

THE SLAVE WHO SUED FOR FREEDOM

by Jon Swan

While the Revolution was still being fought, Mum Bett declared that the new nation's principle of liberty must extend to her too. It took eighty years and a far more terrible war to confirm the rights she demanded.

Early during the year 1781, having heard a lot of talk about the "rights of man," a black slave woman named Mum Bett walked out of her master's house in western Massachusetts to tell a lawyer that she wanted to sue for her freedom. After asking her what had put such an extraordinary idea into her head and being satisfied by her reply, the lawyer agreed to represent her. The case is a reminder of the fact that slavery existed even in the cradle of abolitionism, and it is a testament to the hopes inspired by revolutionary rhetoric. But it is most fascinating, perhaps, for the glimpse it yields of a singular woman who was determined to be free.

Bett and a younger sister, Lizzie, grew up as slave chil-



An 1811 portrait of Mum Bett by Pamela Sedgwick's daughter Susan.

dren in Claverack, New York, about twenty miles south of Albany. Their owner was a Dutchman, Pieter Hogeboom. In 1735 his youngest child, Hannah, married John Ashley, the son of one of the original proprietors permitted by the General Court of Massachusetts to organize settlements along the Housatonic River.

The Ashleys had four children. Exactly when they acquired Bett and Lizzie is not known, but Hannah's father died in 1758, when Bett was about fourteen.

By this time John Ashley had become an important figure in Sheffield, Massachusetts, the largest settlement in the western slice of Massachusetts that would later be called Berkshire County. In 1761 he was appointed judge of the Court of Common Pleas, a post he voluntarily

resigned twenty years later, when his servant Bett's case came before that court. Col. John Ashley was an honorable man.

Described as "patriarchal of appearance, of middling size," according to an early biographical sketch, Ashley was also a cautious man. As a member of the Massachusetts Assembly, he signed a letter drafted by Samuel Adams in 1768 objecting to the "several acts of Parliament, imposing Duties & Taxes on the American colonies"; but, along with only a few of his colleagues, he subsequently bowed to the governor's demand for a disavowal of the letter.

A town meeting held in Great Barrington, one of the three Berkshire County towns that Ashley represented, denounced him for repudiating the "highly approved circular letter." Nevertheless, in the next election he was again chosen to represent the area, and when, in 1773, Sheffield appointed a committee "to take into consideration the grievances which Americans in general and Inhabitants of this Province in particular labor under," Colonel Ashley was appointed chairman.

The meeting of that committee, held in Colonel Ashley's home in early January of 1773, very probably was a turning point in the life of Mum Bett. She was now almost thirty years old. The committee's clerk, Theodore Sedgwick, was the lawyer who would ultimately take her case. Sedgwick was only twenty-six. He had been expelled from Yale for unspecified "boyish gaities" but then studied law in Great Barrington and set up practice in

She had overheard a town panel preparing a resolution that "Mankind in a State of Nature are equal, free and independent."

downtown Sheffield. The meeting lasted for several hours, and Mum Bett presumably served refreshments—and perhaps listened in—as the men discussed the evening's business in the pine-paneled study on the second floor of the Ashley house.

The result of that discussion was a document called the Sheffield Declaration. While duly respectful of the crown, it contained a resolution that read: "Resolved that Mankind in a State of Nature are equal, free and independent of each other, and have a right to the undisturbed Enjoyment of their lives, their Liberty and Property." Clearly somebody there had read John Locke. Mum Bett had not—she never learned to read or even



Mum Bett's lawyer Theodore Sedgwick, by Gilbert Stuart.

to write her name—but she seems to have taken the philosopher's message more directly to heart than anyone else in the room.

The Sheffield Declaration, the first of its kind, was subsequently "twice Reade distinctly" at the Sheffield town meeting and unanimously approved. The following year—no doubt to the colonel's consternation—the townspeople of Great Barrington, where Ashley sat as a judge, packed the courthouse so that no further business could be carried out until a state constitution had been drawn up and approved. Thereafter the so-called Berkshire Constitutionalists shut down courts throughout the county until 1780, the year Massachusetts finally approved its constitution.

The first article of the Declaration of Rights of the new constitution stated that "all men are born free and equal, and have certain natural, essential, and inalienable rights. . . ." Thus the sentiments expressed by the Sheffield Declaration and the Declaration of Independence were now the law of the state and county in which Mum Bett lived and worked.

A single, but dramatic, domestic scene apparently made her decide that the time had come to put those high-sounding words to the test. In "The Practicability of the Abolition of Slavery," a lecture delivered fifty years after the event, Henry Dwight Sedgwick, one of Theodore Sedgwick's ten children, recalled the episode.

"Slavery in New-York and New-England," he first ex-

plained, "was so masked, that but a slight difference could be perceived in the condition of slaves and hired servants. . . . The younger slaves not only ate and drank, but played with the children. They thus became familiar companions with each other. The black women were cooks and nurses, and as such assisted by their mistresses. . . . In this state of familiar intercourse, instances of cruelty were uncommon, and . . . caused a degree of indignation not much less than if committed upon a freeman.

"Under this condition of society, while Mum Bett resided in the family of Col. Ashley, she received a severe wound in a generous attempt to shield her sister. Her mistress in a fit of passion [had] resorted to a degree and mode of violence very uncommon in this country: she struck at the weak and timid [Lizzie] with a heated kitchen shovel: Mum Bett interposed her arm, and received the blow; and she bore the honorable scar it left to the day of her death."

After this incident, according to the lawyer's son, Mum Bett set off to consult Theodore Sedgwick. By now Bett was about thirty-seven years old; Sedgwick was thirty-four. He had seen action in the Revolutionary War and in 1780 had been elected to the first General Court held under the new state constitution.

The conversation between the slave and the lawyer was preserved by Harriet Martineau, a novelist with strong abolitionist views who visited the Berkshires a couple of years after Mum Bett's death in 1829 and who was,

for a time, a close friend of the Sedgwicks. According to her account, when the lawyer asked the slave how she had learned "the doctrine and facts on which she proceeded, she replied, 'By keepin' still and mindin' things.'" And when pressed to explain to what things she had paid mind, she replied that, "for instance, when she was waiting at table, she heard gentlemen talking over the Bill of Rights and the new constitution of Massachusetts; and in all they said she never heard but that all people were born free and equal, and she thought long about it, and resolved she would try whether she did not come in among them."

"By keepin' still and mindin' things" sounds authentic. So does a long sentence recollected by Theodore Sedgwick's daughter Catharine: "Anytime, anytime while I was a slave, if one minute's freedom had been offered to me, and I had been told I must die at the end of that minute, I would have taken it—just to stand one minute, I would have taken it just to stand one minute on God's earth a free woman—I would."

In 1781 it seemed to her that she could hope for more than just a single minute of freedom—if Sedgwick would consent to take her case. Just why he agreed to do so, given his close friendship with Colonel Ashley, whose generally conservative views he shared, remains something of a mystery. The historian Arthur Zilversmit has speculated that some Berkshire County residents seized upon the case as a means of testing the constitutionality of slavery in Massachusetts.

Her lawyers argued that no law had ever established slavery, and that it couldn't be constitutional anyway.

What effect Sedgwick's acceptance of the suit had on his friendship with the Ashleys is unknown. If Colonel Ashley was, as Catharine Sedgwick described him, "the gentlest, most benign of men," while his wife was "a shrew untamable" and "the most despotic of mistresses," it would seem likely that he viewed the whole matter more philosophically than she did—as an interesting case, an important case, which just happened to involve a woman whom his wife may have regarded as a valuable part of her inheritance.

Nor do we know why a co-plaintiff—another Sheffield slave, a man named Brom—came to be involved in the case. A surviving record of the case calls it *Brom & Bett v. J. Ashley Esq.* Brom is described simply as "a Negro Man . . . of Sheffield" and a "Labourer"; Bett, as "a Negro Woman . . . of Sheffield" and a "Spinster." And that's all we learn about Brom.

The case was set in motion when Sedgwick obtained a writ of replevin—a form of action taken for the recovery of property—from the Berkshire County Court of Common Pleas. The property in

this case was two humans who claimed they were being illegally detained. At least two such writs were sent to the colonel and also to his son, John Ashley, Jr. (in whose household Brom may have been employed). After the Ashleys refused to release the two slaves, the court ordered the sheriff to issue a summons to both father and son to appear at its next session. The case was heard in Great Barrington on August 21, 1781.

Both sides brought in prominent counsel. Sedgwick had enlisted the assistance of Tapping Reeve, of Litchfield, Connecticut, who later founded the Litchfield Law School; the Ashleys were represented by David Noble, who subsequently became a judge, and John Canfield, a respected lawyer from Sharon, Connecticut.

Noble and Canfield argued that "the said Brom and Bett, are and were at the time of Issuing the original Writ [or replevin], the legal Negro Servants of the said John Ashley during their Lives" and that this could be proved; thus the suit should be dismissed. Sedgwick and Reeve countered by insisting that the plaintiffs were not the servants of John Ashley "during their Lives," but on what legal ground they based this assertion the record does not make clear.

However, the duc de la Rochefoucauld-Liancourt, who visited Sedgwick in Stockbridge, provided in his *Travels* an outline of the argument that Sedgwick and Reeve presented. They pleaded, he wrote: "(1) That no

antecedent law had established slavery, and that the laws which seemed to suppose it were the offspring of error in the legislators . . ." and "(2) That such laws, even if they had existed, were annulled by the new Constitution."

In any event, the jury was persuaded. Not only did "Jonathan Holcomb Foreman & His Fellows" find that Brom and Bett "are not and were not at the time of the purchase of the original Writ the legal Negro Servants of him the said John Ashley during life," but they ordered Ashley to pay thirty shillings' damages and the cost of the suit—five pounds, fourteen shillings, and four pence.

Ashley appealed, but then a few months later he dropped the appeal. Moreover, as Zilversmit has pointed out, "he confessed judgment—that is, he assented to the lower court ruling that Brom and Bett were not slaves." Why? Because, in the intervening months, the state's supreme court had ruled, in another case, that slavery was unconstitutional in Massachusetts. That decision, in *Caldwell v. Jennison*, was a murky one, and some have argued that because no legislation banned slavery in the state, it was strictly legal until 1866—though not practiced.

Mum Bett changed her name to Elizabeth Freeman, and for the rest of her working life she served as a paid domestic in the household of Theodore Sedgwick and his second wife, Pamela—first in Sheffield and then in Stockbridge, where the family moved in 1785.

Mum Bett was "the main pillar of the household,"

according to Pamela's last-born daughter, Catharine Maria. Pamela slipped into severe depression, and Mum Bett was "the only person who could tranquilize my mother when her mind was disordered. . . . She treated her with the same respect she did when she was sane . . . her superior instincts hit upon the mode of treatment that science has since adopted."

When, in the winter of 1785, followers of Shays' Rebellion broke into the house demanding the family silver, Mum Bett faced them down. With Theodore Sedgwick away, she had hid the silver in her own chest of drawers; after leading the unruly men from room to room she shamed them out of looking in her chest by urging them to do so. "Oh, you had better search that—an old nigger's as you call me." Thus she saved the family silver.

At what age Mum Bett retired is unknown. But she did have enough money to buy herself a home—a "little hut," Catharine Sedgwick called it. Catharine recalled that when she visited Mum Bett there daily during her final illness, "I felt as awed as if I had entered the presence of Washington. Even protracted suffering and mortal sickness . . . could not break down her spirit."

On October 18, 1829, Elizabeth Freeman signed—with her mark—her last will and testament. It alone reveals that at some point she was married and that she had children, grandchildren, and great-grandchildren.

Elizabeth Freeman died on December 28, 1829. Her tombstone stands in the Stockbridge cemetery beside that



BOTH: MEL ADEGLASS



Top: Col. John Ashley's house, in Ashley Falls. **Bottom:** Mum Bett's gravestone.

of her friend Catharine, in the innermost circle of a plot known as the Sedgwick Pie. In the center of the pie are the tall monuments inscribed with the names of Theodore and Pamela Sedgwick; buried in concentric circles around them are generations of Sedgwicks by birth or marriage, all facing in toward the center so that, it is said, on the Day of Judgment, when the dead shall

rise, they shall see no one but other Sedgwicks. The only person who is not a Sedgwick is Elizabeth Freeman—an exception in this as in so many other ways. She is also the only black among all those whites.

The inscription on her tombstone is exceptional too—longer than the others and revealing a personal and profound affection. It was written by Catharine's brother Charles and it reads: "ELIZABETH FREEMAN, known by the name of MUMBET died Dec. 28 1829. Her supposed age was

85 years. *She was born a slave and remained a slave for nearly thirty years. She could neither read nor write, yet in her own sphere she had no superior nor equal. She neither wasted time nor property. She never violated a trust, nor failed to perform a duty. In every situation of domestic trial, she was the most efficient helper, and the tenderest friend. Good mother fare well.*" ★

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