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# The Law of Servants and the Servants of Law: Enforcing Masters' Rights in Montreal, 1830-1845

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The law governing masters and servants offers a unique point from which to examine the history of Montreal labour law during the early nineteenth century. The author examines the methods by which masters attempted to enforce their employment rights in the judicial district of Montreal during the years 1830 to 1845. Using primary sources from various Montreal court records, the author reconstructs the judicial and quasi-judicial processes that accompanied the manifold master-servant disputes. He concludes that while the letter of the law may have favoured masters, courts were relatively even-handed in adjudicating such disputes. He examines the role of newspaper advertisements as tools for protecting masters' rights. Through analysis of these advertisements the author paints a colourful and animated portrait of master-servant relations at that time. The article also focusses on the role of courts in interpreting disputes—especially those involving desertions of indentured servants. While the author concentrates his attention on the role of courts within the city of Montreal, he also draws a comparison with the role of courts outside the city limits. Although many similarities existed between the respective courts, there nevertheless remained significant differences.

Le droit régissant les relations entre employeurs et ouvriers constitue un excellent point de départ pour l'étude de l'histoire du droit du travail montréalais au début du XIX<sup>e</sup> siècle. L'auteur examine les moyens auxquels les employeurs avaient recours pour faire respecter leurs droits dans le district judiciaire de Montréal durant les années 1830-45. Il reconstruit les processus judiciaires et quasi-judiciaires associés aux différents conflits employeur-ouvrier en analysant diverses sources primaires provenant des dossiers des tribunaux montréalais. Il arrive à la conclusion que, bien que la lettre de la loi semble avoir été en général plus favorable aux employeurs, les tribunaux étaient relativement impartiaux dans la résolution de ce type de conflits. Il examine le rôle qu'ont joué les annonces placées dans les journaux à titre de moyens de protéger les droits des employeurs. À travers l'analyse de ces annonces, l'auteur présente un portrait coloré et vivant des relations employeur-ouvrier au début du XIX<sup>e</sup> siècle. L'article met également l'accent sur le rôle des tribunaux dans l'interprétation des conflits, en particulier ceux résultant de l'abandon de l'emploi par des ouvriers liés par contrat. Bien que l'auteur se concentre principalement sur le rôle des tribunaux dans la ville de Montréal, il effectue également une comparaison avec le rôle que jouaient les tribunaux en dehors des limites de la ville pour conclure que, malgré de nombreux points de ressemblance, il existait à ce niveau d'importantes différences.

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© McGill Law Journal 2001

Revue de droit de McGill 2001

To be cited as: (2001) 46 McGill L.J. 779

Mode de référence : (2001) 46 R.D. McGill 779

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## Introduction

### I. Newspapers as Quasi-judicial Tools

### II. The Role of Courts within City Limits

#### A. *Desertion Prosecutions*

1. Convictions
  - a. *The Police Court*
  - b. *The Court of Weekly and Special Sessions*
2. Suspended and Variant Dispositions
3. Acquittals

#### B. *Refusal to Obey Orders, Refusal to Work or Enter Service, and Negligence*

#### C. *Third Party Employment Offences*

### III. The Role of Courts outside City Limits

#### A. *Desertion Prosecutions*

1. Convictions
2. Suspended and Variant Dispositions
3. Acquittals

#### B. *Refusal to Obey Orders, Refusal to Work or Enter Service, and Negligence*

#### C. *Third Party Employment Offences*

## Conclusion

## Appendix: Figures

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## Introduction

On 26 January 1841, a seventeen-year-old apprentice painter and chair maker named Robert Bruce McIntosh stood before a Montreal court, charged with having deserted Thomas Albert Martin's service for the second time. McIntosh had earlier been convicted and sentenced to fifteen days' hard labour in the local prison, and was ordered to return to Martin's service immediately after his release. The day McIntosh's term of imprisonment was over, he sought refuge with his mother, but was arrested once again. In light of his previous conviction the court viewed him as incorrigible and sentenced him to two months in the Montreal Gaol.<sup>1</sup>

The story of Robert Bruce 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, a few are immortalized in contemporary judicial records and newspapers. Examination of the judicial archives for the courts that heard master-servant disputes within the city limits, as well as for the greater district of Montreal (which encompassed surrounding parishes outside the city), assists in reanimating the history of Montreal labour law during the early nineteenth century.<sup>2</sup>

The number and variety of cases clearly reflect that master-servant disputes—instigated by both parties—constituted a significant part of the legal business heard by the courts during this period. Through the use of primary sources, this article attempts to dissect the manner in which masters sought to enforce their employment rights in the judicial district of Montreal during the years 1830 to 1845. At a time when the contractual nature of these relationships was already well established and readily enforced by courts, analysis of the dispositions of these cases indicates that while the letter of the law favoured masters, courts were relatively even-handed in adjudicating such disputes.

## I. Newspapers as Quasi-judicial Tools

When a servant absented himself from service, refused to obey his master's orders, or otherwise proved negligent or obdurate, a master had a variety of legal and quasi-legal tools at his disposal. He could discharge his servant within the parameters

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<sup>1</sup> See *infra* note 109 and accompanying text for a further discussion of McIntosh's court appearances.

<sup>2</sup> For a discussion of sources consulted, see generally I.C. Pilarczyk, "'Too Well Used by His Master': Judicial Enforcement of Servants' Rights in Montreal, 1830-1845" (2001) 46 McGill L.J. 491.

of the applicable master-servant law or request that a notary (or a court) cancel an indenture.<sup>3</sup> He could also prosecute his servant in a court of law, advertise him as a deserter, or both. The case of an apprentice printer in Montreal in 1830 reflects a common approach. Following the apprentice's desertion, his master filed a complaint against him on 18 November 1830.<sup>4</sup> The following month he placed an advertisement in a local newspaper, stating that the "sole cause for his [apprentice's] absconding arises from the contagion of Idle and Dissolute Company, and a Propensity to Gambling."<sup>5</sup> The apprentice was likely arrested or returned shortly afterwards, as Tracy brought another proceeding against him later the same month.<sup>6</sup>

For many masters the issue of greatest immediacy would have been how to ensure that servants fulfilled the terms of their employment. For others, enforcement of master-servant law was a means of seeking justice and combatting desertion and delinquency. This section analyzes in detail the legal and quasi-legal options available to masters to enforce their rights vis-à-vis servants.

Masters who were unwilling to let their servants desert without recrimination, or who wished to protect themselves legally against liability, or both, often took advantage of newspaper advertisements. Desertion advertisements appeared in North American newspapers throughout the seventeenth and eighteenth centuries, and well into the nineteenth.<sup>7</sup> In earlier times in Canada similar advertisements were placed for runaway slaves, and unhappily, continued to appear in American newspapers in slaveholding states during this period. In Montreal masters commonly placed notices that employees had been discharged or had left employment,<sup>8</sup> and fathers renounced

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<sup>3</sup> For discussion of cancellation of indentures, see *ibid.* at 507-509.

<sup>4</sup> *Daniel Tracy v. Jean Baptiste Bourtron dit Larochelle* (18 November 1830), Archives nationales du Québec à Montréal [hereinafter A.N.Q.M.], Files of the Court of Quarter Sessions [hereinafter Q.S.(F.)].

<sup>5</sup> *The Vindicator and Canadian Advertiser* (14 December 1830).

<sup>6</sup> *Daniel Tracy v. Jean Baptiste Bourtron dit Larochelle* (23 December 1830), A.N.Q.M., Q.S.(F.).

<sup>7</sup> Historians appear to have given advertisements for runaway servants relatively short shrift. For discussion of such advertisements, see e.g. B.D. Palmer, *Working Class Experience, The Rise and Reconstitution of Canadian Labour, 1800-1980* (Toronto: Butterworths, 1983) at 28 (nineteenth-century Upper Canada); S.V. Salinger, *"To Serve Well and Faithfully": Labor and Indentured Servants in Pennsylvania, 1682-1800* (Cambridge: Cambridge University Press, 1987) (seventeenth- and eighteenth-century Pennsylvania).

<sup>8</sup> 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. This particular advertisement, however, triggered a response by Aaron and a rebuttal by Jones (*The Montreal Gazette* (11 January 1834) (Aaron's response); *The Montreal Gazette* (16 January 1834) (Jones's rebuttal)).

claims against their sons' earnings by publishing advertisements to that effect.<sup>9</sup> As such advertisements suggest, 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.<sup>10</sup> Advertisements also publicized employment opportunities,<sup>11</sup> and were placed by unemployed servants seeking positions.<sup>12</sup> Most relevant for the purposes of this article, however, is the multitude of advertisements placed by English and French masters pertaining to servants who had fled from their service.<sup>13</sup>

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 in them were identified as later having been prosecuted; second, they often provide information on

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<sup>9</sup> 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 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.

<sup>10</sup> See M.J. Childs, *Labour's Apprentices: Working-Class Lads in Late Victorian and Edwardian England* (Montreal: McGill-Queen's University Press, 1992) at 15.

<sup>11</sup> Such advertisements were not examined, as they are beyond the scope of this work. In theory, however, these advertisements could be used to analyze demands for labour during this period, although their utility seems limited. See G.L. Hogg, *The Legal Rights of Masters, Mistresses and Domestic Servants in Montreal, 1816-1829* (M.A. Thesis, McGill University, 1989) at 20 [unpublished], describing them as "repetitive and uninformative". While I have not discussed such advertisements, an exceptional example appearing in *The Montreal Gazette* (30 May 1845) is worth noting, in which a mistress sought employment for her servant: "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 unexceptionable and satisfactory references."

<sup>12</sup> 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").

<sup>13</sup> But see P.H. Audet, *Apprenticeship in Early Nineteenth Century Montreal, 1790-1812* (M.A. Thesis, Concordia University, 1975) at 157 [unpublished]. Audet states that "[d]esertion from the service of the master appears to have been a problem peculiar to British-Canadian masters. Ads in the newspapers of Montreal were placed by British-Canadian masters." While advertisements during the period examined here were placed much more often by British-Canadian masters, examination of a greater range of newspapers indicates that they were also placed by French-Canadian masters in French-language newspapers. See e.g. *infra* notes 17, 21. It should be observed that a considerably larger number of English newspapers existed in Montreal during this period, but that French-Canadian masters were well represented in desertion prosecutions.

the capacity in which the servant was employed; and third, they represent a quasi-legal tool used by masters to enforce their interests.<sup>14</sup>

For the years 1830 to 1845, advertisements of this kind were found in seven of the ten Montreal newspapers examined.<sup>15</sup> Analysis of these papers identified seventy-two servants who had deserted their master's service within the judicial district of Montreal.<sup>16</sup> Of these advertisements, nearly two-thirds were for apprentices.<sup>17</sup> A vari-

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<sup>14</sup> E.g. Quimby concludes that the law in colonial Pennsylvania "was no great deterrent ... [as evidenced by] numerous advertisements in the newspapers for runaways" (I.M.G. Quimby, *Apprenticeship in Colonial Philadelphia* (New York: Garland Publishing Inc., 1985) at 85). The insights offered by these advertisements are not limited to the enumerated categories discussed here. While not pertinent here, the advertisements offer information on the attire worn by servants of the time. See Audet, *ibid.* at 91-92. The advertisements 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 7 (noting at 108-109 that in the context of colonial Pennsylvania the language of description used for 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.* at 109). Descriptions used in Montreal were intended primarily to aid detection, such as "out-mouthed [with] large teeth" (*Canadian Courant* (11 September 1833)), possessing a "large drooping nose" (*Canadian Courant* (16 May 1832)), or "pock-pitted in the face" (*The Montreal Gazette* (3 October 1833)).

<sup>15</sup> 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 and Canadian Advertiser* (1830-1837). The greater frequency of ads for 1830-1836 largely mirrors the greater number of issues available for those years. Advertisements that concerned servants who had deserted for areas outside the judicial district of Montreal were not included.

<sup>16</sup> See fig. 1, below. As a point of comparison, see D.T. Ruddell, *Apprenticeship in Early Nineteenth Century Quebec, 1793-1815* (M.A. Thesis, Université Laval, 1969) at 170-71 [unpublished] (approximately fifty deserting apprentices advertised in Quebec from 1790 to 1812); Audet, *supra* note 13 at 157 (twenty-three advertisements for deserting apprentices in Montreal from 1790 to 1812); G. Hamilton, *Contract Incentives and Apprenticeship: Montreal, 1791-1820* (Ph.D. Thesis, Queen's University, 1993) at 129 [unpublished] (ten advertisements in *The Montreal Gazette* for deserting apprentices in Montreal from 1791 to 1807). Salinger's research indicates that the *Pennsylvania Gazette* ran advertisements for 87 urban servants (and 365 rural servants) for the period 1744 to 1751 (*supra* note 7 at 105). 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 of identifying other runaways.

<sup>17</sup> 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 more frequent as printers had readier (and cheaper) access to this medium. Ludger Duvernay, proprietor of *La Minerve*, advertised five runaways in four separate advertisements between January 1832 and August 1836: *La Minerve* (2 January 1832), *The Vindicator and Canadian Advertiser* (20 August 1833), *La Minerve* (27 August 1835), and *La Minerve* (4 August 1836). Advertise-

ety 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, more so than would have been the case for domestic servants, labourers, or journeymen. As a result, many masters were unwilling to accept their apprentices' desertions 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 also usually minors and hence more vulnerable to mistreatment and exploitation; desertion may have been their most immediate recourse.

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 this notice, and 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.<sup>18</sup> One unusual advertisement revealed a strained family or employment relationship or both, stating that as the son had "left my employ without any just provocation," he therefore "forbid[s] all persons harbouring or trusting him on my account."<sup>19</sup> Other masters placed advertisements replete with vivid graphics of runaways, using images apparently used in earlier years to advertise runaway slaves.<sup>20</sup> The most common reward, when one was offered, was one or two pence.<sup>21</sup> Occasionally other rewards were offered, such as a "Brummagem-

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ments for runaway apprentice printers also ran for longer periods than typical advertisements. The last of the advertisements mentioned above, for a "garçon-imprimeur", appeared recurrently for an astonishing eight months! Among the other most common occupations of runaways were apprentice and journeyman painter, domestic servant, and apprentice joiner, tinsmith, and blacksmith.

<sup>18</sup> E.g. 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 (*The Montreal Gazette* (9 August 1836)).

<sup>19</sup> *The Canadian Courant* (6 March 1830). In other instances fathers placed advertisements as a means of insulating themselves from any debts incurred by their runaway children or to ensure that masters did not hold them liable for their children's desertion.

<sup>20</sup> See *The Vindicator and Canadian Advertiser* (27 June 1834). Such a 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.

<sup>21</sup> See e.g. *La Minerve* (17 August 1835):

Deux Sols de Récompense. DÉSSERTÉ, du service du sous-signé, vendredi dernier, le nomme LOUIS GABOURIE, apprenti peintre, dûment engagé. La sus dite récompense

halfpenny".<sup>22</sup> 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".<sup>23</sup> Such advertisements for women 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 of this sort, the servant was usually alleged to have left with his master's property, thus implicating both desertion and theft.<sup>24</sup> In one instance a concerned master offered ten pounds for information, unsure whether his servant had deserted or taken ill, and wishing to provide medical care if needed.<sup>25</sup>

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 any account."<sup>26</sup>

Several general conclusions may be drawn from desertion advertisements. First, these advertisements commonly forbade "crediting or harbouring" the servant or the like. Given the limited financial means of the average servant and the prevalence of credit transactions in the Montreal economy, masters had a double incentive to place such advertisements, both to protect themselves against any debts contracted in their name and to foreclose possible sources of credit. Since servants were often entrusted to secure goods or services for their masters on credit, these advertisements were a

sera payée à ceux qui lui donneront des nouvelles; defense est faite à personne de loger ou employer le dit apprenti. MICHEL MOSES, peintre, Montreal, 17 adut.

<sup>22</sup> *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 article, 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 D. Fyson, *The Court Structure of Quebec and Lower Canada 1764 to 1864* (Montreal: Montreal History Group, 1994) at 5. Local newspapers routinely published valuations for the numerous types of currency in common use.

<sup>23</sup> *The Montreal Gazette* (30 September 1830). She was likely an apprentice domestic.

<sup>24</sup> See e.g. *The Vindicator and Canadian Advertiser* (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 has 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 be entitled to the above reward. JOHN MORGAN. Bleury Street, 29th Jan. 1836.

<sup>25</sup> *The Canadian Courant* (21 April 1832).

<sup>26</sup> *The Montreal Gazette* (10 June 1834).



way of announcing that the particular servant in question was no longer in the master's employ, and therefore had no legal right to incur debts in the master's name.

Second, these advertisements were designed to impede a deserter's ability to flee the locale or obtain employment elsewhere, serving as a reminder to others that the master had a justiciable contractual interest in his servant. Master-servant law provided for the right to prosecute third parties for harbouring, enticing, or forcibly detaining servants; advertisements served as notice to potential employers that the servant in question was still legally in another's service.<sup>27</sup>

Third, advertisements—especially those which make it clear that the master was not seeking return of his wayward servant—likely served a social function.<sup>28</sup> Masters faced with intransigent servants, an insatiable demand for skilled labour, and the knowledge that many servants could readily re-establish themselves in other communities may have sought to warn potential employers of the untrustworthy or peripatetic nature of these runaways.<sup>29</sup> Masters may also have sought to take a stand against the

<sup>27</sup> For examples of third party prosecutions, see Parts II.C, III.C, below.

<sup>28</sup> For instance, *The Montreal Transcript* of 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), where a reward was offered “to any Person or Persons, who will apprehend and lodge the Runaway in the Jail of Montreal or Quebec”; *The Vindicator and Canadian Advertiser* (3 April 1835), stating that “[a]ny communication respecting [the runaway apprentice] ... will be thankfully received.”

<sup>29</sup> Some advertisements were explicit negative character references. See e.g. *The Vindicator and Canadian Advertiser* (14 December 1830), which published an advertisement for an apprentice printer stating that “the sole cause for his absconding arises from the contagion of Idle and Dissolute Company, and a Propensity to Gambling ...”; *The Canadian Courant* (31 December 1830) published an advertisement that stated: “I CAUTION any person from hiring a man of the name of DANIEL DEEGAN ... without enquireing [*sic*] his character from MAJOR COLCLOUGH, Dorvillier.” An interesting variant appeared in *The Vindicator and Canadian Advertiser* (13 August 1830), which stated that a 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 to refute a charge of desertion:

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 ...

While the advertisement placed by Robb was not located, the rejoinder above is particularly illuminating as publicly casting aspersions on a master's character was no doubt a courageous act. It seems equally clear, however, that the apprentice felt legally justified in leaving his service. Such “duelling ads” were not uncommon in eighteenth- and nineteenth-century America. See W.J. Rorabaugh, *The*

pernicious phenomenon of desertion, as the language of some advertisements explicitly states. Masters may even have been prompted by a desire to exact retribution.<sup>30</sup> The “social function” aspect to these advertisements is further supported by the fact that a majority of them offered token rewards such as a penny.<sup>31</sup> 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.

## II. The Role of Courts within City Limits

Perennial shortages of skilled labour ensured that many servants were in high demand. Servants thus had a powerful financial incentive to desert before expiry of their terms of employment and to seek 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. While servants deserted most commonly with the intent of improving their job prospects, they were not always driven, however, by mere opportunism. Some servants fled to escape domineering, exploitative, or abusive masters, or were motivated by

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*Craft Apprentice: From Franklin to the Machine Age in America* (New York: Oxford University Press, 1986) 49-50; see also *supra* note 8.

<sup>30</sup> See e.g. *The Vindicator and Canadian Advertiser* (7 October 1836), which advertised 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”; *The Montreal Transcript* (25 August 1838) (warning the public not to harbour or employ a runaway apprentice, “as much for example as respect to justice”). Jeremy Webber reached similar conclusions regarding the purpose of such advertisements in the context of nineteenth-century Ontario. See J. Webber, “Labour and the Law” in P. Craven, ed., *Labouring Lives: Work & Workers in Nineteenth Century Ontario* (Toronto: University of Toronto Press, 1995) 105 at 148-49.

<sup>31</sup> To put this amount into perspective, *The Montreal Transcript and General Advertiser*, Lower Canada’s first penny newspaper, appeared on 4 October 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 Wilkie can possibly be, even were he a perfect Caliban. ... Pray, how old may you be, if you will allow us to ask so bold a question?

Note, nevertheless, that 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. See *infra* note 85 and accompanying text.

homesickness or a desire to be closer to loved ones.<sup>32</sup> In so doing, runaways may have sought to escape via outbound ships or enlisted in the armed forces.<sup>33</sup> Most likely, though, the majority remained within their community and attempted to re-establish themselves with another master.

Should a master have sought legal redress for a refractory servant, he could prosecute before Montreal courts, as well as before justices of the peace residing in the outlying areas that encompassed the greater judicial district of Montreal. As the city proper was governed by different legislative enactments than that of the outlying towns and parishes, this article shall analyze separately the judicial remedies available to masters in these geographical areas.

Master-servant law within the city of Montreal was explicated in two primary legislative enactments during this period: the provincial *Statute of 1817*,<sup>34</sup> and municipal bylaws for the city known as the *Police Regulations*.<sup>35</sup> Essentially, the *Statute of 1817* set out general procedural parameters concerning master-servant disputes, while the *Police Regulations* offered much more detailed provisions for their adjudication. As article 2 of the *Police Regulations* stipulated, the primary employment offences were desertion, absenteeism, negligence, refusal to perform one's job duties, and refusal to obey masters' commands.<sup>35</sup> Of these, desertion was the most common offence.

## A. Desertion Prosecutions

### 1. Convictions

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, and advertisements no doubt played a part in this process. While it is safe to assume that a significant percentage of deserters were never prose-

<sup>32</sup> See e.g. Salinger, *supra* note 7 at 103-104. Salinger notes that women were far more likely to desert to join spouses or lovers than were men (*ibid.* at 103).

<sup>33</sup> See e.g. *ibid.* at 103. Opportunities to join the armed forces would likely have been most frequent during the rebellions of 1837-38. For a discussion of arrest rates regarding runaways, see text following note 57; fig. 4, below, which suggests that servants were not often successful in deserting their masters.

<sup>34</sup> *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, 1817 (Qc.)*, 57 Geo. III, c. 16 [hereinafter *Statute of 1817*]. See generally Pilarczyk, *supra* note 2.

<sup>35</sup> *Compilation of the Bye-Laws and Police Regulations in Force in the City of Montreal* (Montreal: James Starke & Company, 1842) at 117-20 [hereinafter *Police Regulations*]. See Pilarczyk, *ibid.*

<sup>36</sup> *Police Regulations, ibid.* at 118, para. 10. Analysis of judicial records suggests that the above offences were often subsumed under the general rubric of "desertion".

cuted, judicial records reveal that employment offences 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.<sup>37</sup> 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.<sup>38</sup>

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.<sup>39</sup> It is irrefutable, however, that servants deserted in large numbers in Montreal during this period, and that masters often used the machinery of the legal system to enforce their rights. Eighty-nine cases were identified before the Police Court, 133 cases before the Court of Weekly and Special Sessions, and 76 cases before justices of the Court of Quarter Sessions for the city of Montreal. Coupled with an additional 72 runaway servants identified only in newspaper advertisements, and 91 servants imprisoned for breach of service who were found within the records of the Montreal Gaol, a total of 461 breach of service cases were documented for the city of Montreal.<sup>40</sup>

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<sup>37</sup> Besides prosecutions and newspaper advertisements, the terms of indentures could themselves play a part in combatting desertion, although legal proceedings were often needed to enforce them. See generally Hamilton, *supra* note 16. The number of cases found before lower courts in Montreal is in marked contrast to the observations Craven has made about the sparsity of such suits in nineteenth-century Ontario. See P. Craven, "The Law of Master and Servant in Mid-Nineteenth-Century Ontario" in D.H. Flaherty, ed., *Essays in the History of Canadian Law*, vol. 1 (Toronto: University of Toronto Press, 1981) 175 at 181 [hereinafter "Law of Master and Servant"]. For discussions of apprentice misbehaviour and prosecutions for employment offences, see e.g. Audet, *supra* note 13 at 101-103; Ruddell, *supra* note 16 at 164-69.

<sup>38</sup> See e.g. Sahinger, *supra* note 7 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, *ibid.* at 143-44).

<sup>39</sup> In addition, prosecutions could antagonize neighbours and other members of the community. See Webber, *supra* note 30 at 131.

<sup>40</sup> Due to the difficulty in dividing advertisements between the city of Montreal proper and the greater district of Montreal, all relevant advertisements have been included in this figure, rather than attempting to ascertain how many pertained specifically to masters and servants outside city limits. Likewise, the number of imprisoned servants found within the records of the Montreal Gaol who were employed outside city limits is not ascertainable. These figures are for separate prosecutions, cross-indexed to prevent misidentification. Undoubtedly these figures are far from complete, due to the vagaries of the records. As a point of comparison, in Quebec City 202 apprentices were identified as having deserted during the period 1800 to 1815, not including other varieties of servants. See generally J.-P. Hardy & D.-T. Ruddell, *Les apprentis artisans à Québec 1660-1815* (Montreal: Presses de l'université du Québec, 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 dc-

While the dispositions of cases heard before courts were frequently published in local newspapers, desertion proceedings were sufficiently recurrent so as rarely to merit attention. Newspapers did occasionally, however, publish information on such proceedings in a manner which indicates that 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 SERVANTS!"<sup>41</sup> The *Montreal Transcript* included a similar account (reprinted from another local newspaper) which it 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 Hupe, 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.<sup>42</sup>

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.<sup>43</sup> The records of the proceedings before

sertion, and nineteen times for disobedience, during the period 1822 to 1859. Furthermore, a few ambiguous cases were found that suggest courts were willing to use criminal sanctions against adult servants. See C.L. Tomlins, "The Ties That Bind: Master and Servant in Massachusetts, 1800-1850" (1989) 30 *Labor Hist.* 193 at 212. Adult servants in Massachusetts (except for seamen, African and Native Americans, and indentured servants) were disciplined through civil suits (*ibid.* at 217).

<sup>41</sup> *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. See *e.g.* *La Minerve*, *infra* note 76; *L'Ami Du Peuple*, *infra* note 140.

<sup>42</sup> *The Montreal Transcript* (15 February 1842) (citing the *Morning Courier and Commercial Messenger*).

<sup>43</sup> While this observation would be true under virtually any circumstances, prison conditions in Montreal at 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.* M.A. Poutanen, "Reflections of Montreal Prostitution in the Records of the Lower Courts, 1810-1842" in D. Fyson, C.M. Coates & K. Harvey, eds., *Class, Gender and the Law in Eighteenth- and Nineteenth-Century Quebec: Sources and Perspectives* (Montreal: Montreal History Group, 1993) 99 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

these courts allow for a systematic analysis of the variety of judicial 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 source used for this analysis. Nevertheless, records from other courts also proved helpful. Analysis of the complaints filed before the Court of Weekly and Special Sessions, as well as of those disposed of summarily by justices of the Court of Quarter Sessions, offer information on the prevalence of breach of service cases among different categories of servants. With respect to the Court of Quarter Sessions, journeymen, labourers, and apprentices made up the preponderance of servants prosecuted during this period, accounting for over 80 percent of total prosecutions as shown in Figure 2. Figure 3 indicates that before the Court of Weekly and Special Sessions, they constituted nearly 60 percent. That three times as many cases before this latter court did not allow for identification of servants' occupations may account for this difference.

Similarly in both courts, domestic servants comprised between 8 and 10 percent of all prosecutions. Miscellaneous servants, however, made up four times as many defendants before the Court of Weekly Sessions as before justices of the Court of Quarter Sessions. Why this group of servants—which included such occupations as shop clerk, cart driver, and milkman—would have been so much more prevalent before one court than the other can only be a matter for speculation. It should be noted, however, that differences in nomenclature (*e.g.* whether a cart driver was identified as such, rather than simply as a “servant” or “labourer”) could help explain this phenomenon.

#### *a. The Police Court*

Many desertion proceedings in Montreal were initiated before the Police Court. While the surviving records of the Police Court intersect with the period covered by this article for only a short time (July 1838 to January 1842), these records allow for another layer of analysis of how the law responded to breach of service cases. The police magistrate issued arrest warrants for deserters and processed arrests based on these warrants.<sup>44</sup> Once servants were arrested, the magistrate would release them on

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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 to escape exposure to the harsh winter, intentionally committing or threatening to commit crimes so as to be arrested. See *e.g.* Poutanen, *ibid.* at 108-109.

<sup>44</sup> Many arrests were based on “suspicion of desertion”, and in all likelihood this pertained almost exclusively to seamen. Such cases are therefore excluded from analysis unless clearly identified as involving non-seamen.

bail or jail them pending appearances before the Court of Weekly and Special Sessions or the justices of the Court of Quarter Sessions.<sup>45</sup>

The Police Court records occasionally offer picturesque glimpses into the world of master-servant relations that are otherwise unavailable. For example, on 2 December 1840 an apprentice was arrested by the police for “[f]orcing his master’s door at midnight,” most likely as he had skulked outdoors after hours. For this offence he was admonished by the police magistrate and then discharged.<sup>46</sup> 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 laborious processes, especially if defendants or their masters or both were not entirely cooperative in appearing in court. For example, on 25 September 1838 John Fullum swore an affidavit charging Olivier Mailloux with desertion, and the police magistrate accordingly issued an arrest warrant.<sup>47</sup> On 9 October Mailloux and his master both defaulted on their scheduled court appearance and the police magistrate issued another arrest warrant.<sup>48</sup> Mailloux was arrested and released on bail for his appearance at the following week’s Court of Weekly Sessions.<sup>49</sup> On 16 October both parties again de-

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<sup>45</sup> 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 Court of Weekly and Special Sessions. As the newspaper account accompanying note 42 indicates, police magistrates also sat as members of the Court of Weekly and Special Sessions, and had essentially the same jurisdiction as justices of the peace. Thus, on many occasions a defendant was arrested and brought before a police magistrate and the case was heard the same day before the Court of Weekly or Special Sessions. The dispositions 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 that have not otherwise survived can therefore be gleaned from the Police Court registers. These cases have been compiled in fig. 5, below. It is 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. See D. 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, 1995) at 34-35 [unpublished, hereinafter *Justices of the Peace in the District of Montreal*].

<sup>46</sup> *Domina Regina v. John Smith* (2 December 1840), A.N.Q.M., Registers of the Police Court [hereinafter P.C.(R.)] 34.

<sup>47</sup> *Queen v. Olivier Mailloux* (25 September 1838), A.N.Q.M., P.C.(R.) 120. It is a striking element of the judicial processes of this period that courts often issued arrest warrants for obdurate servants, rather than summonses to appear in court. See e.g. *Justices of the Peace in the District of Montreal*, *supra* note 45 at 313.

<sup>48</sup> *John Fullum v. Olivier Mailloux* (9 October 1838), A.N.Q.M., Registers of the Court of Weekly Sessions [hereinafter W.S.S.(R.)] 247 [hereinafter *Olivier Mailloux* (9 October 1838)].

<sup>49</sup> *Queen v. Olivier Mailloux* (9 October 1838), A.N.Q.M., P.C.(R.) 138.

faulted on their court appearance;<sup>50</sup> the police magistrate therefore issued another arrest warrant for Mailloux.<sup>51</sup> Mailloux was finally tried on 23 October and fined twenty shillings and costs.<sup>52</sup>

As Mailloux's case suggests, servants arrested for desertion were either released on bail or imprisoned to await trial. Although many were released on bail, insofar as many servants were of limited means, it is no surprise that a considerable number were imprisoned before trial.<sup>53</sup> As a result, some servants who were later acquitted spent lengthy times in prison. By way of example, in the summer of 1841 a journeyman carriage maker was arrested and bound over to the Court of Special Sessions, spending four days in prison before charges were dismissed against him.<sup>54</sup> Another servant was incarcerated for a week before being acquitted on the grounds that he had not entered into the prosecutor's service.<sup>55</sup> These cases were not unusual, and other servants endured even lengthier periods of pretrial incarceration.

For undisclosed reasons a small number of prosecutions were referred to the Court of Quarter Sessions for summary disposition. In all likelihood they were referred to that court as the timing of the prosecution coincided with the court's sitting. Only four such cases were identified, three of which clearly intersected with a session of that court. The one ambiguous case involved a servant arrested and admitted to bail in July 1838 to appear at the Court of Quarter Sessions.<sup>56</sup> Curiously, the records of this court contain a recognizance in the servant's name, but dated eight months later, perhaps for a separate offence or as the case had been postponed.<sup>57</sup>

During the period July 1838 to January 1842, the police magistrate issued 134 arrest warrants for servants. While the registers of the Police Court suffer from limitations, they allow for some extrapolation on the efficacy of the Montreal police at ar-

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<sup>50</sup> *John Fullum v. Olivier Mailloux* (16 October 1838), A.N.Q.M., W.S.S.(R.) 254 [hereinafter *Olivier Mailloux* (16 October 1838)].

<sup>51</sup> *Queen v. Olivier Mailloux* (16 October 1838), A.N.Q.M., P.C.(R.) 143.

<sup>52</sup> *John Fullum v. Olivier Mailloux* (23 October 1838), A.N.Q.M., W.S.S.(R.) 257. Unfortunately, no information exists on why Fullum defaulted on his court appearance on two occasions, or why the police magistrate continued to issue arrest warrants for Mailloux.

<sup>53</sup> One such example involved a servant charged with assaulting his master before the Police Court, who was "committed for want of bail" (*Domina Regina v. William Griffiths* (11 May 1840), A.N.Q.M., P.C.(R.) 152 at 152).

<sup>54</sup> *Domina Regina v. Andre Moses* (7 June 1841), A.N.Q.M., P.C.(R.) 200; *Hypolite St. Amour v. André Moses* (11 June 1841), A.N.Q.M., W.S.S.(R.) 153 (dismissed with costs).

<sup>55</sup> *Domina Regina v. Charles Requé dit Lalonde* (29 October 1839), A.N.Q.M., P.C.(R.) 288; *Isidore Charlebois v. Charles Rique dit Lalonde* (5 November 1839), A.N.Q.M., W.S.S.(R.) 617 [hereinafter *Isidore Charlebois*].

<sup>56</sup> *Queen v. Etienne Beneche dit Lavictoire* (20 July 1838), A.N.Q.M., P.C.(R.) 29.

<sup>57</sup> *Augustin Lamorte v. Etienne B. Lavictoire* (28 March 1839), A.N.Q.M., Q.S.(F.).



resting runaway servants. Figure 4 indicates that approximately 72 percent of warrants resulted in arrests, suggesting that, for whatever reason, many servants who deserted did not leave the city. In all likelihood most deserters sought employment with another master in the city. 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 that have not survived in other judicial records, for a total of eighty-nine cases. The majority of these cases were most likely heard before the Court of Weekly and Special Sessions. Figure 5 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. Nearly one-third of these fifty-three prosecutions resulted in the defendant's 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,<sup>58</sup> such as the ease brought by Thomas Albert Martin against one of his apprentice painters.<sup>59</sup> A disproportionately large number of these settled cases occurred in 1841, suggesting that during that time the presiding police magistrate took greater pains to encourage the parties to settle rather than to continue with the adversarial (and often protracted) process of litigation.

Once formal proceedings had progressed further, while courts still freely gave leave to parties to settle out of court, settlement may have been less likely. This was perhaps because the nature of adversarial proceedings tended to cement each side's stance towards its antagonist. Nonetheless, 2 out of 133 suits before the Court of Weekly and Special Sessions were explicitly settled, such as the case in which a master and his servant appeared before the court and requested permission to drop proceedings, to which the court acceded.<sup>60</sup>

These cases and others like them illustrate that courts saw one of their functions as facilitating amicable resolution of disputes, rather than automatically interposing the heavy hand of the law between what were essentially personal relationships. In-

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<sup>58</sup> As fig. 5 illustrates, 35.8 percent of the cases identified solely within the records of the Police Court were settled.

<sup>59</sup> *Domina Regina v. Samuel Jackson* (30 March 1842), A.N.Q.M., P.C.(R.) 45. This was one of only three desertion cases, found at the very beginning of this particular register, most likely as the preceding register was full. As mentioned, Thomas Albert Martin also twice prosecuted another of his apprentices, Robert Bruce McIntosh, a year prior to this proceeding. See text accompanying note 1; *infra* notes 109-15.

<sup>60</sup> *André Giguere v. Pierre Delisle* (19 April 1834), A.N.Q.M., W.S.S.(R.) 838. See fig. 6, below. It is likely that this result is artificially low, especially as nearly 10 percent of the judgments in these cases were not identifiable. It is reasonable to conclude that a significant number of these unidentifiable judgments consisted of settlements, especially as information on convictions was often retrievable from multiple sources.

deed, settling disputes in a non-adversarial manner was a common juridical function, especially in rural areas where such a resolution was infinitely preferable to the possible negative repercussions that a court judgment might engender.<sup>61</sup> Unfortunately, it is not possible to know the conditions under which cases such as these were settled.

In other instances masters requested that their servants be discharged from prison prior to trial, perhaps as they felt pretrial incarceration had been sufficient punishment. A house servant was arrested and committed to trial for desertion in 1838, but was discharged from prison at his master's request.<sup>62</sup> Another servant was arrested for desertion and discharged at his master's bidding, yet was rearrested the following day.<sup>63</sup> What accounts for this change of heart cannot be ascertained, but one possible explanation is that the servant was discharged from prison with the understanding that he return to service and yet failed to do so. In all instances involving imprisonment of servants, the servants could be released at any time prior to trial or expiration of their sentence, if they consented to return.<sup>64</sup>

### b. *The Court of Weekly and Special Sessions*

As previously mentioned, desertion prosecutions commenced in the Police Court were primarily adjudicated by the Court 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

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<sup>61</sup> See e.g. S. Lewthwaite, "Violence, Law and Community in Rural Upper Canada" in J. Phillips, T. Loo & S. Lewthwaite, eds., *Essays in the History of Canadian Law*, vol. 5 (Toronto: University of Toronto Press, 1994) 353 at 368-69.

<sup>62</sup> *Queen v. Lewis Wickman* (6 October 1838), A.N.Q.M., P.C.(R.) 135; *Queen v. Lewis Wickman* (8 October 1838), A.N.Q.M., P.C.(R.) 137 at 137 ("the prisoner was discharged from the Common Gaol, at the request of the private prosecutor Henry Walmsley").

<sup>63</sup> *Queen v. Theophile Lafontaine* (8 February 1839), Montreal, A.Q.N.M., P.C.(R.) 283 at 283 (arrested for desertion, "discharged by consent of his Master"); *Queen v. Theophile Lafontaine* (9 February 1839), A.N.Q.M., P.C.(R.) 284 at 284 ("on charge of desertion on the affidavit of [his master] committed for trial").

<sup>64</sup> This point is made in *Justices of the Peace in the District of Montreal*, *supra* note 45 at 358, n. 794. The number of cases in which servants were discharged from prison before their sentences were completed can be ascertained only by examination of the relevant registers of the Montreal Gaol. My examination of the registers for 1830 to 1845 indicates that this happened fairly frequently. See e.g. Commitment of Mary Rudd (incarcerated 10 April 1831), A.N.Q.M., Register of the Montreal Gaol [hereinafter M.G.(R.)] ("condemned to pay a fine of one pound and one week imprisonment from 10 April", but discharged on 11 April). In exceptional cases, servants could even be pardoned after conviction, as was the case with Robert Bruce McIntosh. See text accompanying note 115.

illustrate the scope of the judgments rendered, a few representative examples of sentences imposed upon conviction will be discussed.<sup>65</sup>

Servants appearing before the Court of Weekly and Special Sessions were convicted in approximately 60 percent of the cases. In three cases defendants were convicted *in absentia* by virtue of their having defaulted in making their scheduled court appearances. These records also suggest that the overall conviction rate for the years 1838 to 1843 (despite the unusually high rate in 1840) was markedly lower than that for the years 1832 to 1835, with a concomitant rise in the rate of dismissed cases.

Sentences upon conviction exhibited considerable variety.<sup>66</sup> The Court of Weekly and Special Sessions most often imposed costs, imprisoned the defendants, ordered them to return, or imposed a fine. Over 40 percent of defendants were explicitly ordered to return to service within a specified time upon pain of imprisonment. As shown in Figure 7, servants were incarcerated outright in approximately one-sixth of those cases that resulted in conviction. Costs were assessed against servants in 78.3 percent of cases, while fines were imposed in nearly 50 percent. The length of threatened prison terms in the case of default differed dramatically. An apprentice shoemaker was ordered to return within three days or face fifteen days in prison,<sup>67</sup> while an apprentice tailor faced one month's imprisonment, but was ordered to pay only half costs, implying that the court felt both parties shared fault.<sup>68</sup>

One of the many servants who appeared within the annals of employment prosecutions for having deserted the service of Henry Talon *dit* Lesperance, shipwright and boat builder, was fined twenty shillings and costs in 1835. The justices postponed further judgment, however, to decide whether they could order the servant to return to service. They concluded that they could, and imposed the sentence of one month in jail for default.<sup>69</sup> Likewise, an apprentice to Workman and Bowman Printers faced two

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<sup>65</sup> Fig. 6, below, shows the overall disposition rates for all prosecutions before the Court of Weekly and Special Sessions. The dispositions found are as follows: conviction; dismissed prosecutions; prosecutor's default; defendant's default; prosecution settled; servant discharged by prosecutor's request; defendant defaulted but acquitted; and dispositions that could not be identified.

<sup>66</sup> Cases in which there were more than one defendant are categorized as separate prosecutions. Prosecutions involving multiple defendants were virtually always those in which the defendants were sailors, and are excluded from consideration.

<sup>67</sup> *Elie Chassé v. Joseph Lacroix* (25 August 1835), A.N.Q.M., W.S.S.(R.) 251; see also *John and William Molson v. Thomas Hodges* (26 May 1835), A.N.Q.M., W.S.S.(R.) 121 (maltster employed by Molson's Brewery ordered to return "immediately to accomplish his time", in default of which to serve fifteen days' imprisonment, and fined twenty shillings and costs).

<sup>68</sup> *Charles Mudford v. John Carroll* (3 November 1835), A.N.Q.M., W.S.S.(R.) 331.

<sup>69</sup> *Henry Lesperance v. Joseph Gratton* (31 March, 7 April 1835), A.N.Q.M., W.S.S.(R.) 81, 87. Unfortunately, the particular circumstances of Gratton's case are not recorded.

months' incarceration if he failed to "forthwith return" to his master's service.<sup>70</sup> In a few instances, however, courts ordered servants to return to service or face paying a fine, rather than on pain of imprisonment. In 1833 an apprentice tailor was ordered to pay costs and return to service or pay a penalty of ten pounds—an unusually large potential fine, especially for an apprentice. One possible explanation for the heavy fine was the testimony of another apprentice, who testified that the defendant had sought a discharge as he was offered the sum of ten pounds to enter another master's service.<sup>71</sup> Alternatively, 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 would presumably have been triggered by the act of desertion itself.<sup>72</sup>

Courts also sporadically ordered servants back to service without the *threat* of a fine or imprisonment in the case of default. In these cases they frequently assessed a fine of five, ten, or twenty shillings. For example, a journeyman to Henry Talon *dit* Lesperance alleged that he was not provided "good and sufficient board and lodging"<sup>73</sup> and claimed a shortage of food, "[e]specially of bread";<sup>74</sup> but was nevertheless ordered to return and fined twenty shillings and costs. Other servants were merely sent back to service upon paying the costs of the prosecution, as was the case with an apprentice baker.<sup>75</sup> 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.<sup>76</sup>

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<sup>70</sup> *Benjamin Workman v. John Edmundstone* (21, 28 August 1832, 4, 11 September 1832), A.N.Q.M., W.S.S.(R.). See also *La Minerve* (30 August 1832), which contained an account of François Xavier Beauchamp's trial before the Court of Weekly Sessions: "Convaincu d'avoir laissé, sans permission, le service de son maître condamné à retourner sous trois jours au service de son maître, faute de quoi, à être confiné dans la prison durant deux mois" (*Charles Couvrette v. François X. Beauchamp* (28 August 1832), A.N.Q.M., W.S.S.(R.) 321).

<sup>71</sup> *George Fax v. John Riley* (23 July 1833), A.N.Q.M., W.S.S.(R.) 374 [hereinafter *George Fax*].

<sup>72</sup> See *infra* notes 192, 193 and accompanying text for examples of a justice of the peace enforcing such a provision. It should be noted that default of payment of fines could result in imprisonment, so that some dispositions did not explicitly mention imprisonment for default does not preclude the possibility that these servants could nevertheless have been jailed. That in some cases courts did not mention penalties for defaulting on payment of fines, however, suggests that the prosecutor or the court itself was loath to have the servant in question imprisoned.

<sup>73</sup> *Henry Talon dit Lesperance v. Joseph Sanford* (15 April 1834), A.N.Q.M., W.S.S.(R.) 834 at 834.

<sup>74</sup> *Ibid.* at 836.

<sup>75</sup> *Alexander Boure v. Henry Popham* (17 June 1839), A.N.Q.M., W.S.S.(R.) 453.

<sup>76</sup> This manner of release occurred most often before the Police Court or justices of the peace outside the city. See *La Minerve* (22 November 1832), stating that before the Court of Weekly Sessions, "Michel Bourgouin, 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 was not found.

That so many servants were returned to service is powerful evidence that one of the primary reasons driving prosecutions was to ensure that delinquent servants completed 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, Alexander McPherson, a labourer bound for one year, deserted from his master's service, was convicted by the Court of Weekly Sessions, and ordered to return within twenty-four hours or face one month in prison and to pay costs.<sup>77</sup> Two days later McPherson still failed to return, prompting his master to seek his arrest.<sup>78</sup>

In a handful of cases defendants were explicitly ordered to make up the time lost through their desertion.<sup>79</sup> While the reasons for this disposition were seldom discussed in the records, it is possible that the terms of the contract contained such a stipulation, 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 ten shillings in fines and costs, return to service or face two months in jail, and make up the time.<sup>80</sup> Similarly, an apprentice tinsmith who pleaded guilty was ordered to return, pay costs, and "endemnify [*sic*] [his master] for his time lost."<sup>81</sup>

A considerable number of servants were fined but not explicitly sent back to service, perhaps as they had already entered the service of another or as their employer did not request it. 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 on payment. A servant who admitted his engagement but denied he was ever actually in the prosecutor's service was convicted and fined five shillings and costs or one month in prison.<sup>82</sup> Another indentured servant was fined one shilling and costs or two months

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<sup>77</sup> *Alexander Grant v. Alexander McPherson* (23 June 1835), A.N.Q.M., W.S.S.(R.) 144.

<sup>78</sup> *Alexander Grant v. Alexander McPherson* (25 June 1835), A.N.Q.M., Q.S.(F.).

<sup>79</sup> *E.g.* in colonial New York 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, in keeping with legislative enactments. See Hamilton, *supra* note 16 at 20. For discussion of courts' ordering servants to make up lost time before justices of the peace, see *infra* note 192 and accompanying text.

<sup>80</sup> *Samuel Davis v. François Xavier Dufresne* (11 December 1832), A.N.Q.M., W.S.S.(R.) 517.

<sup>81</sup> *Jean Baptiste Asselin v. Jean Pensier* (18 September 1840), A.N.Q.M., W.S.S.(R.) 907.

<sup>82</sup> *Arthur Webster v. John Dredge* (18 December 1838), A.N.Q.M., W.S.S.(R.) 281 (half the fine to prosecutor and half to road treasurer). As mentioned, 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's

in jail for default,<sup>83</sup> while an identical term of imprisonment was faced by a servant fined five pounds and costs.<sup>84</sup>

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 runaways, 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 runaways. The provincial statute, however, provided that informers would be awarded one-half the fines collected in any prosecutions in which they were involved, and informers appear intermittently in desertion suits during this period.<sup>85</sup> For example, in one case in which a labourer was fined five pounds on pain of two months in prison, the fine was remitted equally to both an informant and the road treasurer.<sup>86</sup>

As these sentences make clear, imprisonment was commonly used as a means of ensuring obedience to judicial rulings. Courts were also not adverse to imprisoning servants outright, but the nature of the records leaves no explicit indication as to why they chose to do so in some cases and not in others. Analysis suggests that imprisonment was generally imposed when defendants were recidivists, or against those whose desertion posed the greatest pecuniary loss or inconvenience to their masters. The extreme heterogeneity of sentences also indicates that no standardized guidelines were used, other than those imposed by legislative parameters and the general principle that defendants who pleaded guilty received lesser sentences.

In fact, the range of sentences imposed was dramatic. A misbehaving servant sentenced before the Court of Special Sessions received eight days in prison,<sup>87</sup> while a female domestic convicted of disobeying orders was imprisoned for ten days.<sup>88</sup> 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 con-

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being bound to the prosecutor's service and that he had subsequently left without permission (*William Manuel v. William Haldenby* (13 May 1834), A.N.Q.M., W.S.S.(R.) 863).

<sup>83</sup> *George Gray v. Joseph Warwick* (25, 27 June 1839), A.N.Q.M., W.S.S.(R.) 463, 471.

<sup>84</sup> *Charles Grant v. George Sweeny* (2 June 1840), A.N.Q.M., W.S.S.(R.) 803; see also *L'Ami Du Peuple* (10 June 1840).

<sup>85</sup> *Statute of 1817*, *supra* note 34, s. 13. For a discussion of the role of informers in apprenticeship prosecutions in sixteenth- and seventeenth-century England, see M.G. Davies, *The Enforcement of English Apprenticeship: A Study in Applied Mercantilism 1563-1642* (Cambridge, Mass.: Harvard University Press, 1956) at 40-76.

<sup>86</sup> *Supra* note 84. See also *Edward Maitland v. Samuel Williamson* (5 June 1840), A.N.Q.M., W.S.S.(R.) 805 (fine of two pounds and costs, half to informer and half to road treasurer).

<sup>87</sup> *Bartholomew Conrad [Gugy] v. Oliver Purvis* (27 November 1843), A.N.Q.M., Court of Weekly and Special Sessions, Criminal Matters [hereinafter W.S.S.(C.M.)].

<sup>88</sup> *John Richard Fraser v. Mary Kennedy* (21 July 1840), A.N.Q.M., W.S.S.(R.) 844 [hereinafter *Mary Kennedy*].

victed *in absentia*.<sup>89</sup> In contrast, another servant was convicted, also *in absentia*, but sentenced to two months' incarceration.<sup>90</sup>

As these cases demonstrate, courts often imposed the weight of the law to enforce masters' interests. Discussion of judicial responses to employment breaches would be incomplete without at least a cursory examination of the defences proffered by servants and rejected by courts, as analysis of these defences offers a penetrating glimpse into social mores and judicial attitudes of this period. In discussing such offences it must be noted that servants often pleaded "justification", but what form this took in individual cases was recorded only infrequently. Of the defences raised by servants, the three most common were ill-treatment, unlawful withholding of wages due, and violation of the terms of employment. Of these three, the cases that discuss ill-treatment are not only the most frequent, but also the most comprehensive.

Ill-treatment as alleged by servants encompassed treatment that ranged from simple neglect to physical abuse. While it is difficult to extrapolate with certainty from these records, it appears that while courts looked into allegations of mistreatment, they tended 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 while allegations of poor food and mistreatment appear throughout the court records, they were not successful as defences. Such was the experience of a labourer in 1840, indentured for one year, who pleaded justification based on improper treatment and "want of proper nourishment", but was nevertheless fined five pounds and costs.<sup>91</sup> 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 defence. It should be noted that defendants often did not call witnesses on their behalf.

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<sup>89</sup> *Hezekial Rice Cushing v. Joseph Allarie* (2 December 1840), A.N.Q.M., W.S.S.(R.) 1001.

<sup>90</sup> *Robert Handyside v. Thomas Higgins* (11 June 1839), A.N.Q.M., W.S.S.(R.) 443. See also *John Molson v. Michael Doran* (15 August 1839), A.N.Q.M., W.S.S.(R.) 516, in which an iron caster was sentenced upon pleading guilty to two months' imprisonment, five pounds' fine, and costs. In light of the defendant's guilty plea and the heavy sentence imposed, this case suggests that his desertion may have had an adverse impact on his master's business. Of course his master's social status may also have been a factor.

<sup>91</sup> *Supra* note 84 at 804.

The first such example is that of John Edmundstone, apprentice printer to the firm of Workman and Bowman, who in 1832 was prosecuted for desertion.<sup>92</sup> Edmundstone's trial is intriguing for many reasons, not the least of which is that it was one of the lengthiest breach of service trials of this period. Over the course of four days' 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 others who appeared without counsel or were represented (in the case of minors) by male relatives untrained in the law. His attorney answered the complaint by alleging that Edmundstone was a minor and hence "not bound to answer this complaint, and that he is not legally before this Court."<sup>93</sup> These arguments were overruled, however, and he proceeded to enter a plea of not guilty.

Edmundstone alleged, *inter alia*, that he had been mistreated, served inadequate food, and made to sleep with a boy suffering from typhus fever.<sup>94</sup> 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*."<sup>95</sup> On cross-examination he further stated that he "never complained of the food served to him, except of its being too fat[ty]."<sup>96</sup> It was the testimony of two other apprentices, however, that provided the most detail of the method of correction that the defendant had endured. One of Bowman's apprentices testified on direct examination that he did not see Mr. Bowman beat the said defendant.<sup>97</sup> Similarly, another of Bowman's apprentices testified that "once

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<sup>92</sup> *Benjamin Workman v. John Edmundstone* (21, 28 August, 4, 11 September 1832), A.N.Q.M., W.S.S.(R.) 309, 313, 322, 329. As the dates of this prosecution attest, courts that met weekly were ill suited for lengthier cases.

<sup>93</sup> Minority could be a successful defence if it were shown that the employment contract was not entered into with the aid of an adult parent or guardian. See *infra* note 140 and accompanying text.

<sup>94</sup> The first witness to confirm that Edmundstone had been subjected to corporal punishment was an employee who testified on cross-examination that

there was some difficulty between the Complainants and said Deft. saw Mr. Workman push said Defend[ant] 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 beat the Defendant, which was done till the Def[endant's] Arms ached, saw the Def[endant] beat chiefly on the head (*supra* note 92 at 329-34).

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> The apprentice continued

that a sick boy was placed in the Defend[ant's] bed; that he the deponent left the Complainant's 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 Oc-



he heard the said Mr. Bowman give directions to the foreman, to beat the Defendant."<sup>98</sup> On cross-examination he admitted to having been present when the foreman beat Edmundstone, but did not hear the latter "[p]ut the foreman to defiance." He also noted that "when the boys could not get sufficient food, they used to procure bread and butter."<sup>99</sup> 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 and that the food served was sometimes wholesome and sometimes "middling."<sup>100</sup> A previous witness for the prosecution, Mr. Milholland, was recalled to bolster the prosecution's case and emphasized 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."<sup>101</sup> This last assertion, while not comforting from a modern perspective, apparently swayed the court, as it ordered Edmundstone to return to service and pay costs or face two months' imprisonment. Edmundstone's life evidently did not improve; two months later he chose the most viable option remaining to him and deserted again, as evidenced by an advertisement placed by his master.<sup>102</sup>

The saga of John Edmundstone is not unique, being merely one of many similar stories during this period. Servants often deserted to escape abusive working environments, and a considerable number were prosecuted by their masters 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.<sup>103</sup> Racicot admitted the existence of his indenture, but convinced the court that it had been cancelled by a subsequent written agreement and charges against him were dismissed. Villeneuve, for his part, admitted to having deserted his master's service, but nonetheless

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curred from Mr. Bowman's Orders, that the Def[endant] was flogged with a Whip (*ibid.*).

<sup>98</sup> This apprentice

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 (*ibid.*).

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *The Canadian Courant* (1 December 1832). Edmundstone's second attempt may have been successful, as his name was found in no subsequent desertion prosecutions.

<sup>103</sup> *Pierre Alexander Trudeau v. Michel Racicot & Regis Villeneuve* (13 August 1833), A.N.Q.M., W.S.S.(R.) 424 [hereinafter *Michel Racicot*].

entered a plea of not guilty.<sup>104</sup> The court register reflects a similar litany of complaints about inadequate nourishment and ill-treatment:

Jean B[aptis]te Parent de Montreal après serment duement prêté depose et dit qu'a sa connaissance le poursuivant a battu et maltraité le Defendeur Regis Villeneuve, Qu'il l'a frappé a Coup de pieds et qu'il a pris le dit Defendeur Regis Villeneuve par le bras et l'a jetté au moins a 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.<sup>105</sup>

The court then called Michel Racicot to the stand:

Michel Racicot après serment duement prêté depose et dit que Samedi dernier en sa présence le poursuivant a battu et maltraité Regis Villeneuve son apprentif—a coup de pieds—dit que le poursuivant a pour habitude de boire des boissons fortes[.] Que le poursuivant est souvent absent de sa maison.<sup>106</sup>

These two witnesses were the only witnesses heard by the court, and at least ostensibly, seemed to buttress Villeneuve's defence. Yet the court ordered that Villeneuve "retourne immédiatement au service du Poursuivant pour parachever son Engagement."<sup>107</sup> Thus, if the facts as alleged were accurate, Villeneuve faced a veritable Hobson's choice: return to service, or be fined six pounds or spend three months in prison (although the statutory maximum was only two months). Villeneuve chose to return, but deserted again the following year.<sup>108</sup>

Robert McIntosh, it may be remembered, had also run afoul of the law. McIntosh had deserted his master's service early in 1841, two months after the start of his service, prompting Thomas Albert Martin to secure an arrest warrant before a police magistrate.<sup>109</sup> McIntosh was promptly arrested and tried the next day upon his plea of guilty. The court sentenced him to fifteen days in prison, and apparently required he return to service immediately afterwards.<sup>110</sup>

McIntosh, however, found the possibility of further prosecution less odious than the prospect of returning to service. On the day of his release from prison, McIntosh's

<sup>104</sup> As was evidenced by numerous prosecutions during this period, confessing to an offence did not foreclose the option of pleading not guilty in court, as this was apparently akin to raising a defence of "justification".

<sup>105</sup> *Michel Racicot*, *supra* note 103 at 426.

<sup>106</sup> *Ibid.*

<sup>107</sup> The court continued: "[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 Outre la Cour condamne le dit Regis Villeneuve le defendeur en cette cause a payer les frais encourrus dans cette poursuite" (*ibid.* at 427).

<sup>108</sup> *Pierre Alexander Trudeau v. Regis Villeneuve* (22 July 1834), A.N.Q.M., W.S.S.(C.M.).

<sup>109</sup> *[Thomas] Albert Martin v. Robert Bruce McIntosh* (10 January 1841), A.N.Q.M., P.C.(R.) 85.

<sup>110</sup> *Thomas Albert Martin v. Robert Bruce McIntosh* (11 January 1841), A.N.Q.M., W.S.S.(R.) 3.

master again obtained an arrest warrant on the grounds that he had failed to return to service.<sup>111</sup> McIntosh was apprehended and brought before the Court of Weekly Sessions. On this occasion McIntosh attempted a more elaborate defence, first claiming that his indenture “though signed by ... his mother is null because she was not authorised [legally] to bind him.”<sup>112</sup> The court rejected this claim, and McIntosh asserted ill-treatment as an alternative defence. Among the testimony given was that of another of Martin’s apprentices, Samuel Jackson, who asserted that Martin had struck McIntosh “five or six times” but that he “was not stunned by the blows.”<sup>113</sup> The court once again found for the master, and McIntosh was sentenced to two months’ incarceration with hard labour.<sup>114</sup> Perhaps because of his age or the circumstances of the case, he was accorded the unusual privilege of receiving a governor’s pardon, and was released on 23 March 1841, approximately three weeks early.<sup>115</sup>

As accounts such as these demonstrate, courts were not overly sympathetic to allegations of ill-treatment. They assumed that masters had the right to inflict moderate chastisement on unruly servants. While claims of ill-treatment did not avail servants like Robert McIntosh, it is nevertheless 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 exhibited considerable deference to masters with respect to their modes of discipline, the courts nonetheless deemed such claims worthy of careful inquiry. Courts likely felt that ill-treatment did not justify desertion, as the law provided mechanisms for servants to seek legal redress specifically on that ground.<sup>116</sup>

## 2. Suspended and Variant Dispositions

Even in those cases resulting in convictions, it was not infrequent that sentences were suspended or were variant dispositions (*i.e.* sentences that did not impose fines, imprisonment, or costs). Suspended sentences were imposed in circumstances where servants were explicitly employed on a probationary basis. On occasion courts even

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<sup>111</sup> *The Queen v. Robert Bruce McIntosh, Desertion*, Affidavit of Thomas Albert Martin (26 January 1841), A.N.Q.M., W.S.S.(C.M.).

<sup>112</sup> *Thomas Albert Martin v. Robert Bruce McIntosh* (8 February 1841), A.N.Q.M., W.S.S.(C.M.).

<sup>113</sup> *Thomas Albert Martin v. Robert Bruce McIntosh* (17 February 1841), A.N.Q.M., W.S.S.(R.) 39 at 39.

<sup>114</sup> No further information on McIntosh was found within the judicial archives. Another apprentice, Samuel Jackson, charged Thomas Albert Martin with assault and battery the following year; see Pilarczyk, *supra* note 2 at 523, n. 134.

<sup>115</sup> *Robert Bruce McIntosh* (incarcerated 17 February 1841), Montreal, A.N.Q.M., M.G.(R.) (sentenced to “2 months h[ard] l[abour] from date; discharged March 21 “by G[overnor’s] P[ardon]”).

<sup>116</sup> As discussed below, servants did bring these types of suits, and were often successful. See Pilarczyk, *supra* note 2 at 523-25 (within city limits), 526-27 (outside city limits).

went so far as to construe terms of employment as including probationary periods, even if the terms of employment had not provided for such.

In 1841 the Court of Special Sessions 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.<sup>117</sup> 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,"<sup>118</sup> the court postponed judgment with the master's consent "until the said plaintiff ascertains if the defendant will behave better than he has ... done heretofore."<sup>119</sup> A comparable case involved a servant sentenced to two months' incarceration and costs in which "on motion of the Prosecutor the court takes off the imprisonment [*sic*] and merely condemns the defendant to pay the costs of this suit."<sup>120</sup>

These cases are somewhat unusual in that they involve situations where the master either explicitly or tacitly supported suspending the sentence. While the vast majority of cases during this period were brought by private prosecution, courts were not bound to adhere to masters' preferences in desertion prosecutions. It is therefore not surprising that most prosecutions which exhibit variant dispositions make no mention of masters' preferences at all.

Many judgments included variant dispositions upon the conviction of defendants for breaches of service. Servants were frequently allowed to return to work without fines, prison terms, or even court costs being imposed. For example, the court records of a servant convicted of refusing to obey orders noted that he "agrees to go [back] and accordingly he is delivered."<sup>121</sup> Such cases occurred in 15.1 percent of proceedings before the Police Court, and in over one-third of the proceedings before justices of the peace outside the city.<sup>122</sup> In other instances servants were convicted of or pleaded guilty to desertion and were allowed to return to service with costs being imposed.<sup>123</sup>

A handful of cases were found in which courts did little more than scold unruly servants. 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 one day before his period of service was to end. The court register noted that the "prosecutor

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<sup>117</sup> *Francis Rasco v. George Black* (30 April 1841), A.N.Q.M., W.S.S.(R.) 87.

<sup>118</sup> *John Adams v. Edward Lunnie* (1 August 1842), A.N.Q.M., W.S.S.(R.) 621 at 621.

<sup>119</sup> *Ibid.* at 621-22.

<sup>120</sup> *John Jones v. Edouard LaBrie* (28 March 1835), A.N.Q.M., W.S.S.(R.) 79 at 79.

<sup>121</sup> *Charles Williamson v. Thomas Clarke* (22 September 1841), A.N.Q.M., W.S.S.(R.) 281 at 281.

<sup>122</sup> See fig. 5, below (Police Court); fig. 8, below (justices of the peace).

<sup>123</sup> *Alexander Boure v. Henry Popham* (17 June 1839), Montreal, A.N.Q.M., W.S.S.(R.) 453.

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."<sup>124</sup>

One of the most intriguing dispositions rendered by a court was a prosecution brought by John George, the Montreal tinsmith from whom so many apprentices fled during this period.<sup>125</sup> The apprentice in question, Antoine Charbonneau, appeared with his attorney before the Court of Special Sessions in December 1834. Charbonneau's attorney entered a plea of not guilty and admitted that the defendant was engaged to the prosecutor. The court clerk recorded his defence 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 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.<sup>126</sup>

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.<sup>127</sup> Another apprentice to John George testified on cross-examination that he observed George's brother "beat the defendant with his fists"<sup>128</sup> for abusive language directed at the prosecutor's wife. The apprentice further

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<sup>124</sup> *Francis Rusco v. George Black* (30 April 1841), A.N.Q.M., W.S.S.(C.M.).

<sup>125</sup> George was involved in at least six desertion proceedings between 1834 and 1842.

<sup>126</sup> *John George v. Antoine Charbonneau* (4 December 1834), A.N.Q.M., W.S.S.(R.) 1241 at 1241-42.

<sup>127</sup> The first of these, Marie Morrin, testified

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 apprentifs... 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'était 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 sait pas si le défendeur est parti pour aller se plaindre à son père — le défendeur avait insulté tous les gens de la maison (*ibid.* at 1242-43).

<sup>128</sup> *Ibid.* at 1243.

testified that the initial cause of argument was the defendant's intransigence when asked to attend to the store. For the defence 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. The court's disposition in this case was extremely unusual. After having "mûrement délibéré",<sup>129</sup> the court chose to order Charbonneau back to service, but also required that George's brother provide surety for his good behaviour towards the defendant.<sup>130</sup>

It is therefore apparent that many judgments—even those which resulted in convictions of servants—were essentially benign. One may even point to evidence that occasional prosecutions were driven by beneficent motives. A particularly riveting case is that of Sarah Stenson, against whom the superintendent of the Ladies' Benevolent Society filed a complaint on 31 July 1838.<sup>131</sup> This particular case illustrates that 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 benevolent, motivations when using the legal mechanisms in place for regulating master-servant relations.

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 continue their employment. Some servants, for example, may have been satisfied with the opportunity of airing their grievances in a forum where there was at

<sup>129</sup> *Ibid.* at 1244.

<sup>130</sup> This unusual disposition reads as follows:

[La Cour] condamne le défendeur à retourner au Service du Poursuivant sous le délai 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 aucun 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 défaut par le défendeur de retourner au service du Poursuivant qu'il soit confiné dans la prison commune du District pendant l'espace d'un mois (*ibid.* at 1244).

<sup>131</sup> 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 (*William Scoles v. Sarah Stenson* (31 July 1838), A.N.Q.M., Q.S.(F)).

No further information on Stenson was found.

least the appearance of neutrality and fairness, and were not overly intimidated by 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 offences committed in these particular cases. The nature of these proceedings suggests that masters on some occasions may have used courts as a means of humbling intransigent servants without actually having them imprisoned or fined. This was a particularly effective means, considering that some servants were liable to be imprisoned prior to trial if unable to make bail. Through these variant dispositions, masters (and courts) could send messages about their mercy, power, and authority. Whatever the explanation, the paramount reason many masters in Montreal brought breach of service suits was to compel servants to complete their terms of employment. This was reflected both by the cases in which servants returned to service voluntarily and by those in which they were ordered to do so.

### 3. Acquittals

While one can ascertain the rate with which desertion cases were dismissed, it is much more problematic to determine the reasons behind the courts' rulings. Many—indeed the majority—of the judicial records that have survived offer no explicit information other than the final disposition of cases. This is particularly so when the proceedings were conducted before a court of summary jurisdiction. As such, these records preclude any possibility of compiling qualitative data on the grounds for dismissal. These sources suggest that among the most common reasons for finding in favour of a defendant were failure to pay wages, absence of a legal employment contract, prior dismissal, defect in legal notification of the complaint, and violation of the terms of service.

Under the traditional common law rule as applied in Canada, a servant forfeited his right to wages due if his employment was terminated for misconduct or if he chose to leave of his own accord. Whatever the reason for the departure, a servant's failure to conclude the agreed-upon term of service was generally a bar to recovery of wages due.<sup>132</sup> The corollary to this rule was that a master's failure to pay wages due did not exonerate a servant should he leave his master's service. The law considered that the remedy available to servants—suing for wages lawfully due—was sufficient. Accordingly, servants were subject to prosecution for desertion should they fail to complete the terms of their employment.<sup>133</sup>

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<sup>132</sup> See e.g. Webber, *supra* note 30 at 140; "Law of Master and Servant", *supra* note 37 at 179; Tomlins, *supra* note 40 at 219-20 (nineteenth-century Massachusetts).

<sup>133</sup> See e.g. "Law of Master and Servant", *ibid.* at 181. Unlike their counterparts in Upper Canada, servants in this jurisdiction did have recourse to summary wage recovery under master-servant law. For discussion of Montreal wage suits, see generally G.L. Hogg & G. Shulman, "Wage Disputes and

Interestingly, this rule was not generally observed in Montreal during this period, as numerous servants were exculpated on the grounds of nonpayment of wages. For example, a domestic servant by the month was acquitted of desertion based on this defence and was awarded 10s. 9d. in wages due, and 5s. for costs.<sup>134</sup> Similarly, an apprentice who alleged mistreatment and nonpayment of wages as justification for desertion was successful on the grounds of nonpayment.<sup>135</sup> The master admitted to being four months in arrears for half the wages owed his apprentice. The court therefore dismissed the suit solely “in [c]onsequence of the nonpayment of the wages payable as per agreement.”<sup>136</sup> Cases such as this were not unusual. In fact, court records suggest that evidence of nonpayment of wages due was seen as a fundamental breach of the master’s obligations towards his servant, which justified a servant’s premature departure.

Another successful tactic employed by servants was to plead that the employment agreement was invalid. 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 present poursuite, dont il demande le renvoi.”<sup>137</sup> One master was unable to prove a contract existed with his cook, and the prosecution was accordingly dismissed.<sup>138</sup> Another ser-

the Courts in Montreal, 1816-1835” in Fyson, Coates & Harvey, *supra* note 43, 127; see also Piarczyk, *supra* note 2 at 520-22.

<sup>134</sup> *Joseph A. Gagnon v. Julie Lacombe* (21, 23 October 1843), A.N.Q.M., W.S.S.(C.M.).

<sup>135</sup> As the court register reveals:

[The] 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 recollects 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 his breakfast so as to enable him to go to church and from that inconvenience witness is obliged to give him his breakfast every Sunday morning—and finally that the complainant permits his (complainant’s) father to abuse and strike the apprentice and are his clothes (*Charles Davis v. Alexis Verdon* (21 July 1841), A.N.Q.M., W.S.S.(C.M.)).

<sup>136</sup> Such defences were not always successful. *E.g.* 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 nonpayment. He was ordered to return to service and pay costs or face two months in prison (*Henry Lesperance v. James Roddam* (19 March 1833), A.N.Q.M., W.S.S.(R.) 116). In my opinion it is likely that unsuccessful cases were often those in which nonpayment was not proven or where the fifteen-day notice period invoked in the *Police Regulations* had not passed.

<sup>137</sup> *Jean Baptiste Choquette v. Joseph Lafrance* (31 May 1834), A.N.Q.M., W.S.S.(R.) 899 at 899.

<sup>138</sup> *Patrick Swords v. Mary Stewart* (9 June 1841), A.N.Q.M., W.S.S.(R.) 150.



vant was acquitted on similar grounds by arguing that he had not entered the prosecutor's service and therefore there was no right of action.<sup>137</sup>

Furthermore, while servants under the age of majority could be legally bound by an adult parent or guardian, minor-aged servants did not have legal standing to bind themselves to an employment agreement. To take an example, in 1842 a journeyman named John Désormier was acquitted as he was a minor and consequently unable to enter into an employment agreement without the aid of an adult guardian or "tutor".<sup>140</sup>

Servants could also prevail when prosecuted for misconduct if they could demonstrate that their employer had altered the terms and conditions of their employment or had previously dismissed them from service prior to bringing suit. A cart driver argued in 1841 that he was employed only to deliver metal within the city limits, but had been required to make deliveries outside the city—albeit for only one day—to replace a sick employee. As the master admitted the allegation, the court dismissed the suit with costs levied against the prosecutor.<sup>141</sup> Proceedings against a physician's servant were unsuccessful after evidence was produced indicating that the fickle master had earlier discharged the defendant from his service.<sup>142</sup>

Servants periodically claimed medical reasons as a defence to desertion, arguing that injury or illness prevented them from fulfilling the terms of their employment. When servants received room and board from their masters, the law generally ex-

<sup>139</sup> *Isidore Charlebois*, *supra* note 55.

<sup>140</sup> See *John Fullum v. John Désormier*: "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 an agreement with the said Prosecutor, without being assisted in so doing by a Tutor duly elected to him" ((3 June 1842), A.N.Q.M., W.S.S.(R.) 541 at 541). For a case in which 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 dépens de l'action.

<sup>141</sup> *Thomas Lecompte v. Jean Lambert* (11 June 1841), A.N.Q.M., W.S.S.(C.M.).

<sup>142</sup> *Peter Buchanan v. Edmund Hackett* (17 February 1835), A.N.Q.M., W.S.S.(R.) 42. For an example of an apprentice who was successful in proving that his indenture had been cancelled by subsequent written agreement, see *Michel Racicot*, *supra* note 103 and accompanying text.

pected that the master would provide necessary medical attention should the servant fall sick—this was especially true of apprentices. As such, an apprentice or live-in domestic was unlikely to contest a desertion suit successfully on medical grounds. Other servants could absolve themselves if they were able to produce a medical certificate or convincing evidence of a medical condition, but a reading of these cases suggests that courts were reluctant to recognize this as a valid defence. In all likelihood servants would have had to satisfy the court that the affliction was serious and that the master was not responsible for providing medical care. These prerequisites were likely met in the singular case of John Lewis, a hired servant, who was acquitted of absenteeism during the summer of 1841 on the grounds that he was “ruptured” and therefore “unable to work”.<sup>143</sup>

Courts also recognized changes in legal status as a defence. In November 1833 an apprentice milliner and dressmaker was acquitted on grounds of marriage. This case is of interest for numerous reasons, but particularly as this was the only desertion case of this period discussed at length in contemporary newspapers.<sup>144</sup> In court the apprentice and bride’s attorney admitted the existence of his client’s indenture and that she had left her service, and produced the marriage certificate. He 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.” Williams’s attorney argued that his client was emancipated by virtue of marriage as much as if she had been indentured beyond the age of majority.<sup>145</sup> The court concurred, and dismissed the charges.

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<sup>143</sup> *John Russell v. John Lewis* (23 June 1841), A.N.Q.M., W.S.S.(R.) 173 at 174.

<sup>144</sup> *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 her apprenticeship. Last week Miss Williams was married ... [She was then arrested and sued for damages by Miss Bourne] as an apprentice who had abandoned or deserted from her mistress (23 November 1833).

This case is also noteworthy insofar as it is a rare example of a breach of service case brought by a prosecutrix.

<sup>145</sup> The judicial register records the attorney’s argument before the court as follows:

[E]lle 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

While considering the court's judgment to be "just, legal and equitable", *The Montreal Gazette* nevertheless lamented the lack of redress available to the mistress. This decision, it argued, 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."<sup>145</sup>

From an historical perspective, Williams'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's attorney successfully cited French authorities to support the view that she was 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 indicate that anti-marriage provisions were viewed by many as vestigial elements of master-servant law, contrary to public policy.<sup>147</sup>

Last, defects in legal process could also be grounds for dismissal. This is not surprising given the often-Byzantine complexity of the common law rules with respect to form and procedure that endured throughout this period. Defendants—even those not assisted by counsel—repeatedly argued procedural irregularities as a first line of defence before entering a formal plea. While this approach was often unavailing, some defendants clearly had nothing to lose by so doing.<sup>148</sup> In other instances this stratagem proved successful, as was the case with a Scottish labourer brought before the Court

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 produit son certificate de mariage (*Sophia Bourne v. Louisa Williams* (19 November 1833), A.N.Q.M., W.S.S.(R.) 604, 610).

<sup>145</sup> *The Montreal Gazette* (26 November 1833).

<sup>147</sup> *The Montreal Gazette* (23 November 1833), in describing this non-marriage provision, surmised that

[it was] probably one of these relies 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.

<sup>148</sup> See e.g. *George Fax*, *supra* note 71 at 375, in which an apprentice tailor "pleads by exception that the Defendant is not brought before this Court regularly inasmuch that he has not been summoned." This exception was overruled.

of Weekly Sessions who was acquitted and awarded costs, having demonstrated that the prosecution was not “instituted as required by law”.<sup>149</sup> By way of another example, a master named Peter Lawless was adjudged in 1835 to have instituted a prosecution which itself was lawless, although regrettably the records do not elaborate.<sup>150</sup> An apprentice saddler charged with “refus[al] to obey the lawful commands and orders” of his master demonstrated that his master’s complaint failed to specify whether his engagement was written or verbal. The court dismissed the suit and imposed costs of five shillings against the prosecutor.<sup>151</sup>

The outcomes of many of these lawsuits are among the strongest evidence that courts viewed and enforced master-servant relationships as constituting a mutually binding compact. Desertion prosecutions are particularly illuminating, as they were unique to servile relationships.<sup>152</sup> One might reasonably conclude that if master-servant law were truly an organ of employers at the expense of employees, this would best be reflected in desertion prosecutions. Yet a significant percentage of such prosecutions were unsuccessful. Other elements of such lawsuits, such as settlements and suspended or variant dispositions, provide additional substantiation of this contention.

Included within the approximately 30 percent of identified cases before the Court of Weekly and Special Sessions that did not result in conviction were cases in which prosecutors defaulted (4 percent) or discontinued the lawsuit (two), or in which the parties settled (two). 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. If he then appeared in the interim, he was normally ordered to pay costs incurred in the previous court hearing. The case would then be heard and decided. If the defendant failed to appear for the second trial date, the case was heard in his absence and judgment entered.<sup>153</sup> For instance, in 1833 a servant was discharged from prison and proceedings dismissed when his master failed to appear in court—a not-uncommon occurrence.<sup>154</sup> Proceedings against another servant were dismissed after both parties failed to appear, perhaps as they had settled their dispute prior to the

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<sup>149</sup> *Donald McDonald v. William Black* (3 March 1835), A.N.Q.M., W.S.S.(R.) 62 at 62.

<sup>150</sup> *Peter Lawless v. Daniel Crawley* (5, 12 May 1835), A.N.Q.M., W.S.S.(R.) 110 (dismissing the case as it was “illegal and unfounded”).

<sup>151</sup> *Robert Wood v. Timothy Donahue* (29 September 1841), A.N.Q.M., W.S.S.(R.) 288 at 288.

<sup>152</sup> Desertion was de facto possible only by those who were of subordinate status within the confines of a hierarchal institution or relationship, whether servants, sailors, or members of the armed forces.

<sup>153</sup> See e.g. Hogg, *supra* note 11 at 69-70.

<sup>154</sup> *Francis Metzler v. John Kelly* (16 July 1833), A.N.Q.M., W.S.S.(R.) 350.

scheduled court date.<sup>155</sup> Indeed, the cases in which both parties failed to appear were surely not always the product of coincidence; mutual default was probably indicative of the parties' having unofficially settled the case without leave of the court.

### ***B. Refusal to Obey Orders, 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 offences that encompassed other varieties of misbehaviour 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 offences all possessed the commonality of implicating a failure on the part of servants to comply with the accepted norms of service during this period. As many prosecutions were brought under the general nomenclature of "desertion" rather than specifying exactly what type of misbehaviour was implicated, it is not always obvious what employment infraction was at the crux of the lawsuit.<sup>155</sup>

Of those related offences mentioned in breach of service cases, refusal to obey the lawful commands of one's master was the most common, and conviction often resulted in imprisonment. In 1835 a cook sought to defend 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."<sup>157</sup> 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."<sup>158</sup> Her master testified that she had acted belligerently, refused to work, and demanded her wages. The justices, perhaps cognizant that sending her back to service would have been futile, imprisoned her for one month and fined her twenty shillings. A domestic servant was sentenced to ten days in prison for the identical infraction in 1840,<sup>159</sup> while another servant was sentenced to three days' imprisonment for refusal to obey his master and the unusual misdeed of *attempted* desertion.<sup>160</sup> In one prosecution brought in 1832, a hired servant was charged with "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 dur-

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<sup>155</sup> See e.g. *Joseph N. Pacau v. Louis Bourdoin* (24 July 1838), A.N.Q.M., W.S.S.(R.) 190. See also *Olivier Mailloux* (9 October 1838), *supra* note 48; *Olivier Mailloux* (16 October 1838), *supra* note 50.

<sup>156</sup> Because of the variety of offences that could lead to legal recourse under master-servant law, I have elected to refer to these infractions as "breach of service" rather than "desertion".

<sup>157</sup> *Edward A. Clarke v. Mary Rudd* (10 April 1835), A.N.Q.M., W.S.S.(R.) 89 at 89.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Mary Kennedy*, *supra* note 88.

<sup>160</sup> *Daniel Ryland v. Charles Catton* (5 June 1841), A.N.Q.M., W.S.S.(R.) 136.

ing the space of One Year.”<sup>161</sup> Cases such as this illustrate that servants could be charged with failing to commence their terms of service, as well as failing to complete them.

One of the most picturesque prosecutions of this period was that of Mary Ann McDonough, a wet nurse, servant, and chambermaid, who was convicted in 1842 of a veritable laundry list of faults. 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 further 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.<sup>162</sup>

Following her conviction the Court of Special Sessions ordered her to pay a fine of fifteen shillings and costs.<sup>163</sup> McDonough's is a particularly interesting case in light of the number of employment offences enumerated. Furthermore, it also vividly illustrates the quasi-criminal nature of such prosecutions, insofar as “illegally taking in her possession and wearing” her mistress's 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 employment offences are best thought of as hybrid offences—that is, neither purely civil nor criminal in the modern conception of these terms.<sup>164</sup>

Another discernible 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 Prosecutor” was sentenced to eight days in prison,<sup>165</sup> 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.<sup>166</sup> While desertion prosecutions were common during the early nineteenth century in Montreal, it must be stressed that their utility to masters was often limited, particularly as a significant percentage of cases brought by masters were unavailing. The conviction rate before the Court of Weekly and Special Sessions was approximately 60 per-

<sup>161</sup> *John Kemp v. William Eamon* (1 May 1832), A.N.Q.M., W.S.S.(R.) 197 at 197.

<sup>162</sup> *Charles Lindsay v. Mary Ann McDonough* (27 May 1842), A.N.Q.M., W.S.S.(R.) 536 at 536.

<sup>163</sup> *Ibid.*

<sup>164</sup> For discussion, see Pilarczyk, *supra* note 2 at 517, n. 112. The phrase “fault and misdemeanor” is found within the *Police Regulations*, *supra* note 35 at 118, para. 10.

<sup>165</sup> *Bartholomew C. Gagy v. Olivier Purvis* (27 November 1843), A.N.Q.M., W.S.S.(R.) 170 at 170.

<sup>166</sup> *John Trimble v. Charles Lunn* (12 February 1841), A.N.Q.M., W.S.S.(C.M.); see also *Domina Regina v. Charles Lunn, Misdemeanor*, “Affidavit of John Trimble” (12 February 1841), A.N.Q.M., W.S.S.(C.M.).

cent, with 20.3 percent of prosecutions dismissed outright.<sup>167</sup> If one assumes that such prosecutions were brought with the avowed purpose of punishing servants, compelling them to complete their terms of service, or both, then it is evident that masters were unsuccessful with significant frequency, saddled with court costs, and perhaps humbled by the experience. Within the confines of a system that afforded greater facial legal protection to masters than to servants, and which lacked a rigorous burden of proof, this acquittal rate is stark evidence that masters could not assume that success was virtually ensured.<sup>168</sup>

Servants were also discharged from service by courts, presumably (but not necessarily) at their masters' behest. Fifteen percent of the cases before the Police Court 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.<sup>169</sup> The police magistrate also dismissed several servants from service without any sanction. One notation states simply that "Denis Carty, being absent since yesterday morning without leave is dismissed from the tenth instant inclusive."<sup>170</sup>

### C. Third Party Employment Offences

Given the nature of the contractual rights that masters possessed, it is scarcely surprising 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.<sup>171</sup> Given the delicate nature of such situations, and perhaps

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<sup>167</sup> See fig. 6, below. Fyson's work shows that before the Court of Quarter Sessions for the years 1824 to 1830 there was an overall acquittal rate of 28 percent for all defendants (*Justices of the Peace in the District of Montreal, supra* note 45 at 332). The overall acquittal rate before the Court of Weekly and Special Sessions was probably between 40 and 70 percent (*ibid.* at 335).

<sup>168</sup> 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 certain (*supra* note 61 at 368-69). Juries then, like now, could be fiercely independent and performed powerful "social levelling" functions. See also M.S. Cross, "The Laws Are Like Cobwebs": Popular Resistance to Authority in Mid-Nineteenth Century British North America" (1984) 8 Dal. L.J. 103, who states at 115 that "the jury system ... could be used by communities to frustrate authority." While breach of service prosecutions were not heard before juries, it is clear that justices did not automatically convict servants charged with such offences.

<sup>169</sup> *Domina Regina v. Elizabeth Bissette* (16 December 1840), A.N.Q.M., P.C.(R.) 49 at 49.

<sup>170</sup> *Queen v. Denis Carty* (11 July 1838), A.N.Q.M., P.C.(R.) 15 at 15.

<sup>171</sup> *Police Regulations, supra* note 35 at 120, para. 13. See also *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, 1836 (Qc.)*, 6 Will. IV, c. 27 [hereinafter *Parish*

also more practical and evidentiary obstacles, it is not surprising that such prosecutions appear only sporadically within the annals of lower courts in Montreal.<sup>172</sup>

With respect to harbouring runaways, it is a truism that a servant's desertion would often have necessitated obtaining the aid of sympathetic third parties. John Edmundstone's attempt to flee 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.<sup>173</sup>

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 house.<sup>174</sup> Unfortunately, the evidence presented was not recorded, so Cather's identity and the court's reasons for the dismissal remain purely conjectural.

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, enticing the apprentice as well as harbouring him. In an interesting variant, 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 defendant's testimony suggested the forcible detention was merely a poorly conceived jest.<sup>175</sup>

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*Statute of 1836*]; Webber, *supra* note 30 at 148. It is worth noting that, at least in Montreal, the offence of "enticing desertion" most often involved encouraging members of the armed forces to desert. Such prosecutions are, of course, excluded from this discussion.

<sup>172</sup> Such cases were more common in the rural areas outside Montreal. See Part III.C, below.

<sup>173</sup> *Benjamin Workman v. Margaret Cathers* (21, 28 August 1832), Montreal, A.N.Q.M., W.S.S.(R.) 309, 313. Note the reference to the sources of relevant master-servant law.

<sup>174</sup> For discussion of this case, see *supra* note 92 and accompanying text. See e.g. *Domina Regina v. Joseph Rondeau* (14 January 1841), A.N.Q.M., P.C.(R.) 75, where 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.

<sup>175</sup> *Charles P. Leprohon v. Daniel Trudelle* (8 February 1841), Montreal, A.N.Q.M., W.S.S.(R.) 28.



### III. The Role of Courts outside City Limits

One of the motivating factors behind the promulgation of the *Parish Statute of 1836*<sup>176</sup> was to provide for a more effective system of justice that would be equipped to grapple with such matters as master-servant disputes.<sup>177</sup> Justices were authorized to hear a variety of infractions and minor criminal matters, and could bind defendants to trial before city courts for offences over which they lacked jurisdiction. During this period justices outside the city limits were required to submit quarterly returns to the clerk of the court in Montreal that provided basic information on any cases they adjudicated, as well as to report and remit all fines collected. Analysis of the few surviving quarterly returns (which offer only abridged information) nevertheless indicates that master-servant disputes accounted for a significant number of the cases heard before these jurists. The only years coinciding with the period under examination for which records have survived were 1839 to 1843, and the surviving records are especially spotty for the years 1839 and 1843. Even so, within those records 111 breach of service cases were recorded.

#### A. Desertion Prosecutions

##### 1. Convictions

Labour shortages were endemic in the rural areas of Lower Canada during this period, and the judicial district of Montreal was no exception.<sup>178</sup> As has been mentioned, the quarterly returns for the years 1839 to 1843 reveal that master-servant disputes were among the most common cases that justices of the peace were called upon to adjudicate outside the city of Montreal. Justices were the most convenient, regular—and for all intents and purposes, sometimes the only—real organ of justice that functioned for townships and parishes outside the city. While the surviving records suffer from a variety of lacunae, they are nevertheless a valuable tool in evaluating the administration of master-servant law outside the city limits during this period.

While the sample upon which this analysis is based is small, Figure 8 suggests that the number of acquittals and settled cases (as a percentage of the total prosecutions) appeared to increase over the course of this period, whereas the number of fines levied against unsuccessful defendants appeared to decrease substantially. While fines can generally be expected to decrease as acquittals and settlements rise, examination

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<sup>176</sup> *Supra* note 171.

<sup>177</sup> See the Preamble to the *Parish Statute of 1836*, *ibid.*, noting that it was promulgated to avoid “the great expenses attendant on the decision of causes of [master-servant disputes] ... in the Towns.”

<sup>178</sup> See e.g. “Law of Master and Servant”, *supra* note 37 at 191-93; Webber, *supra* note 30 at 115, 131.

of the entries for these years suggests that, for the years 1841 to 1843 in particular, 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 or 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 that 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 an inducement for a certain narrow class of defendants (such as journeymen). This class of defendants, perhaps coincidentally, appeared in more lawsuits in the later years of this sample.

The records filed by justices of the peace also indicate that nearly 5 percent of proceedings held before them resulted in settlement. Many more master-servant conflicts, however, were undoubtedly settled well before they progressed beyond the initial stages of litigation.<sup>179</sup> For example, while George Wehr may have prosecuted his servant for leaving his employ without permission, both parties requested to settle the case before a justice of the peace in Stanbridge.<sup>180</sup> In another instance a justice of the peace noted that he “admonished the Prisoner and the Parties settled their differences with ... permission,” suggesting that the settlement may have been at the justice’s instigation.<sup>181</sup>

Justices of the peace outside the city appear often to have ordered servants to return to service, as one-third of the cases contained this explicit provision.<sup>182</sup> The quarterly returns suggest that, typically, apprentices or other servants indentured for substantial periods were ordered to return, while journeyman or labourers were not so ordered. For example, an apprentice in 1841, “having no sufficient reason to leave the service of the Plaintiff,” was ordered to return and finish his time.<sup>183</sup> Justices frequently

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<sup>179</sup> This is especially true when examining the records of justices of the peace, as the quarterly returns they were required to file reflect only suits actually heard before the justice in his judicial role. Disputes resolved prior to the time the justice sat in judgment of the suit were likely not recorded, and few other related documents (such as complaints, arrest warrants, and summonses) were found.

<sup>180</sup> *George A.F. Wehr v. Oliver Gallipo* (4 January 1840), Stanbridge, A.N.Q.M., Quarterly Returns for Justices of the Peace [hereinafter J.P.(Q.R.)]. In one ambiguous case the records state that the parties settled the “Absence from Service 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. *Alexis Brinotier* [?] v. *David Bouthellier* (4 July 1842), A.N.Q.M., J.P.(Q.R.)).

<sup>181</sup> *André Cognac v. Joseph L’Amousian* (11 October 1841), St. Joseph de Chambly, A.N.Q.M., J.P.(Q.R.) [hereinafter *Cognac*] (defendant ordered to pay costs of five shillings).

<sup>182</sup> Cases which stipulated that servants “make up” their time required de facto that servants return.

<sup>183</sup> *François Couzineau v. Micheal* [sic] *Cédilot, fils* (2 January 1841), Vaudreuil, A.N.Q.M., J.P.(Q.R.).

used the prospect of weighty fines, incarceration, or both to encourage servants to return. In Terrebonne a justice of the peace sentenced a servant to a fine of 10s. and costs of 16s. 9d., plus "15 jours de travail ou huit jours de prison",<sup>184</sup> while another was condemned to pay costs of 17s. plus an additional penalty of £2 10s. if he failed to finish his term of engagement.<sup>185</sup> In another 6 percent of cases servants apparently returned voluntarily to service. The prosecution of one servant resulted in no formal disposition, as he consented to return to his master,<sup>186</sup> as did the lawsuit in which the court "arrangé le [défendeur] retournant au service."<sup>187</sup>

Analysis of these primary sources reveals striking differences between breach of service prosecutions heard before justices of the peace outside city limits and those heard before city courts. One conspicuous divergence is reflected in the rates of acquittals and dismissals of court cases. While fully 20 percent of breach of service cases resulted in dismissals or acquittals within the city, the rate before justices of the peace was only 3.6 percent, as shown in Figure 8.<sup>188</sup> Given the dearth of information found within the primary sources of these justices, coupled with the fact that many of these returns did not survive, it is problematic to draw defensible conclusions as to what would account for this discrepancy. It might reflect, for example, a greater rigidity on the part of justices, different evidentiary approaches, a greater need to enforce employment contracts, or merely the vagaries of surviving records.

Justices of the peace, however, also seemed considerably more reluctant to jail offenders for breach of service offences. Whereas nearly 17 percent of servants were jailed before the Court of Weekly and Special Sessions, only three were jailed outright by justices.<sup>189</sup> Two of these three servants jailed outright were incarcerated by order of the same justice of the peace in St. Martin Isle Jesus in 1841; a female domestic was committed for twenty-four hours, while another servant was incarcerated for ten

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<sup>184</sup> *Jean Baptiste Gadbois v. Gilbert Guindon* (15 October 1840), Terrebonne, A.N.Q.M., J.P.(Q.R.). 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 explicitly imprisoned until he returned to service, see *La Minerve*, *supra* note 76.

<sup>185</sup> *R. v. Théophile Chartier* (30 June 1843), St. Hyacinthe, A.N.Q.M., J.P.(Q.R.).

<sup>186</sup> *Antoine Paradis v. Joseph Granger* (12 October 1842), St. Jean L'Évangéliste, A.N.Q.M., J.P.(Q.R.); see also *Alexander Newman v. Walter O'Ryan* (12 October 1840), Lachine, A.N.Q.M., J.P.(Q.R.).

<sup>187</sup> *La Reine v. Pierre Barron* (30 September 1841), St. Hyacinthe, A.N.Q.M., J.P.(Q.R.).

<sup>188</sup> For discussion of cases before the Court of Weekly and Special Sessions, see Part II.A.1.b, above; fig. 7, below.

<sup>189</sup> See fig. 8, below. Arguably, some justices may not have included prosecutions that resulted in acquittal or dismissal in these quarterly returns.

days.<sup>190</sup> All other servants imprisoned by justices of the peace—likewise amounting to three servants—had previously defaulted on fines.<sup>191</sup>

Justices were also more likely explicitly to require convicted defendants to indemnify their masters for time lost through their misconduct, doing so in one out of eight cases. One servant in 1842 was “admonished, sentenced to make up his time to his said master and to pay the costs” of five shillings,<sup>192</sup> while another hireling convicted of “having deserted his service and employ without leave and without giving notice” was ordered to “return to his employ and to make good the time lost and continue for one month if required.”<sup>193</sup> This mirrored a provision found in the *Parish Statute of 1836* which stated that servants could be “condemned to make such time good to his Master.”<sup>194</sup> That this provision did not exist in the relevant statute and bylaws for the city of Montreal—coupled with the possibility that labour shortages in the country might have made masters more likely to demand that their servants complete their term of service—might well account for the greater frequency of such recorded dispositions outside the city than was the case within the city limits.<sup>195</sup>

In a few instances the terms of servants’ contracts impacted markedly on the sentence imposed following conviction. Charges against one servant were dismissed, but he was ordered to pay costs of 8s. 9d. as he had “undertaken to pay a penalty of ten

<sup>190</sup> *Michel Brunette v. Anasthea Armand* (11 October 1841), St. Martin Isle Jesus, A.N.Q.M., J.P.(Q.R.) (twenty-four hours’ imprisonment); *Jean Baptiste Cousineau v. Jocqeline Bigneau* [?] (11 October 1841), St. Martin Isle Jesus, A.N.Q.M., J.P.(Q.R.) (ten days’ imprisonment). See also *James Thompson v. Christopher Hill* (12 January 1842), Grenville, A.N.Q.M., J.P.(Q.R.) (labourer sentenced to fifteen days’ incarceration and costs of 7s. 6d.).

<sup>191</sup> *James Liddell v. George Carty* (15 April 1840), St. Armand, A.N.Q.M., J.P.(Q.R.) (servant convicted of absenteeism and refusing to work defaulted on fine of £1 5s. and imprisoned for fifteen days); *Reverend Joseph Braithwaite v. Charles Cox* (15 April 1841), Chambly, A.N.Q.M., J.P.(Q.R.) (servant convicted of absenteeism defaulted on fine of £2 10s. and costs of 8s. 9d. and imprisoned for unspecified duration); *Alanson Cooke v. Joseph Lipine* (4 July 1841), Petite Nation, A.N.Q.M., J.P.(Q.R.) (servant defaulted on fine of £2 10s. and imprisoned fifteen days).

<sup>192</sup> *Queen v. Joseph Perron* (10 April 1842), St. Joseph de Chambly, A.N.Q.M., J.P.(Q.R.). Similarly, see *Cognac*, *supra* note 181 (servant admonished and parties settled).

<sup>193</sup> *George Tait v. Louis Harpie* (15 October 1841), Sorel, A.N.Q.M., J.P.(Q.R.).

<sup>194</sup> *Supra* note 171, Preamble.

<sup>195</sup> All such cases discussed are ones in which courts explicitly made a servant’s return an element of the judgment. It is of course possible that in some number of cases it was expected that servants would return and therefore this was not recorded as a formal element of the judgments. This would coincide with a general rule throughout the British Empire that punishment usually did not interrupt the agreed-upon term of service. Given the level of specificity of many recorded dispositions, however, especially within the Court of Weekly and Special Sessions, it seems unlikely that crucial elements of the judgment (e.g. “make up time lost” or “return to service”) would not have been formally recorded. As such, I believe it is more likely that cases which make no mention of returning to service did not require it.

dollars to his master according to a previous private agreement between them for such breach of contract.<sup>196</sup> This essentially amounted to a liquidated damages provision, included by some masters in indentures both to dissuade servants from deserting and as a means of reimbursing them for their losses. Whether the master in this case also accepted his wayward servant back into service or merely sought “satisfaction” is not known. Another servant in Stanbridge was ordered to “return and make good the time lost according to contract” plus pay costs, indicating that the disposition was likely based on the language of his indenture.<sup>197</sup> These are superb examples of the interplay between master-servant law and the terms of employment as stipulated in notarial contracts.

## 2. Suspended and Variant Dispositions

It should also be noted that “variant” dispositions were relatively more frequent before justices of the peace, perhaps as rural life required that certain local realities be taken into account. This miscellany of variant cases usually involved justices suspending fines or jail terms due to the individual circumstances of the case. In Terrebonne, for example, the justice of the peace ordered a convicted servant to pay costs in the amount of 14s. 9d. but suspended the fine.<sup>198</sup> Another servant who received a significant fine failed to pay but was “not committed in consequence of the probability of payment and his (defendant’s) ill health.”<sup>199</sup> In a case brought against a manservant for desertion in 1840, he was fined 20s. plus 14s. 9d. in costs, but the “[p]enalty [was] not Paid, the defendant not pos[s]essing the means of paying” and the court took no further action.<sup>200</sup> An apprentice cobbler was ordered “à aller continuer immédiatement son apprentissage ... et à rendre le temps qu’il a perdu,” but his master was not awarded costs.<sup>201</sup> Cases such as these reflect the discretionary ability of justices to temper the harsher elements that enforcement of master-servant law entailed. Such actions could have served several purposes, such as to emphasize the mercy of masters, courts, or both and to facilitate the reconstruction of frayed employment re-

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<sup>196</sup> *Queen v. Seguien Demess dit Chêneville* (4 July 1842), St. Joseph de Chambly, A.N.Q.M., J.P.(Q.R.).

<sup>197</sup> *Edward B. Ross v. William Snyder* (14 October 1842), Stanbridge, A.N.Q.M., J.P.(Q.R.). Of course the court could have decided to require the defendant to make up lost time even in the absence of such a contractual provision.

<sup>198</sup> *Joseph Oct. Alfred Turgeon v. Gidéon Barrette* (31 December 1839), Terrebonne, A.N.Q.M., J.P.(Q.R.) (noting simply “dechargé de l’amende mais condamné aux frais”).

<sup>199</sup> *Alanson Cooke v. Oliver Bousexjour* (4 July 1841), Petite Nation, A.N.Q.M., J.P.(Q.R.) (fined £2 10s. and 8s. costs).

<sup>200</sup> *Micheal [sic] McLean v. Basil De[s]jardin* (22 April 1840), Petite Nation, A.N.Q.M., J.P.(Q.R.).

<sup>201</sup> *François Dubour v. Ambroise Phaneuf* (11 October 1842), Ste. Marie de Monnoir, A.N.Q.M., J.P.(Q.R.) [hereinafter *Dubour*].

lations, but also may have reflected the reality that justices were frequently neighbours of the parties that appeared before them. While it would appear that master-servant disputes before justices of the peace resulted overwhelmingly in conviction, the seemingly perennial labour shortages faced by employers in the country, as well as other local realities, might have caused justices often to feel the necessity of making use of variant dispositions.

The high conviction rates, however, also suggest that justices favoured stability in labour relations and consequently expected acquiescence on the part of servants. While justices certainly had the ability to enforce master-servant law in a relatively benign manner, they were by no means required to do so. The fact that courts held by justices of the peace were eminently local and informal institutions could have far less beneficent repercussions. Higher court review of their decisions was a decided rarity, and therefore justices reigned supreme in the realm of master-servant law. Not only could they rule on cases in which they had a personal interest, but justices would often have had a natural inclination to side with masters by virtue of their social standing.<sup>202</sup>

These realities are vividly depicted through a published letter to the editor of *The Montreal Gazette* in 1841, which painted a poignant picture of an unfortunate female servant caught up within the machinations of an unsympathetic judicial system. This singular account of the administration of master-servant law outside the city limits offers a penetrating, if prolix, account of the draconian enforcement of labour laws by some justices:

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 depo[s]ed 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.

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<sup>202</sup> See e.g. Webber, *supra* note 30 at 112-13:

Many complaints concerned partiality or arbitrary behaviour. ... It was virtually inevitable that magistrates would rule in 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 further discussion of conflicts of interest among justices of the peace, see generally *Justices of the Peace in the District of Montreal*, *supra* note 45.

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 crave 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.<sup>233</sup>

This account not only offers a trenchant, contemporary criticism of labour law during this period, but also demonstrates the "incestuousness" that could pervade these courts. In this 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. 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 servants.<sup>234</sup> Justices may have been "servants of the law", but they could also dictate what the law was and use it to their own benefit.

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<sup>233</sup> *The Montreal Gazette* (6 March 1841). This account is confirmed by analysis of the quarterly returns of the justices of the peace for William Henry in 1841. Edward W. Carter brought suit against his hired servant, Sarah Wright, on charges that she had absented herself without permission and had not returned (*Edward W. Carter v. Sarah Wright* (3 June 1841), William Henry, A.N.Q.M., J.P.(Q.R.)). She was condemned to pay the identical fine and costs mentioned above. Furthermore, Carter was indeed a justice of the peace for Sorel during this time, as I ascertained through examination of a list of justices 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 often took up collections for their benefit. See e.g. Lewthwaite, *supra* note 61 at 369-70. It is noteworthy that the justices apparently stated "there was no appeal from their decision." This was, for all intents and purposes, *de facto* true in almost all cases, although a right to appeal existed formally. For another example of a suit brought against a servant by a justice of the peace, see *Judge Burton v. Levi Larrivierre* (9 January 1841), St. John the Evangelist, A.N.Q.M., J.P.(Q.R.) (servant ordered to pay fine of 6d. and costs of 11s. 3d.).

<sup>234</sup> For a contemporary example of this phenomenon, see Pilarczyk, *supra* note 2 at 519, n. 117.

### 3. Acquittals

In contrast to the number of acquittals before city courts, the number of acquittals of servants before justices of the peace, as they appear in the surviving quarterly returns, was extremely low.<sup>205</sup> The paucity of detail in these sources prevents any real analysis of the reasons that caused these cases to result in acquittal. A typical example is that of a servant in Petit Nation in 1841, who was acquitted of leaving his master's employ and awarded costs of six shillings.<sup>206</sup> The solitary exception is a notation by one justice of the peace in Lachine, who discharged a servant charged with desertion "in consequence of [the master's] exacting more work than agreed upon."<sup>207</sup>

#### ***B. Refusal to Obey Orders, Refusal to Work or Enter Service, and Negligence***

As was the case within the city of Montreal, justices of the peace within the greater judicial district of Montreal also grappled with employment offences related to desertion. The *Parish Statute of 1836*, it will be remembered, included offences such as "ill behaviour, refractory conduct, idleness, absence without leave, or dissipating his or her Master's, Mistresses [*sic*] 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."<sup>208</sup>

Refusal to work was an accusation made most often against seamen, but servants were also charged with this offence. In the town of St. Charles, for instance, a servant was fined, made to pay costs, and ordered to continue working for his master for six months following his conviction for refusal to work.<sup>209</sup> In St. Edouard, meanwhile, a servant was punished for having "négligé et refusé de faire faire les travaux."<sup>210</sup> Likewise, another servant was fined ten shillings for refusal to obey his master's lawful orders.<sup>211</sup> A discernable but related category was that of misconduct or negligence. A servant outside the city was convicted of "refractory conduct" and fined 5s. and costs

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<sup>205</sup> See fig. 8, below.

<sup>206</sup> *James L. Gray v. John Graves* (13 April 1841), Petite Nation, A.N.Q.M., J.P.(Q.R.).

<sup>207</sup> *Joseph Aimond v. Charles Gauthier* (11 October 1843), Lachine, A.N.Q.M., J.P.(Q.R.).

<sup>208</sup> *Supra* note 171, Preamble.

<sup>209</sup> *Louis Chicou Duvert v. Antoine Chaume* (20 August 1839), St. Charles, A.N.Q.M., J.P.(Q.R.).

<sup>210</sup> *Larence McGhee v. Camille Pinsounault* (24 October 1839), St. Edouard, A.N.Q.M., J.P.(Q.R.) (fine of five shillings and costs of fourteen shillings). See also *Larence McGhee v. Jean Baptiste Laporte* (8 November 1839), St. Edouard, A.N.Q.M., J.P.(Q.R.) (fine of five shillings and costs of fifteen shillings).

<sup>211</sup> *Queen v. François Gagnon* (1 July 1842), St. Hyacinthe, A.N.Q.M., J.P.(Q.R.).



of 8s. 9d. in 1841,<sup>212</sup> while another was convicted for “mauvaise conduite, lui avoir manqué de respect, et s'être absenté fréquemment le soir—Sans sa permission.”<sup>213</sup>

One difference between the law as applied in Montreal proper and in the outlying townships was the charge of dissipating property. This offence was explicitly included in the *Parish Statute of 1836*,<sup>214</sup> whereas equivalent terminology was found neither in the *Statute of 1817* nor the *Police Regulations*. Only one prosecution, however, was found for this offence. In 1842 in the town of Laprairie, a servant was arrested and convicted for having “dissip  les effets de son ma tre.” The defendant was fined fifteen shillings, and costs of eighteen shillings were also imposed.<sup>215</sup>

### C. Third Party Employment Offences

As was the case within the city limits, third parties outside the city limits could be held liable for interfering with the master-servant relationship. These types of prosecutions appear most often within the records of justices of the peace, rather than within those of the city courts.<sup>216</sup> This may reflect the differing social realities of these jurisdictions, including more tightly knit (even if more dispersed) communities than existed in the cities, as well as more acute labour shortages. Masters were known to entice servants away from other masters, and were not adverse to cajoling servants to leave by using threats against their employers. In Lachine in 1839, for example, a defendant was bound to the peace for twelve months as he had threatened that “[i]f [the] Prosecutor did not turn out a Girl ... who was in his service defendant would do him harm.”<sup>217</sup>

The *Parish Statute of 1836* explicitly provided for prosecutions against third parties for interfering with the master-servant relationship:

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<sup>212</sup> *William Gorman v. Louis Cameron* (15 October 1841), St. John the Evangelist, A.N.Q.M., J.P.(Q.R.).

<sup>213</sup> *Jean Baptiste Beutron dit Major v. Antoine St. Jean dit Lagarde* (11 March 1840), St. Eustache, A.N.Q.M., J.P.(Q.R.) (fined ten shillings and costs).

<sup>214</sup> *Supra* note 171, Preamble.

<sup>215</sup> *Richard Phoepoe [sic] v. Toussaint La Fontaine* (15 October 1842), Laprairie, A.N.Q.M., J.P.(Q.R.). While unfortunately no more information is available as to this prosecution, it should be noted that the offence of dissipation was a nebulous one. Embezzlement cases were fairly numerous (at least in Montreal proper), and larceny and other cases were commonplace during this period. Unlike this case, however, embezzlement and larceny could be more cleanly categorized as “criminal” offences, rather than breaches of service. It seems possible—and indeed even likely—that dissipation could include actions which did not explicitly include theft, such as negligence or waste, or allowing others to benefit from use of a master’s property.

<sup>216</sup> For discussion of third party prosecutions within the city limits, see Part II.C, above.

<sup>217</sup> *Pierre Grulot v. Louis [?] Lafont* (9 July 1839), Lachine, A.N.Q.M., J.P.(Q.R.). This case was not included within the statistics, as it was not a prosecution for an employment offence.

Eighthly, that if any person shall knowingly entice, by any means whatever, any such Apprentice, Servant, or Journeyman ... to depart from the service of his or her Master, or Mistress, or employer, and that in consequence such Apprentice, Servant, or Journeyman 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.<sup>218</sup>

The language used in court cases of this type was broader than the statutory language above might imply. Similar to the situation in the city of Montreal, cases were brought for such related offences as harbouring or employing deserters. For example, in *Sorel* a defendant was fined ten shillings for “having advised the Plaintiff’s Apprentice to leave his Service, and having harboured and lodged him in his House.”<sup>219</sup> Likewise, in *Ste. Marie de Monnoir* a cobbler was fined five shillings for having lodged and employed a deserting apprentice.<sup>220</sup> The apprentice himself was ordered “à aller continuer immédiatement son apprentissage ... et à rendre le temps qu’il a perdu,” but the master was not awarded costs.<sup>221</sup>

Many of these cases obviously had implications of unfair competition, as they involved one employer inveigling a servant from another employer’s service. In 1839 a defendant was convicted of the colourful offence of “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 the said Antoine Menancon.” After finding him guilty, the court ordered the defendant to pay a fine of £2 10s., as well as costs of 11s. 3d.<sup>222</sup> In other instances it is unclear whether defendants were consciously employing runaways or merely secreting them. In 1842 Jacques Pepin was convicted of “harbouring [a] servant knowingly” before a justice of the peace in *Laprairie*, and was ordered to pay a fine of 10s. and rather hefty court costs amounting to £1 5s. 9d.<sup>223</sup>

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<sup>218</sup> *Supra* note 171, Preamble.

<sup>219</sup> *Louis Boivin v. Louis Barcier* (11 July 1842), *Sorel*, A.N.Q.M., J.P.(Q.R.).

<sup>220</sup> *François Dubour v. Isaac Maillette* (11 October 1842), *Ste. Marie de Monnoir*, A.N.Q.M., J.P.(Q.R.).

<sup>221</sup> *Dubour*, *supra* note 201. For an example in which a suit was withdrawn by the prosecutor, although the prosecutor also successfully sued his servant for desertion, see *Caleb R. Free v. Baptiste Lapre* (5 July 1841), *Stanbridge*, A.N.Q.M., J.P.(Q.R.) (hired servant convicted of desertion, ordered to return and complete his term of service and pay costs of ten shillings); *Caleb R. Free v. Richard Gage* (5 July 1841), *Stanbridge*, A.N.Q.M., J.P.(Q.R.) (suit for harbouring servant withdrawn, with costs of 2s. 6d. imposed against prosecutor).

<sup>222</sup> *Peter McNie v. Ambroise Peloquin dit Félix* (2 July 1839), *William Henry*, A.N.Q.M., J.P.(Q.R.).

<sup>223</sup> *Pierre Bourassa v. Jacques Pepin* (4 January 1842), *Laprairie*, A.N.Q.M., J.P.(Q.R.).

Given the acute labour shortages in the country parishes, it is not surprising that luring away a master's servant would be a fairly common offence before justices of the peace. Enticement cases, however, did not exclusively involve apprentices, journeymen, or other "skilled help". Given a strong demand for servants of all kinds, including domestic servants, some masters undoubtedly attempted to coax away other servants before their terms of employment had legally concluded. In 1843, for example, two enticement cases involved domestics. In Shefford a defendant was convicted of enticing a maid to leave the prosecutor's service,<sup>224</sup> while in Stanbridge a defendant was convicted of doing the same to a neighbour's domestic.<sup>225</sup>

Lawsuits such as these reflect the procedures used to protect masters' contractual rights in their servants, the same rights alluded to in advertisements that prohibited "harbouring or crediting" runaways. While the number of such identified suits is fairly limited (as are the records of justices of the peace in general), they demonstrate that courts accorded remedies to masters against third parties. Given a scarcity of available 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 cut-throat labour competition in check, the law recognized that masters who harboured, enticed, or employed runaways were also a crucial part of the equation.

## Conclusion

Master-servant relationships played an integral part in the economy of Montreal during the period 1830 to 1845. Nevertheless, the inexorable encroachment of industrialization brought with it fundamental changes to labour relationships in Montreal, as it did throughout North America. Masters increasingly viewed their servants merely as wage labour, freed from the paternalistic ties that had historically bound them together. This transition was most prevalent among apprentices, who became increasingly dissatisfied with an institution that, in a way favouring masters, seemingly retained only the vestiges of its past.

Master-servant legislation in Montreal exhibited the approach common to many Anglo-American jurisdictions of this period, characterizing employment offences as crimes 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 them-

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<sup>224</sup> *Nahum Williams v. Jared Bryant* (5 July 1843), Shefford, A.N.Q.M., J.P.(Q.R.) (fined twenty-five shillings).

<sup>225</sup> *H.N. Whitman v. Nathan M. Blin* (29 December 1843), Stanbridge, A.N.Q.M., J.P.(Q.R.) (fined 15s. and costs of 19s. 6d.).

selves, 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, and did not hesitate to incarcerate servants viewed as incorrigible or whose acts of delinquency were particularly grave. Yet the number of cases in which servants consented or were ordered to return to service indicate that many masters sought legal recourse primarily to compel servants to complete their service, rather than merely to punish them for violations of master-servant law. The courts, for their part, attempted to facilitate the completion of employment agreements when servants breached their terms of service.

While courts were a powerful tool available to masters, these tribunals did not view the master-servant relationship as entailing duties only on the part of servants. 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. To begin with, 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 advance their interests more aggressively, bolstered by shortages of skilled labour and a growing ethos of resistance to masters' authority. Servants often used various non-legal means to their advantage, such as deserting in large numbers when dissatisfied with working conditions. As analysis of servants' suits indicates, however, servants also sought redress before courts against their masters, bringing lawsuits alleging nonpayment of wages, ill-treatment, and non-performance of the duties owed to servants by masters. That so many members of the servile class brought legal proceedings indicates that they generally viewed courts as 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 those of masters, providing further evidence that courts provided relatively impartial forums for the resolution of employment disputes.

Labour relations during this period were therefore characterized by constant flux. While they retained vestiges of their more hierarchical, 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 nature of servants, but simultaneously wished to absolve themselves of the non-economic responsibilities that had traditionally characterized these relationships. Servants likewise exhibited a heightened tendency to demand satisfying employment relationships, and used the mechanisms of the law to considerable advantage. Faced with such fundamental and pervasive alterations to the very fabric of master-servant relationships, the legal system evolved to reflect these changes, and in so doing, it also assisted in cementing them.

## Appendix: Figures

Advertisements for Delinquent Servants  
in Montreal Newspapers, 1830-1845

Year	Apprentices	Misc. Servants	Journeyman	N/A	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 1

**Breach of Service 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 2**

**Breach of Service Prosecutions before the Court of  
Weekly and Special Sessions, 1832-1835 and 1838-1843**

Year	Apprentices	Journeymen & Labourers	Misc. Servants	Domestic Servants	NI	Total
1832	1	4	2	-	1	8
1833	5	4	1	-	-	10
1834	4	1	1	-	2	8
1835	8	4	5	1	2	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 3

**Total Number of Breach of Service Proceedings  
before the Police Court, 1838-1842**

Year	Warrants Issued	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 4

**Breach of Service Prosecutions in the Records  
of the Police Court, 1838-1842**

Year	Warrant	Settle	Held for Trial	Return to Service	Jail	Disc. from Service	Dismiss	Dismiss from Jail
1838 n=5	2	-	1	-	-	1	-	1
1839 n=16	6	1	7	1	-	2	-	1
1840 n= 27	11	3	4	5	6	-	1	-
1841 n=37	17	13	3	2	-	-	2	-
1842 n=4	-	2	2	-	-	-	-	-
<b>TOTAL n=89</b>	<b>36</b>	<b>19</b>	<b>17</b>	<b>8</b>	<b>6</b>	<b>3</b>	<b>3</b>	<b>2</b>
% of arrests	N/A	35.8	32.1	15.1	11.3	5.7	5.7	3.8

Figure 5

**Dispositions of Breach of Service Prosecutions by Percentage before the  
Court of Weekly and Special Sessions, 1832-1835 and 1838-1843**

Year	Convict	Dismiss	Pros. Default	Def. De- fault & Conv.	Settle	Servant Disc. by Prosecutor	Def. De- fault & Acquit.	N/I
1832 n=8	100.0	-	-	-	-	-	-	-
1833 n=10	70.0	20.0	10.0	-	-	-	-	-
1834 n= 8	50.0	25.0	-	-	12.5	-	-	12.5
1835 n=23	65.2	17.4	4.3	-	-	4.3	4.3	4.3
1838 n=16	31.3	18.8	18.8	6.3	-	-	-	25.0
1839 n=20	70.0	10.0	-	5.0	-	5.0	-	10.0
1840 n=11	90.9	-	-	9.1	-	-	-	-
1841 n=23	39.1	39.1	-	-	4.3	-	-	17.4
1842 n=11	54.5	36.4	-	-	-	-	-	9.1
1843 n=3	66.6	33.3	-	-	-	-	-	-
<b>TOTAL n=133</b>	<b>80</b>	<b>27</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>13</b>
% of total	60.2	20.3	3.8	2.3	1.5	1.5	0.08	9.8

Figure 6



Dispositions of Breach of Service Convictions by Percentage before the Court of Weekly and Special Sessions, 1832-1835 and 1838-1843

Year	Costs	Fine	Return to Service	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 7

Disposition of Breach of Service 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 or Dismiss	Jailed for Default	Jailed Outright
1839 n=9	100.0	66.0	55.6	-	-	-	-	-	-
1840 n=38	73.7	57.9	35.9	15.8	5.3	2.6	2.6	2.6	-
1841 n=31	45.2	32.3	19.4	9.7	9.7	3.2	-	6.5	3.2
1842 n=26	57.7	19.2	42.3	26.9	3.8	7.7	7.7	-	3.9
1843 n=7	57.1	-	71.4	14.3	-	14.3	14.3	-	-
Total n=111	67	43	41	14	7	5	4	3	3
% of Total	60.4	38.7	36.9	12.6	6.3	4.5	3.6	2.7	2.7

Figure 8

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