



BREAKING THE CHAINS

# Solomon Moseby

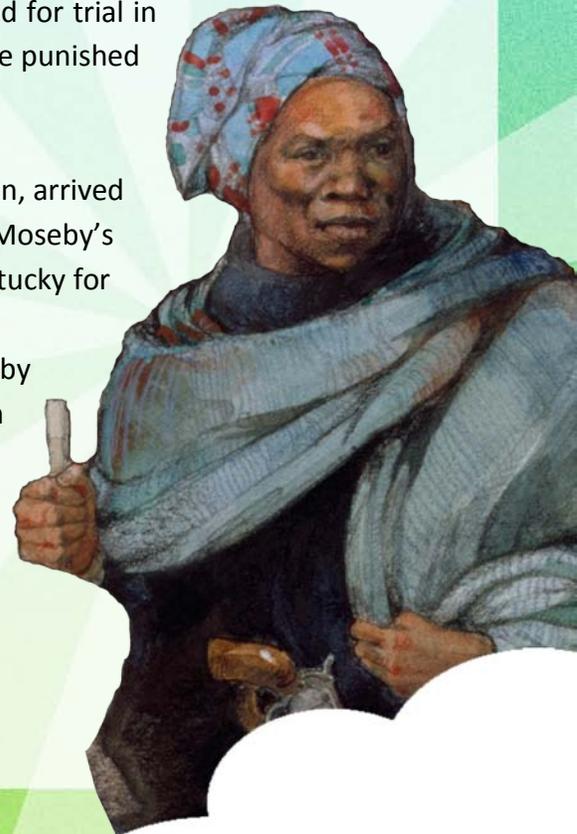
## NIAGARA

### The Moseby Affair Report

In the spring of 1837, an enslaved African American named Solomon Moseby took his master's horse and rode away from Kentucky and slavery. He settled in Niagara (now called Niagara-on-the-Lake), in Upper Canada. Within a few weeks, his new-found freedom was jeopardized. He was thrust into the centre of a dispute that mobilized African Canadians in the Niagara area and beyond, and raised the question of whether Canada was truly a safe haven for those fleeing from US slavery.

Four years before Moseby's arrival, Upper Canada had passed the *Fugitive Offenders Act*, "an act to provide for the apprehending of fugitive offenders from foreign countries, and delivering them up to justice." Under this act, anyone living in what is now Ontario who was accused of committing a serious crime in another country could be extradited for trial in that country. "Serious crimes" were those that in Canada would be punished by death, corporal punishment or imprisonment with hard labour.

In August 1837, Solomon Moseby's former owner, David Castleman, arrived in Niagara with three associates. Castleman carried a warrant for Moseby's arrest, issued in Kentucky, and a request for his extradition to Kentucky for trial. Two men, Daniel Kelly and David Castleman, swore before a Niagara Justice of the Peace that on May 14, 1837, Solomon Moseby had stolen a horse belonging to Castleman, who was a well-known horse breeder and landowner who lived near Lexington, Kentucky. A warrant was then issued in Niagara for Moseby's





arrest,<sup>1</sup> and Solomon was imprisoned. Legal papers were forwarded to Toronto requesting that Lieutenant Governor Sir Francis Bond Head sign an extradition order.

The Niagara authorities saw this as a simple task of returning an alleged felon for trial in the place where the crime had been committed. For Solomon Moseby, though, it would mean a return to slavery, and brutal punishment for the “crime” of escaping. African Canadians in Niagara feared the wider implications: many of them had fled slavery themselves. If Moseby was returned to the US for trial for his alleged crimes, then any fugitive living in Canada could be falsely accused and extradited. A petition (dated September 2, 1837) to the Lieutenant Governor from the “Persons of Colour, residents of the Town and Township of Niagara” explained the issue:

Solomon Moseby a man of Colour, made his Escape from Slavery in the State of Kentucky...and availed himself of the protection of the British Laws in Canada to retain that Freedom he had now acquired...

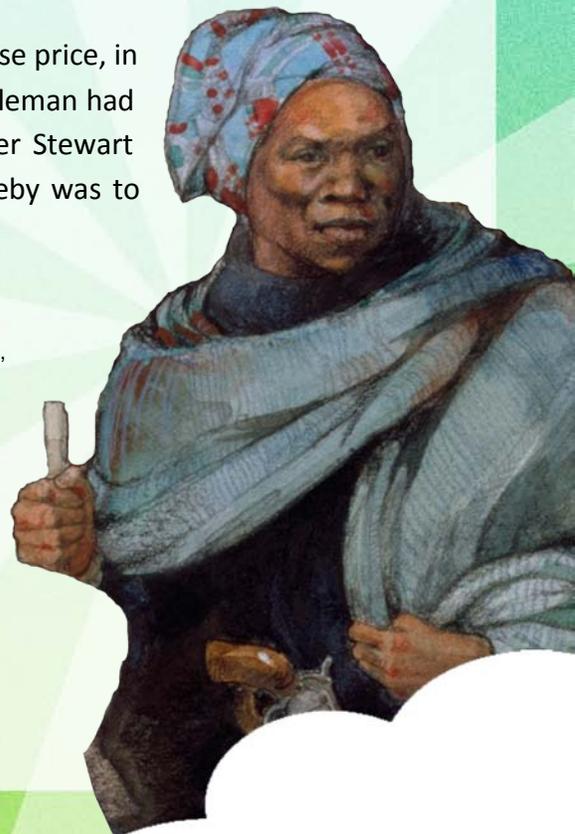
[The petitioners] declare their Solemn, and sincere belief that the accusation which is now set up against our poor Coloured Brother is nothing more than a mere pretence to secure him across the line of demarkation [*sic*], and from under the protection of the British Laws and institution, and the moment he lands on the other side of the Niagara river the charge of Horse-stealing would be withdrawn, and him dragg [*sic*] off once more to irremidiable [*sic*] Slavery.<sup>2</sup>

They had attempted to pay Solomon’s erstwhile owner his purchase price, in order to secure his freedom. To the petitioners, the fact that Castleman had “refused 1,000 dollars for [Moseby] in the presence of Alexander Stewart Esqr Barrister at Law,” proved what a valuable commodity Moseby was to him.<sup>3</sup>

<sup>1</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 222-224. Complaint of Daniel Kelly, Blackheath, Erie Co, NY, Niagara, 1 Sep 1837, Complaint of David Castleman, Fayette, Kentucky, 2 Sep 1837, Daniel McDougal, JP, to Donald McDonald, High Constable, Niagara District and Peter Wheeler, Gaoler, 2 Sep 1837; Library & Archives Canada [LAC] microfilm C-6903. Punctuation has been added to some of the document transcriptions to make them easier to read.

<sup>2</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 226-228. Copy of the Petition of the Coloured Inhabitants of the Town and Township of Niagara on behalf of Solomon Moseby the fugitive slave &c., Niagara, 2 September, 1837; LAC microfilm C-6903. Please note that unctuation has been added to some of the document transcriptions to make them easier to read.

<sup>3</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 226-228. Copy of the Petition of the Coloured Inhabitants of the Town and





One hundred and seventeen white “Inhabitants of the Town of Niagara” also signed a petition “respecting Solomon Moseby the fugitive Slave,”<sup>4</sup> arguing that:

It is the opinion of Your Petitioners that neither morally nor legally can a slave be guilty of the offence charged against him, not being a free agent; that it is notorious beyond all doubt that the man claimed was a Slave when he left Kentucky; that he is now a freeman by the constitutional laws of Great Britain; and that should he be given up, he will inevitably go back to Slavery, there to be tortured as an example.<sup>5</sup>

The petitioners also believed that it was David Castleman’s intention to test Canadian law and find a way to make it easier for American slaveholders to retrieve freedom-seekers. They wrote:

That it will become a precedent whereby no runaway slave will either now or henceforth be safe in a British Colony. Your Petitioners do therefore pray that your Excellency will reconsider your decision, and that if you cannot conscientiously release the man that you will transmit the case to the Home Government for their consideration.<sup>6</sup>

Moseby’s lawyer, Alexander Stewart, wrote to Lieutenant Governor Bond Head on September 5, explaining that this case needed a special interpretation of the Upper Canada *Fugitive Offenders Act* of 1833. There had already been earlier cases in which the fugitive slaves had been allowed to remain in Canada, including the Blackburn Case of June 1833, where Kentucky refugees Thornton and Lucie Blackburn had been accused of trumped up charges in order to secure their extradition.



Township of Niagara on behalf of Solomon Moseby the fugitive slave &c., Niagara, 2 September, 1837; LAC microfilm C-6903

<sup>4</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 229-232. Copy of the Petition of the Inhabitants of the Town of Niagara respecting Solomon Moseby the fugitive Slave, nd; LAC microfilm C-6903

<sup>5</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 229-232. Copy of the Petition of the Inhabitants of the Town of Niagara respecting Solomon Moseby the fugitive Slave, nd; LAC microfilm C-6903

<sup>6</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 229-232. Copy of the Petition of the Inhabitants of the Town of Niagara respecting Solomon Moseby the fugitive Slave, nd; LAC microfilm C-6903



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In his letter, Stewart wondered, “how far our statute passed in 1833 ever contemplated the protection of the barbarous trafic [*sic*] in human flesh.” He noted that, if returned to Kentucky, Moseby would not be imprisoned because “the Labour of the slave is as much the property of the Master as that of his horse” and only in extreme crimes can the State “deprive the Master of his property in his Slave.”<sup>7</sup> In Kentucky, Moseby would be neither tried nor punished for horse theft, but would be returned to slavery. Stewart noted that there had been so many slaves escaping to Upper Canada recently, “that Slave holders are seriously alarmed.” He believed that the charge of horse theft brought against Moseby was “a mere pretext to obtain his servitude in vile bondage.” He went on to say that it was “preposterous” to believe that four men would incur \$400 or more in expenses, and travel 1,500 miles (2400 km) for a \$150 horse.<sup>8</sup>

Stewart reminded the Lieutenant Governor that there was a loophole in the law. The 1833 Act did provide for exceptions: “Fortunately the last action of the Statute arms His Excellency with a power of discretion.”<sup>9</sup> However, in Toronto, Attorney General Christopher A. Hagerman believed that Moseby’s alleged crime fit the *Fugitive Offenders Act*, as horse stealing was a capital offence in Canada. He did not seem to have seen (or paid attention to) the communications from Niagara. Abolitionist Hiram Wilson wrote, “I was sorry...to perceive that [Hagerman] made no distinction between the offense of a slave in taking his master’s horse, and that of a freeman, in appropriating to his selfish purposes a like amount of property belonging to his neighbour.”<sup>10</sup> It may be that Toronto authorities were too preoccupied with other problems - the rumours and unrest that would lead to the Upper Canada Rebellion - to pay careful attention to one legal case in Niagara.

Hagerman recommended that Lieutenant Governor Sir Francis Bond Head sign the extradition warrant to hand Moseby over to the American authorities. Bond Head complied, at the same time requesting direction from legal authorities in England. Bond Head’s reply to the Niagara petitioners was published later in the *St. Catharines Journal*:

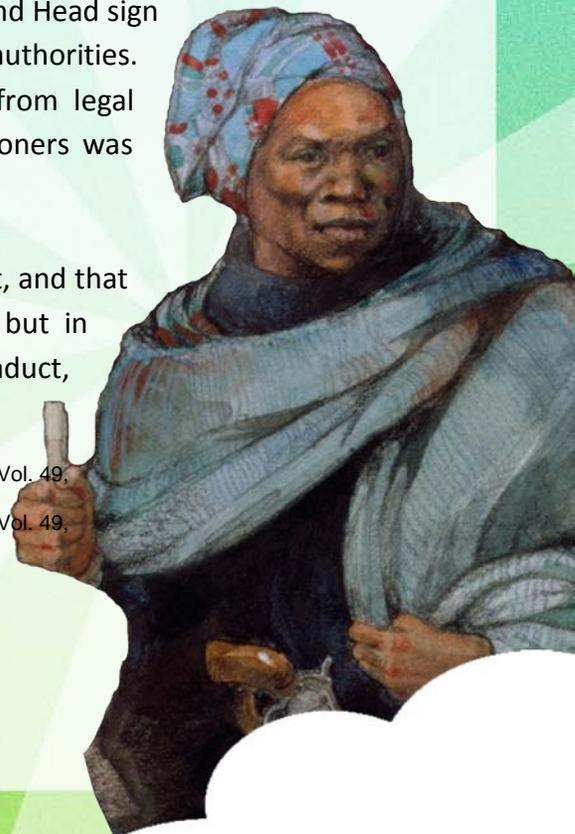
It is true, that a Slave in the United States is not a free agent, and that he becomes so the instant he arrives in Upper Canada; but in obtaining freedom, he becomes also responsible for his conduct,

<sup>7</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 219-221, Alexander Stewart to John Joseph, Niagara 5 Sep 1837; LAC microfilm C-6903

<sup>8</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 219-221, Alexander Stewart to John Joseph, Niagara 5 Sep 1837; LAC microfilm C-6903

<sup>9</sup> RG1-E3 [now R10875-5-7-E] *Executive Council Office of the Province of Upper Canada*, Vol. 49, 219-221, Alexander Stewart to John Joseph, Niagara 5 Sep 1837; LAC microfilm C-6903

<sup>10</sup> *The Friend of Man*, 22 Nov 1837, letter from Hiram Wilson dated Niagara, 26 Oct 1837. Online at <http://newspapers.library.cornell.edu/collect/FOM/>





like other free men. British law gives him as much freedom as belongs to British subjects, but no more. This land of liberty cannot be made an asylum for the guilty of any colour.

The individual in question has been proved to have been guilty of *recent* felony. I believe him to have committed it, and I have reason to believe that you are of that opinion. Under these circumstances, I cannot, on account of his colour, conscientiously refuse to deliver him up to the American authorities.<sup>11</sup>

On September 7, Castleman, Moseby's former owner, made his way to Hamilton, and submitted a similar warrant for the arrest and extradition of another Kentucky fugitive, Jesse Happy. Again, the alleged crime was horse theft, but Happy's particular offense had supposedly taken place 4 years earlier. In this case, Attorney General Hagerman felt that the delay in the Kentuckian's prosecuting of Happy looked suspicious. The two cases were dealt with separately: Moseby was seen as a recent criminal who must be sent to trial, Happy as a man who would suffer the unjust punishment of slavery if returned.

In Niagara, an anxious group of supporters had gathered outside the jail as soon as Moseby was arrested. Herbert Holmes, a preacher and teacher, and Sally Carter, a community leader, "gave the alarm to all their comrades on the Niagara frontier, and called on them to come to the rescue at once, and nobly they responded."<sup>12</sup> Soon, there was a Black encampment around the jail, determined that Moseby should not be returned to slavery. White supporters may not have been so evident, but they helped by supplying food and supplies for travellers.

It was a peaceful protest, in which the women had a leading role, persuading the men not to carry weapons. "They were quite unarmed," reported writer Anna Brownell Jameson, "and declared their intention not to commit any violence against the English law." The initial plan had been to raise enough money to cover the price of the stolen horse, and have the charges against Moseby dropped. They were determined "to do no illegal violence, but to lose their lives rather than see their comrade taken by force across the lines."<sup>13</sup>



<sup>11</sup> *St. Catharines Journal*, Vol II No 28, 28 Sep 1837; AO N77

<sup>12</sup> Janet Carnochan, "Slave Rescue in Niagara, Sixty Years Ago," *Niagara Historical Society* No. 2 1897, 13.

<sup>13</sup> Anna Brownell Jameson, *Winter Studies and Summer Rambles in Canada*, Vol. II. (London: Saunders and Otley, 1838), 45.



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According to Hiram Wilson, “Castleman tried to negotiate with the captains of the *Hamilton* and *Transit* (steamboats) to carry Moseby across the line [border]; but they promptly and wisely refused to disgrace their boats by employing them in business so mean.”<sup>14</sup> Sixty years later, another eyewitness remembered, “[Deputy Sheriff] McLeod wished Capt. Richardson of the *Canada* to take Moseby to Lewiston in his vessel, and received for an answer a reply, forcible and somewhat profane...that no vessel commanded by him would be used to convey a man back to slavery.”<sup>15</sup>

On September 12, documentation arrived from Toronto instructing the sheriff to turn Moseby over to the American authorities. Deputy Sheriff McLeod brought in soldiers for additional security. There was a delay when news came that Bond Head was reconsidering his decision. But soon another order came for the prisoner to be taken to the Niagara Ferry, and over to Lewiston.

Numbers vary according to source, but between 200 and 400 African Canadians were gathered at the jail. (The resident Black population of Niagara at the time was about 400.)<sup>16</sup> This “blockading army” made its plans.<sup>17</sup> The women stood on the bridge over the swampy approach to the jail, blocking the road and singing hymns. They would cause a diversion, giving Moseby a chance to escape.<sup>18</sup> One woman remembered later:

[O]ur people were worked up till they said they would “*live with him or die with him.*” Yes, *do or die*, that’s what they said, and they went up on that day, crowds and crowds, and the sheriff, that was McLeod, and the constables and soldiers, and the people, and children and the white people, crowds and crowds.<sup>19</sup>

They were armed with all kinds of weapons: pitchforks, flails, sticks, stones. One woman had a large stone in her stocking, and many had their aprons full of stones, and threw them, too. The constables had muskets.<sup>20</sup>

Deputy Sheriff McLeod read the *Riot Act* to the angry throng, ordering them to disperse. A child eyewitness remembered sixty years later:

<sup>14</sup> *The Friend of Man*, 22 Nov 1837, letter from Hiram Wilson dated Niagara, 26 Oct 1837.

Online at <http://newspapers.library.cornell.edu/collect/FOM/>

<sup>15</sup> Carnochan 1897, 14

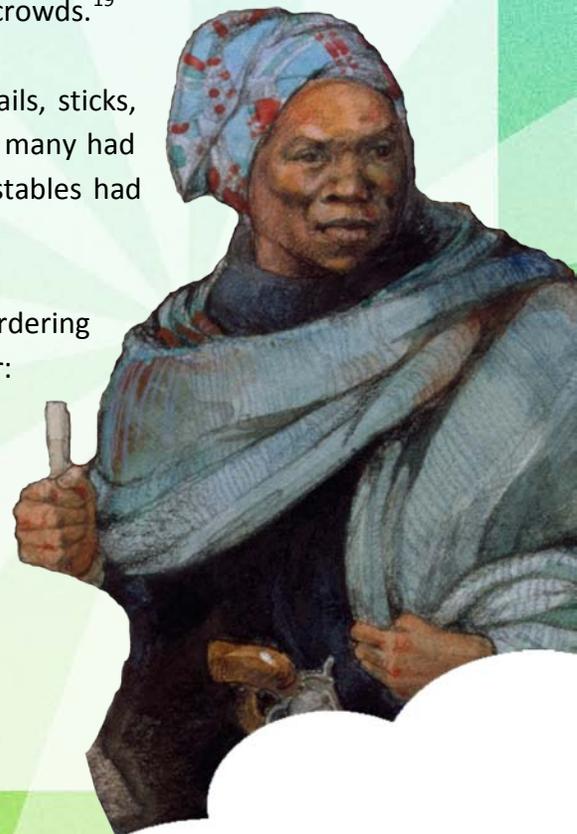
<sup>16</sup> Carnochan, 1897, 10

<sup>17</sup> Carnochan, 1897, 14

<sup>18</sup> Carnochan, 1897, 14

<sup>19</sup> Carnochan, 1897, 11

<sup>20</sup> Carnochan, 1897, 12





[M]other took us up on the top of our house, and we could hear the screaming and the screeching and the firing. Ephraim Wheeler was the jailer, and the sheriff went up and down slashing with his sword and keeping the people back.<sup>21</sup>

As the wagon with Solomon Moseby left the jail yard, Herbert Holmes, one of the leaders and a local school teacher, grabbed the reins of one of the horses. Another supporter, Jacob Green pushed a fencerail through the wheel to stop the wagon. Then McLeod gave the order to fire, and Holmes was hit. Green was stabbed with a bayonet. (Both died from their injuries.) Two others were badly wounded. In the fracas, Moseby escaped.

[The women threw] themselves fearlessly between the black men and the whites, who, of course, shrank from injuring them. One woman had seized the sheriff, and held him pinioned in her arms; another, on one of the artillery-men presenting his piece, and swearing that he would shoot her if she did not get out of his way, gave him only one glance of unutterable contempt, and with one hand knocking up his piece, and collaring him with the other, held him in such a manner as to prevent his firing.<sup>22</sup>

Afterwards, Mrs. Jameson interviewed one of the women, Sally Carter. Events had clearly shaken her faith in Canada:

I asked her if she was happy here in Canada? She hesitated a moment, and then replied, on my repeating the question, "Yes—that is, I was happy here—but now—I don't know—I thought we were safe here—I thought nothing could touch us here, on your British ground, but it seems I was mistaken, and if so, I won't stay here—I won't—I won't!"<sup>23</sup>

Many were arrested, but only six Black men and four white were brought to trial. Most of the male rioters were granted their freedom if they served in the militia, which was being raised to put down the Upper Canada Rebellion.<sup>24</sup>

Solomon Moseby did not feel safe in Canada, so he went to England. According to a resident of Niagara:

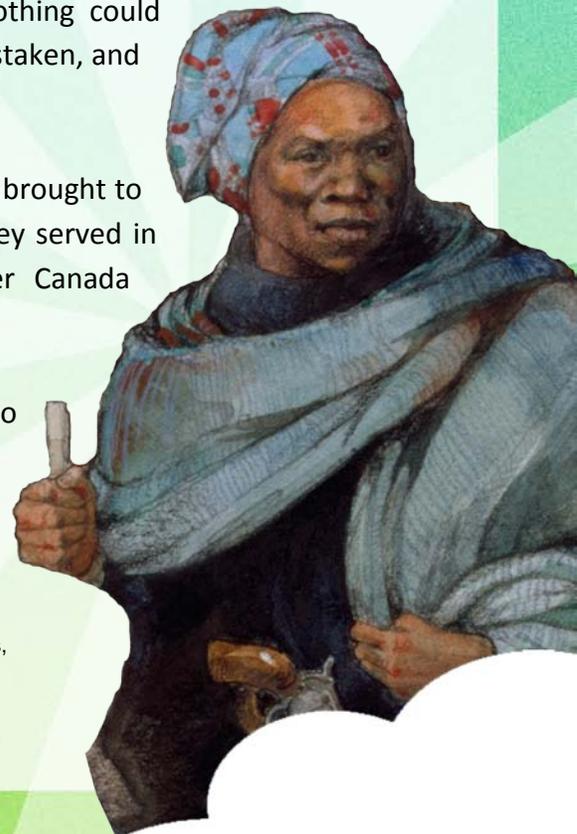
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<sup>21</sup> Carnochan, 1897, 12

<sup>22</sup> Jameson, 1838, 45

<sup>23</sup> Jameson, 1838, 47

<sup>24</sup> Karolyn Smardz Frost, *I've got a Home in Glory Land*. (Toronto: Thomas Allen Publishers, 2007), 244





After some years Solomon Moseby came back, and meanwhile his wife had come here. They met in Mr. – house, but at first they hardly knew one another, but it was a sight to see the tears streaming down their faces with joy...<sup>25</sup>

The rest of their lives, the Mosebys lived in St. Catharines and Niagara.<sup>26</sup>

Debate in Canadian newspapers covered the spectrum of opinion. An article entitled “Mobocracy” in the *St. Catharines Journal* criticised those involved in the escape, asserting that they were “violating the laws and ordinances of the country which affords an asylum for the oppressed of their race.” The writer blamed the participants for “the enormity of the crime of resisting the officers of the law, in the performance of their duty.”<sup>27</sup> On the other hand, the *Niagara Reporter* said that the crowd “forbore with Christian fortitude, exclaiming, ‘Don’t hurt the poor soldiers.’”<sup>28</sup>

The incident raised an important principle for lawmakers: should Canada extradite an alleged criminal when the punishment he or she would receive is more severe than if he or she were tried in Canada? The outcome of his decision regarding Moseby must have given Bond Head pause for thought, because he wrote to the Colonial Office in Britain, “giving up a slave for trial to American law is, in fact, giving him back to his former master.” Until American law allowed the accused fugitive to be returned to Upper Canada after trial, “we are justified in refusing to give him up.”<sup>29</sup> After considering the issue, the Colonial Office noted that where false charges were brought against someone in Upper Canada, the accuser was liable to prosecution for perjury. The charges brought by a slaveholder should first be proven in a Canadian court before an accused fugitive could be handed over to American authorities, thus making the accuser liable to Canadian perjury laws.<sup>30</sup>

With no clearly enacted legislation covering the protection of fugitive slaves, African Canadians continued to be apprehensive about their safety in Canada. At a “Great Meeting of the Coloured Population at Ancaster” in March, 1840, they enlisted the help of white

<sup>25</sup> Carnochan, 1897, 12

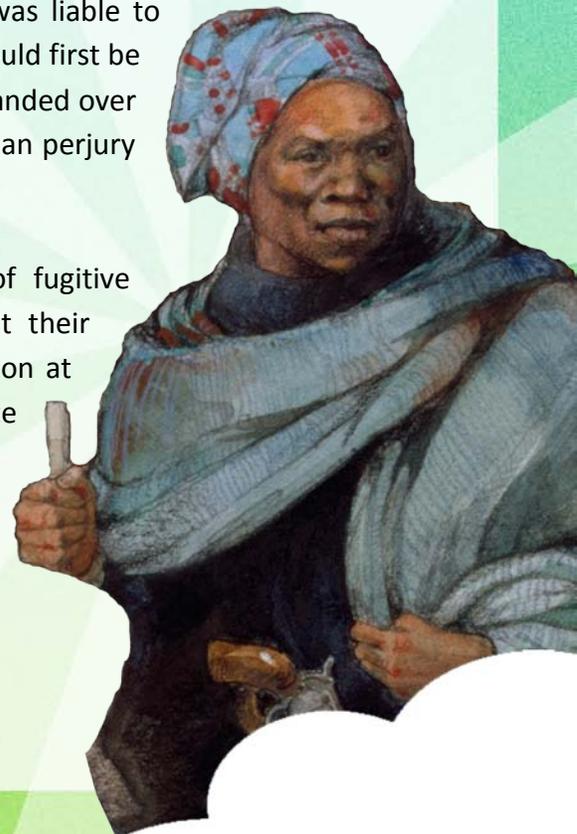
<sup>26</sup> William Kirby and Petrie, Francis J., *Annals of Niagara*. (London, Ont.: E. Phelps, 1872), 233

<sup>27</sup> *St. Catharines Journal*, Vol II No 27, 21 Sep 1837; AO N77

<sup>28</sup> *Niagara Reporter*, Vol. 5 No 17, 14 Sep 1837; AO N023

<sup>29</sup> Head to Lord Glenelg, 8 Oct 1837, quoted in Smardz Frost, 2007, 245

<sup>30</sup> Glenelg to Arthur, 9 Mar 1838, Head to Glenelg, 8 Oct 1837, quoted in Smardz Frost, 2007, 246





abolitionist Dr. Thomas Rolph to explain the situation to anti-slavery groups and lawmakers in England. At the British and Foreign Anti-Slavery Convention in London, in 1840, he presented the concerns of African Canadians regarding extradition. Rolph himself had been corresponding with the government, “trying to obtain protection for the coloured race in Canada, but he almost despaired of success.”<sup>31</sup> However, in 1842, the Webster-Ashburton Treaty between Britain and the US removed horse theft from the list of extraditable offences, in part due to Rolph’s persistence.

To African Canadians in the late summer of 1837, this was not simply a matter of obtaining justice for one man. If Castleman had succeeded in having his former “property” returned to Kentucky, then they would all have been vulnerable to extradition to the US (and re-enslavement) for real or trumped up charges.

The Moseby case drew attention to a major flaw in the 1833 *Fugitive Offenders Act*: extradition could lead to a punishment in another country that exceeded that in Canada for the same crime. This law had been tested in 1833 in the case of Thornton and Lucie Blackburn, fugitive slaves from Kentucky who were falsely accused of crimes by their Kentucky owners. They were freed to start new lives in Canada. The fugitive slave cases such as the Moseby case were important principle influences that helped establish Canadian extradition and refugee policies that are still used today.



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<sup>31</sup> *The Patriot*, London, 24 June 1840, 4-5