all its various branches that he now followeth or may hereafter follow, during these presents in as much as the said apprentice will be willing and capable of taking up and concerning the same and to pay unto the said apprentice the sum of five shillings per month for the first year of these presents and to increase of [sic] one pound per annum every subsequent Year, the same payable as the said apprentice may require it in proportion of the time served, also the said Wm Gettes promises to board lodge and wash the said apprentice during these presents and to give him an immitation [sic] hat every Year during the same period, and the said Mary Haron is to mend and clothe the said apprentice during these presents.

Done and passed at Montreal aforesaid in the office of E. Guy one the said Notaries on the day month and Year first above written and the said parties have signed these presents with us the said Notaries except the said Mary Haron who declared that she could not sign her name these presents having been first duly read in their presence.

(mark) Mary Haron
(signed) Cornelius Kelly
Wm Gettes
J Belle Not. Pub.
E. Guy N.P.

True copy of the original remaining on record in my office. (signed) E. Guy N.P.

Appendix B

Engagement de Pierre Giroux à Etienne Guillot

Par devant les Notaires Publics pour la Province du Bas-Canada, sous signés résidant dans le District de Montréal, Fut présent David Giroux cultivateur de la Paroisse Ste. Marie,

Lequel a par ces Présentes volontairement engagé son fils Pierre Giroux âgé de treize ans jusqu'à l'âge de dix huit ans accomplis à commencer d'aujourd'hui à Etienne Guillot cultivateur de la Paroisse St. Athanase, sous les conditions qui suivent savoir: que le dit Etienne Guillot s'oblige traiter et entre[-]tenir le dit Pierre Giroux en bon père de famille suivant sa condition, et comme un de ses propres enfans, le nourrir à sa table et lui fournir raisonnablement et généralement tous les hardes et chaussures qu'exige la condition de Cultivateur, et aussi un habillement convenable pour les Dimanches toujours suivant par état; Item lui donner 8 livres lorsqu'il sera parvenu á l'âge de dix huit ans une cours courant sur trois ans, pourvu que le dit Pierre Giroux reste avec le dit Etienne Guillot jusqu'à ce temps;....que se le dit Pierre Geroux ne remplissait pas bien son devoir soit par mauvaise volonté, paresse ou autre raison quelconque pour vu que ce ne soit pas par maladie; (à moins que ce serait une malade grave, et de longue durée), alors le dit Etienne Guillot serait li[b]re de le renvoyer et le payer en hardes en proportion de ce qu'il aurait gagné; sera libre également au dit David Giroux de retirer son enfant d'entre les mains que Etienne Guillot, seulement dans le cas qu'il serait notaire que le dit Pierre Giroux serait maltraité dans la maison du dit Etienne Guillot. Et pour l'exécution des Présentes les dites parties ont élu leur domicile en leurs demeures susmentionnées auxquels liera et Promettant et obligrant [sic] et Renoncant et fait et passé à St. Athanase en l'étude de Me. Bardy l'un des notaires soussignés, l'an mil huit cent trente trois, le dix huit Novembre avant midi l'ont les dits comparants déclarés ne savoir signer de ce enquis ont par leurs marques ordinaires après lecture faite.

(marque) David Giroux
(marque) Etienne Guillote
(signé) Antoine Eusebe Bardy

Appendix C

An Act More Effectually to Provide for the Regulation of the Police in the Cities of Quebec and Montreal, and the Town of Three-Rivers

57 George III, Chapter 16 (enacted 22 March, 1817)

Whereas the rules and orders heretofore made touching the police, and also those for the government of apprentices and others, have been productive of much public benefit; and it being expedient and right that the same be continued and more ample provision made for extending the benefits arising from a well regulated police:--Be it therefore enacted, &c., that the justices of the peace, in their general quarter sessions of the peace of the districts of Quebec, Montreal and Three-Rivers, respectively, shall be, and they are hereby authorized and empowered from time to time, to frame such rules and orders, and with such fines and penalties for the breach thereof, as shall be judged requisite and proper for the regulation of the police of the respective cities....

....

VI. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, it shall and may be lawful for the Justices of the Peace, and they are hereby authorised in the terms of the General Quarter Sessions of the Peace, held in the Districts of Quebec, Montreal and Three-Rivers respectively, to make rules and regulations to restrain, rule and govern the Apprentices, Domesticks, hired Servants and Journeymen within their respective Districts, and also to make rules and regulations for the conduct of Masters and Mistresses, towards their said Apprentices [etc.]...; which said rules and regulations shall not have force and effect, until they shall have been approved by the Judges of the Court of King's Bench or any two of them for the Districts of Quebec, Montreal, and Three-Rivers respectively. Provided always, that nothing herein contained, shall be understood to give power or authority to the said Justices of the Peace in virtue of the rules and regulations which they are hereby authorised to make as aforesaid, to inflict upon the said Masters or Mistresses a penalty exceeding ten Pounds current money of this Province; and upon the said Apprentices [etc.]...for the breach or contravention by them committed against the said rules and regulations, a greater fine than ten Pounds, current money of this Province, or two months imprisonment in the House of Correction in the respective Districts aforesaid. And provided also, that the said rules and regulations shall be subject to the same formalities, rules and provisions as are prescribed respecting the Rules of Police.

VII. And be it further enacted by the authority aforesaid, that the mode of proceeding in all cases of complaint respecting the said Apprentices, Domesticks, hired Servants and Journeymen, and their Masters and Mistresses, shall be by summons to cause the party complained of to come before the said Justices of the Peace to answer the complaint, except where the party complaining shall make oath

before a Justice of the Peace, that he or she has reason to believe that the person complained of, being his or her Apprentice [etc.]...duly bound or hired, is about to leave the Town, to desert or secrete himself, or has in fact left the House or the Town, or has already deserted or secreted himself, in which case, it shall be lawful for the Justice of the Peace, before whom such oath has been made, to grant his warrant for the apprehending and holding to bail, such Apprentice [etc.]...until the parties can be heard and the matter complained of, determined: which hearing and determination in cases of arrest, shall not be delayed longer than forty eight hours from the time the person so arrested, shall be brought before the Justice of the Peace, unless a longer time shall be granted, at the request of the either party, for the production of proof or other sufficient cause, to be allowed by the Justice of the Peace, before whom the complaint shall be brought. And in case the said Apprentice [etc.]...so apprehended, shall not offer bail for his or her appearance to answer to the said complaint, it shall be lawful for any one Justice to commit him or her to the Common Goal for safe custody, until he or she find bail, or until the cause be heard and determined, any law, usage or custom to the contrary in any wise notwithstanding.

....

X. And whereas the pernicious vice of Gaming has become extremely prevalent in Public Houses in this Province, to the evil example of the rising generation and the ruin of Individuals, Be it therefore enacted by the authority aforesaid, that from and after the passing of this Act, if any person licensed to sell Spirituous Liquors by retail or to keep a House of Public entertainment within this Province, shall knowingly suffer any gaming in any house, out house, apartment or ground belonging to or in his or her occupation for money, liquor or otherwise either with Cards, Dice, Draughts[,] Shuffle board, Skittles, Nine Pins or with any other implement or in any other manner of gaming, by any Journeyman, Apprentice, Labourer or Servant, and shall be convicted thereof...before one Justice of the Peace, if in the Villages or Country Parishes within fifteen days after the offence committed, or before the Justices of the Peace in their Court of weekly sittings, if in the Cities of Quebec, or Montreal or Town of Three-Rivers, such person or persons so offending, shall forfeit and pay for the first offence the sum of forty shillings current money of this Province, and for the second offence the sum of five pounds current money of this Province, and be deprived of his, her or their License; and also of being incapable of obtaining a license to retail Spirituous Liquors or to keep a House of Public Entertainment for the space of one year; and if any Journeyman, Labourer, Servant or Apprentice, shall game in any of the places or in the manner aforesaid, and shall be convicted thereof, before any Justice of the Peace in the Villages or Country Parishes, or by any Justice of the Peace in the Villages or Country Parishes or before the Justices of the Peace in their Court of weekly sittings in the Cities of Quebec or Montreal, or Town of Three Rivers, by the oath of one credible witness, or by confession, he shall forfeit and pay for every such offence, a sum not exceeding twenty shillings current money of this Province, and not less than five shillings...and in default of payment of such

fine or penalty within six days, such Journeyman, [etc.]... shall be committed to the House of Correction for a space of time not exceeding eight days in discharge of both such fine and penalty as aforesaid....

....

XII. And be it further enacted...that upon all and every judgment to be made by any Justices of the Peace at their weekly or special sessions, it shall and may be lawful to appeal therefrom to the Justices of the Court of Quarter Sessions of the Peace of the District where such judgment may be made, upon which appeal the full merits of the original complaint may be heard, and adjudged; provided always, that the appellant before the allowance of any appeal as aforesaid, shall give good and sufficient security to pay the amount of the judgment appealed from, and costs as well on the original complaint, as in the appeal.

XIII. And be it further enacted by the authority aforesaid, that all penalties incurred for offences against this Act or any of the Clauses thereof...and against any of the rules, orders or regulations of Police within the Cities of Quebec and Montreal, and Town of Three-Rivers, or against any of the rules, orders and regulations concerning Apprentices [etc.]...or their Masters or Mistresses, which shall be established by authority of this Act, shall be prosecuted for and recovered with the reasonable costs of such prosecution before any two of His Majesty's Justices of the Peace of the District wherein the offence shall have been committed, in the weekly sittings of such Justices of the Peace...and the aforesaid Justices of the Peace are hereby authorized and empowered to hear and determine all causes and complaints touching and respecting the regulations of Police, or against any of the rules, orders or regulations concerning Apprentices [etc.]...or their Masters or Mistresses to be made as aforesaid, in a summary manner, on proof of the offence either by voluntary confession of the party or parties accused, or by the oath of one or more credible witness or witnesses other than the informer; which oath all and every of the said Justices of the Peace are hereby empowered to adminster; and one moiety of every such penalty shall belong to the informer, and the other moiety be paid to the Road-Treasurer....

....

XV. And be it further enacted...that no person or persons whatsoever shall be liable to any prosecution for the breach of any rule, or order for the regulation of the Police, or rule, order or regulation concerning Apprentices [etc.]...or their Masters or Mistresses, within the Cities of Quebec or Montreal or the Town of Three-Rivers respectively, unless such prosecution shall be actually commenced within one calendar month next after the commission of the offence, or to any prosecution for the breach of any other rule or order which may be made under or by virtue of this Act, unless such prosecution shall be actually commenced within two calendar months next after the commission of the offence.

Appendix D
Regulations Respecting Apprentices and Hired or Indented Servants
Chapter VII of the Montreal Police Regulations

Article 1. Two or more Justices of the Peace shall hear and determine, at a Weekly or Special Session of the Peace, to be held in the Town of Montreal, all complaints concerning differences and disputes which shall arise between masters and mistresses and their apprentices, hired servants and journeymen. And the mode of proceeding, in all cases of complaint, shall be conformable to the Provincial Statute of 57 Geo. III. chap. 16.

Article 2. All apprentices to any trade or mechanical art whatever, engaged by written agreement, or servants verbally engaged before witnesses, who shall desert from their service or duties, or who shall by day or night, absent themselves from the said service, or from the house or residence of their employers, without permission, or who shall refuse or neglect to perform their just duties, or to obey the lawful commands which shall be given them by their masters or mistresses, or who shall be guilty of any fault or misdemeanor in the service of the same, may and shall be upon complaint and due proof made before the Justices of the Peace, condemned to the fine and punishment prescribed by the above mentioned Statute, 57 Geo. III. chap. 16.

Article 3. Every domestic, servant, journeyman, or labourer, engaged for a fixed period, by the month or for a longer space of time, and not by the piece or job, who shall intend to quit the service in which he or she shall be during that time engaged, shall give, or cause to be given, notice of such intention, at least fifteen days before the expiration of such agreement. And if any of the said persons quit the service without giving such notice, (although the time thereof be expired,) he or she shall be considered as having deserted from the said service, and be punished accordingly; and every master, mistress, or employer, shall give to his or her servants, journeymen, or labourers, like notice of his or her intention no longer to keep or employ them, after the expiration of their time of service.

Provided always, that every domestic, servant, journeyman and labourer, engaged for a time, may be discharged by his or her master, mistress or employer, at or before the expiration of his or her engagement, without notice, upon full payment of the wages which he or she would have received for all the time of his or her service; if the time shall be expired, the person so discharged without notice, shall be entitled to wages for the full time included between the day when such notice should have been given, and the day of his or her discharge as aforesaid.

Article 4. Any domestic, servant, journeyman or labourer, engaged as aforesaid, by the month or longer space of time, or by the piece or job, who shall desert or abandon the service or job for which he or shall have been engaged, before the time agreed, shall be liable to a fine which shall not exceed twenty shillings.

Article 5. Whoever shall designedly harbour or conceal any apprentice or servant, engaged by written act or agreement, who shall have abandoned the service of his or her master or mistress, or who shall instigate or engage any apprentice or servant to abandon such service, shall, upon due proof thereof, incur, for each offence, a fine which shall not exceed five pounds currency.

Appendix E

An Act for the More Easy and Less Expensive Decision of Differences Between Masters and Mistresses and Their Servants, Apprentices, and Labourers, in the Country Parts of this Province
6 William IV, Chapter 27 (enacted 21 March, 1836)

Whereas it is expedient that the Justices of the Peace residing in the Country Parishes, extra-parochial places, Seigniories or Townships in each District of this Province, should be empowered to decide the differences which arise between Masters and Mistresses and their Apprentices, Servants, and Journeymen, in the several Country Parishes, extra-parochial places, Seigniories, or Townships in this Province (the Parishes of Quebec, Montreal and Three-Rivers excepted,) for the purpose of avoiding the great expenses attendant on the decision of causes of the kind aforesaid, in the Towns:

....

Firstly--That if any Apprentice or Servant of either sex, or Journeyman, who may be bound by Act of Indenture, or other written contract, for a longer time than one month, or by verbal agreement for one month, or for any shorter or longer period, shall be guilty of ill behaviour, refractory conduct, idleness, absence without leave, or dissipating his or her Master's, Mistresses' or Employer's effects, or of any unlawful act that may affect the interest, or disturb the domestic arrangements of such Master, Mistress, or such employer; such Apprentice, Servant, or Journeyman, may, upon complaint, and due proof thereof made by such Master, Mistress or employer, before two Justices of the Peace, at a special sitting, be by such Justices sentenced to pay a sum not exceeding two pounds ten shillings currency, and in default of payment, to be imprisoned in the common gaol of the District, or in the house of correction, for a term not exceeding fifteen days.

Secondly, that if any such Apprentice...bound or engaged as aforesaid, has any just cause of complaint against his or her Master...for any mistreatment, defect of sufficient or wholesome provisions, or for cruelty or other ill-treatment, or other matter of the same kind, such Master...may be prosecuted before two Justices of the Peace; and if the complaint shall appear to be well founded, such Justices of the Peace may condemn such Master...to pay a penalty not exceeding two pounds ten shillings currency.

Thirdly, that on complaint made by any Master...against his or her Apprentice...; or by any Apprentice... against his or her Master...of continued mis-usage, and repeated violations of the ordinary and established duties of the parties towards each other, any Justice of the Peace, at a special sitting, may, on due proof of the fact, annul the agreement or contract (whether verbal or written)....

Fourthly, that any Apprentice...who shall absent himself or herself, without leave, or shall altogether desert the service of such Master...shall, upon due proof of the fact, be condemned to make such time good to his Master...; or in case of default on the part of such Apprentice...he or she may be apprehended on the warrant of the Justice of the Peace, and committed to the common gaol of the District, or to the house of correction, for a time not exceeding fifteen days.

Fifthly, that if any such Apprentice...shall absent himself or herself, by day or by night, without leave, or shall altogether desert the service of his or her Master...such Apprentice...shall be proceeded against by warrant, under the hand and seal of any one Justice of the Peace.

Sixthly, that if any person shall knowingly harbour or conceal any such Apprentice...engaged as aforesaid, who may have deserted from the service of his or her Master...such person shall incur and pay a penalty not exceeding two pounds ten shillings currency... before any two Justices of the Peace in Special Session.

Seventhly, that no such Master...shall take and carry out of the District in which they reside, any such Apprentice or Servant, without the consent of such Apprentice or Servant, (or his or her parents or guardians, if a minor), except such as may be bound to the sea service.

Eighthly, that if any person shall knowingly entice, by any means whatever, any such Apprentice...so engaged as aforesaid, to depart from the service of his or her Master, Mistress, or employer, and that in consequence such Apprentice...shall depart from such service, any person or persons so offending shall be liable to a penalty not exceeding two pounds ten shillings currency, to be recovered as aforesaid, or in default of payment, shall be imprisoned in the common gaol of the District, or in the house of correction, for a time not exceeding one month.

Ninthly, that in all verbal agreements between Masters...and the Servants and Journeymen, for any longer period than a month, the party who shall not intend to continue the engagement beyond the term so agreed upon, shall be bound to give the other party fifteen days notice at least to that effect, otherwise the agreement shall be held to have been continued for one month, from the date of such notice; the whole under a penalty of two pounds ten shillings currency, and in default of payment of imprisonment in the common gaol of the District, or in the house of correction, during a period not exceeding fifteen days.

II. And be it further enacted by the authority aforesaid, that in case of the non-payment of the penalties aforesaid, with costs, within fifteen days after conviction, it shall be the duty of either of the Justices of the Peace, before whom such conviction shall have taken place, to issue his warrant, addressed to any Constable

or Bailiff whomsoever, to cause the amount of such penalty and costs to be levied according to Law, in the ordinary manner, and (in case of non-payment) by the seizure and sale of the goods and chattels of the Defendant; or it shall be lawful for such Justice of the Peace to commit such person to gaol or the house of correction, for a period not exceeding fifteen days; and such imprisonment shall be in the place and stead of the penalty.

....

IV. And be it further enacted by the authority aforesaid, that every prosecution for any offence against the provisions of this Act, shall be commenced within three calendar months after the offence shall have been committed, and not afterwards.

....

Appendix F

Punch's COMPLETE LETTER-WRITER,
"Letter From A Lady Inquiring the Character of A Servant."
Reprinted in the Montreal Gazette, August 10, 1844.

Madam--

Bridget Duster having applied to me for a place of maid-of-all-work, I beg to learn of you, as her last mistress, her fitness for the serious responsibilities of that situation. Having suffered so much from the impertinence and wickedness of servants--(I have often thought they were only sent into this world to torment respectable people),--you will, I am sure, forgive me if I appear somewhat particular in my enquiries.... There was a time when I thought all the world as good and honest as myself; but house-keeping wipes the bloom from the human heart, and makes us lock our tea-caddies. I have kept house for five-and-twenty years, in which time I have constantly endeavoured to find a servant who should be without a fault--yet, though I have given eight pounds a year, with tea and sugar--would you believe it?--I have never once succeeded. However, I must say it, I like the face of Bridget; I never saw a deeper small-pox. As for handsome servants, I never have 'em; they always think more of their faces than their fire-irons, and are puckering up their mouths at the looking glass when they should be rubbing the door-plate. Curls, too, I never suffer to cross my threshold. I know more than one instance in which curls have destroyed the peace of a family. For my money, a servant can't be too plain; in a word, I think ugliness to be a sort of cheap livery intended by nature for maids-of-all work--it keeps 'em in their place, and prevents 'em thinking of foolishness....

And now, ma'am, for the article of dress. Servants have never been servants since linsey-woolsey went out. It makes my very flesh creep to see 'em flaunting about, for all the world as if they were born to silk gowns and open work in their stockings. I have seen a servant go out for the day with a parasol! I prophesied her end, and--poor wretch!--so it came about. What I have suffered, too, from such presumption! I once had a creature who copied every new cap I had, violating my best feelings under my own roof!--Bridget looks a humble dresser, fit for a kitchen; I trust she is so.

I hope, however, she is sober. When servants are very plain, they sometimes, to revenge themselves on nature, fly to drink. This is shocking; for with such people, with all one's locking and bolting, one's brandy is never safe.

In the next place, does Bridget break? Not but what I always make my servants pay for all they destroy; still, they can't pay for one's nerves. Again, there is this danger--they may break beyond their wages.

Is Bridget honest? Pray, madam, be particular on this point, for I have been much deceived. I once took a servant with the finest character for honesty; and, only a week afterwards, detected her giving three cold potatoes to a little hurdy-gurdy foreigner with white mice.

Is Bridget civil? Will she bear wholesome reproof? A servant who answers is an abomination. It is clearly flying in the face of the best interests of society. Surely, people who pay wages have a right to find what fault they please; it is the natural privilege that marks the mistress from the maid. I would have a severe law to punish a servant who answers--even if right.

Is Bridget an early riser; without any reference to the time she may be allowed to go to bed? A good maid-of-all-work should, so to speak, be like a needle, and always sleep with one eye open.

Has Bridget any followers? Such creatures I never allow. I conceive that a servant ought to be a sort of nun, and from the moment she enters your house, should take leave of all the world beside. Has she not her kitchen for willing hands always to do something in? And then for company, doesn't she see the butcher, the baker, the dustman--to say nothing of the sweeps.

Is Bridget industrious--is she clean? I hope, for the poor creature's sake, that you may be able to answer these few questions to my satisfaction....With me, her duties will be few, but they must be punctually performed. Indeed, I require a servant to consider herself a sort of human kitchen-clock. She must have no temper, no sulks, no flesh-and-blood feelings, as I've heard impudent hussies call their airs and graces, but must go as regularly through her work as though she was made of steel springs and brass pullies. For such a person, theirs is a happy home in the house of

Your obedient servant,
Pamela Squaw.

Appendix G
Summons for William Gettes (a.k.a. Geddes)

District of Montreal, VICTORIA, BY THE GRACE.OF GOD, OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND, QUEEN, DEFENDER OF THE FAITH.

TO William Geddes of the City of Montreal, in the district of Montreal Hatter and furrier,

You are hereby Commanded to be and appear before our Justices of the Peace of the said District, in the Court of Special Sessions of the Peace, to be holden at the Court-House, in the City of Montreal, on Friday the twentieth day of October Instant at the hour of Two of the Clock in the afternoon, then and there to answer to the complaint made against you by Cornelius Kelly of the same place, apprentice who prosecutes you. For having frequently hitherto abused and illtreated the said Cornelius Kelly, And repeatedly violated your duties as such Master, And more particularly in that, you the said Geddes on the seventeenth day of October instant, without legal cause, provocation or inducement whatsoever did discharge the said Complainant from your service and forbid him to enter your house, & that you have since refused to receive or support him--the said Complainant--And to give your reasons why you should not be dealt with according to law, for such offence, in such case made and provided, otherwise judgment will be given against you by default in this action.

Witness, William Ermatinger, Esquire, one of the Justices of the said Court.

DATED AT MONTREAL, this Nineteenth day of October 1843, in the seventh year of our Reign.

(signed) William Ermatinger J.P.

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