

# ARCHER (McDonald)'s Suit for Freedom

Archer (McDonald) provides an example of an enslaved African-American who, struggling against severe odds, courageously tried to use the legal system to force a commitment of freedom to be honored.<sup>1</sup>

**Promises of eventual emancipation** were sometimes offered to enslaved people, if they would compliantly serve their owner in the interim. Even for the small minority who were given such promises, it's unclear how many people were actually freed as a result. While the slaveowner who made the promise was still alive, he or she could simply revoke it. Even when a Clark County slaveowner made a written instruction for emancipation in a recorded will, it appears that a large percentage, perhaps as many as half, of those who were thereby promised their freedom were never emancipated per the will.<sup>2</sup> A broken promise of freedom could only have made the ongoing enslavement for that individual yet far more painful.

**A slave who sued for his freedom.** Since enslaved people were legally treated as property, not as human beings, it was very difficult for them to do anything about it if a promise of freedom was later ignored. That was the case even when that commitment had been made in writing and witnessed, such as in a will. Slaves had no legal standing to press charges or institute lawsuits or to testify against a white person.

Kentucky did have a narrow exception: a person who was held as a slave had a limited right to file a suit on the grounds that he or she wasn't legally a slave and was thus illegally being held in bondage.<sup>3</sup>

For an enslaved person to take advantage of this narrowly defined legal window required a rare set of circumstances. The first formidable obstacle was that he or she needed a written contractual promise of freedom or comparably compelling evidence. Then, financial resources were needed to retain a

---

<sup>1</sup> In the absence of information about the surname used by an enslaved person, for identification purposes the surname of their first known owner has been used, in parentheses.

<sup>2</sup> A review of Clark County probate records indicates that, for those enslaved people who were to be freed per a slaveowners written instructions in their will (a small subset of all Clark County slaves, to be sure), a large percentage were apparently not emancipated. That is, no court order of emancipation could be found, without which the individual was still a slave. Nor could the relevant individuals be identified thereafter as free people. Occasionally, these situations had a happy ending. Roger Beckwith of Clark County promised freedom to a number of enslaved people in his will but that instruction was ignored by his son Waddington Beckwith. Fortunately for those involved, they faced a simpler legal task than Archer (McDonald). Rather than needing to sue an owner for their freedom, thirteen of the affected Beckwith slaves petitioned the Clark County Court in 1810 to simply recognize that Roger Beckwith's will, which was properly witnessed and recorded, was valid. The court approved that petition. Waddington Beckwith appealed that decision but lost the appeal. Subsequent emancipation orders can be found for most of that group.

<sup>3</sup> The various slave states raised all types of hurdles to freeing slaves. A number made it illegal to free slaves, except under the rarest of exceptions. Although Kentucky didn't bar the manumission of slaves, the state created other major deterrents including, after 1851, a requirement that the newly freed slave had to promptly leave the state (thus leaving their family behind).

lawyer. White witnesses were a necessity. For those few who made it so far as to receive a trial, a jury of white men, some of them slave owners, in a courtroom ruled by a white judge, probably also a slave owner, would have to be persuaded to decide in his or her favor.<sup>4</sup>

Beyond the circumstances and skills to attempt to overcome such a severe set of hurdles, the enslaved person taking on this challenge would have to face the most chilling of dangers: they were suing the person who was now holding them in bondage, a person who would have many ways to make their displeasure felt.<sup>5</sup>

Only a person with extraordinary strength of will would attempt to face such a daunting prospect. Archer (McDonald) was such a man.

**Archer's background.** As with many people held in slavery, it's difficult to learn details about Archer (sometimes called Archie), and the story can become convoluted due to changes of ownership and relocations. Archer was born about 1803, probably in Kentucky. His first known owner was James McDonald, whose original place of residence was probably Kentucky but who later moved to Tennessee.<sup>6</sup>

James McDonald sold Archer to a Tidence Lane, in 1826 or 1827. The sale location was apparently east Tennessee.<sup>7</sup>

**A freedom bond.** James imposed an unusual restriction on the sale of Archer, which would have reduced the amount that he received for Archer's sale then, and that Tidence could sell Archer for in the future. James made Tidence provide a written commitment (which James described as a "bond") that Archer would be emancipated after seven years of "faithful" service. James kept the original of this document.<sup>8</sup>

---

<sup>4</sup> Author Arnold Taylor has diligently searched Kentucky court records for cases of slaves suing for their freedom. The two or three dozen cases presented in his book, *Suing for Freedom in Kentucky*, are each striking in their particulars. Unsurprisingly, these cases are rare, representing only a tiny proportion of the hundreds of thousands of people who were held as slaves in Kentucky over time. (A short version of Archer's story is included in Arnold's book. Although I knew and wrote about Archer long before Arnold's book was published, he does include another story pertaining to Clark County which was new to me: that of Sam Martin.)

<sup>5</sup> That the enslaved person wasn't suing the slaveowner who originally made the promise of emancipation (who could have revoked that promise whenever he or she liked), made no difference as to the difficulties and dangers created by suing the new slaveowner.

<sup>6</sup> This James McDonald was not the James McDonald who died in Clark County circa 1813; it's possible that he was related to him. Unless Archer had lived in Clark County when owned by James McDonald, he only lived fleetingly in Clark County. However, as will be seen, his story still revolves around Clark County since his suit for freedom was against agents of Jeremiah Bush of Clark County and Jeremiah's role was due to Archer's ownership by Jeremiah's sister, Nancy Julia Bush Estill, who had lived in Clark County for most of her life and always maintained strong ties there.

<sup>7</sup> The only known men of that era named Tidence Lane were a Tidence Lane, Jr. of east Tennessee, who apparently also had a cousin named Tidence Lane.

<sup>8</sup> No indication is given in the surviving documents as to why James chose this odd course of action, which neither provided any additional servitude from Archer to James, nor did it free Archer any time soon (or even, as will be seen, actually guarantee his eventual emancipation), yet it did surely reduce the sales price that James received for Archer. One can only guess that James wanted, for reasons unknown, to make an at least somewhat generous gesture to young Archer (who was then about 23), yet also wanted to receive a sizable amount of cash by selling him. The combination is sufficiently peculiar that it makes one wonder if James was Archer's biological father.

In the late 1820s, Tidence sold Archer to Robert Miller of Madison County, Kentucky. It's unknown how Tidence and Robert knew each other but Robert Miller was a major slaveowner.

In late 1829 or early 1830, Nancy Julia nee Bush, of the Bush family of Clark County, bought Archer from Robert, who was the brother-in-law of Nancy Julia's then husband, Benjamin Estill.<sup>9</sup> Archer was part of Julia and Benjamin's household in Madison County in mid-1830, as was an enslaved man who is the subject of another chapter, Daniel (Bush).

Tidence may have conveniently neglected to pass on the information about Archer's freedom bond, since it would have greatly reduced Archer's monetary value. Nonetheless, Archer himself surely told both Robert Miller and the Estill couple about it since he would want his new owners to know about his promised emancipation, which was drawing ever closer in time.

Julia also purchased, circa 1830, a woman named Lucretia, who was born about 1807, and Lucretia's son, who was born about 1829. The son's name—Edward McDonald—suggests that Lucretia and Archer had known each other prior to their ownership by Julia and that Archer was likely Edward's father. Lucretia subsequently gave birth to daughters, Susan Ann, born in 1831, and Nancy Jane, born in 1833. Their father's identity is unknown but it may well have been Archer.

Julia continued to maintain close ties in Clark County during this period, especially with her younger brother Jeremiah Bush. In late 1829, immediately prior to her marriage to Benjamin, Julia had created a complicated prenuptial agreement making use of Jeremiah to hold her assets. This would soon bear on Archer's situation.

Julia and Benjamin and the people they held as slaves moved circa 1831 to Greenup County, at least in part to move out of the reach of the plaintiff in a lawsuit concerning her slave Daniel.

**Julia's death.** Nancy Julia Bush Estill died in mid-1833 in Greenup County. The inventory of the assets of her estate, taken after her death, included Archer, Lucretia, and Lucretia's children.<sup>10</sup>

Julia's brother Jeremiah Bush was named administrator of her estate by the Greenup County Court, presumably because of the prenuptial arrangements she had made with him.<sup>11</sup>

Because Jeremiah lived in Clark County and Julia's estate was being settled in Greenup County, where she died, he made arrangements for a man there, James Dunlap, to take over the day-to-day probate

---

<sup>9</sup> Robert Miller subsequently testified that he sold Archer to Benjamin and Julia Estill jointly, with each paying a portion of the cost and a portion still owed. Jeremiah Bush testified that his sister Julia paid all of the cost for Archer. The lawsuit proceedings only appear to make sense if the court accepted Jeremiah's version.

<sup>10</sup> Archer was valued at \$500 in Julia's estate inventory. This price isn't radically less than would be expected for a man of 30 at that time, indicating that the appraisers were paying little or no attention to any protestations by Archer that he was a free man. Lucretia and her three children were valued at a total of \$700.

<sup>11</sup> Julia died intestate, i.e., without a will. Jeremiah was appointed her administrator by the Greenup County Court on November 4, 1833; Benjamin waived his right to administer. The complicated property arrangements by Julia to transfer some of her property out of her husband's reach to her brother, and to be able to own other assets independently of her husband, and having an estate inventory and estate administrator while her husband was alive, all appear to have been highly unusual in that era. Property ownership for a married woman with a living husband was ordinarily impossible under the coverture laws of the time, in every state in the U.S. Julia's ownership of property separate from her husband was explicitly permitted in her October 29, 1829 prenuptial agreement.

tasks as his agent, and gave him a power of attorney. Dunlap had a neighbor in Greenupsburg, Joseph Collins, who was also apparently his business partner, and assisted him in representing Jeremiah.

**Struggling for freedom.** By 1834, or perhaps sometime in 1833, Archer's seven additional years of servitude were up and he should have been emancipated. Unfortunately, he wasn't able to convince anyone, neither Jeremiah, Jeremiah's representatives, nor Benjamin, to free him. Nor did Archer personally have any written proof of the promise of freedom.

All was not lost for Archer, however. He was able to make contact, perhaps by a letter sent through an intermediary, with James McDonald. James had lost his copy of the freedom bond, but was willing to attest to its existence and validity.

**The lawsuit.** Since James McDonald was willing to vouch for the freedom bond, and with the services of attorney J. T. Morehead, Archer (McDonald) was able to launch a lawsuit for his freedom, in or about 1834.<sup>12</sup> Because the people who now had control over him as property were James Dunlap and Joseph Collins, they became the defendants in Archer's suit for his freedom.<sup>13</sup>

As part of the same legal action, Archer sued James Dunlap and Joseph Collins for assault and battery. Although the details are lost, the charge would seem to illustrate just how risky it was for an enslaved person to sue whites, in the rare circumstance where this was even possible. These two men were not even Archer's owners, just representatives of the estate administrator of his deceased owner, yet they apparently took great offense when they were sued by the enslaved black man in their custody.<sup>14</sup>

**Triumph at trial.** On July 9, 1835, a jury trial was held on Archer's suit at Greenup County Circuit Court. The jury of twelve white men included at least four who were slave owners. The crucial testimony of James McDonald as to the validity of the emancipation contract—the freedom bond—was accepted. After that, it appears that the defendants had no substantive defense to offer. The jury awarded Archer his freedom.

The judgment for emancipation was a tremendous victory for Archer. The jury's award of exactly one cent in damages, for the time he had been held as a slave after he should have been freed and for the assault, was insulting. Nonetheless, that indignity paled in significance compared to freedom.

**Appeal.** Even though the facts clearly supported Archer, the jury verdict in his favor did not go over well with the losing side, James Dunlap and Joseph Collins on behalf of Jeremiah Bush. To them, the outcome must have seemed outlandish, whatever the facts: an enslaved man had won his freedom by suing them. They immediately appealed the jury verdict, using as their argument a contention that the judge's instructions to the jury were in error.

---

<sup>12</sup> The surviving records don't provide an indication of how Archer obtained the money to hire an attorney but it's clear that he was a man not easily deterred. He did subsequently recover his legal fees from the defendants.

<sup>13</sup> The original court files from Greenup County have been lost, probably in an Ohio River flood. Some Circuit Court orders survive. The original appellate file is also lost, however, a publication of the era called "Dana's Reports" reprinted the appellate opinion. Thanks are due to Walter Bowman of the Kentucky Department of Libraries and Archives for his help in locating these records.

<sup>14</sup> So far as I understand, Archer could not even have instituted a suit against white men for assault and battery were it not for his contention that he was a legally a free man, and not a slave, at the time of the assault. If the Greenup Court files had survived, they might have included fascinating depositions or other records shedding more light on the details of what took place.

In an era when court cases, and appeals, were usually decided quite quickly, the appeal of Archer's verdict took a surprisingly long time for a decision. It was only a month short of three full years before the appellate decision was issued.

The Court of Appeals (Kentucky's supreme court at the time) finally issued their judgment on the appeal in June 1838. The lengthy, nearly inscrutable majority opinion by Chief Justice Robertson upheld the defendants.<sup>15</sup> The jury verdict in favor of Archer was overturned and a new trial ordered.

**Escape from Kentucky.** The good news is that Archer didn't wait around to find out what would happen in the appeal. The 1838 and 1839 records of the Greenup Court, where the case was dismissed because Archer was no longer in Kentucky and couldn't be located, make clear that he had long since fled Kentucky.

Archer may have been surprised himself, regardless of the law and testimony in his favor, by actually winning the 1835 verdict. In any case, he correctly understood that it would be better to not wait to see what would happen next in the legal process. However difficult it may have been to leave behind any family members who were still enslaved, getting out of Kentucky while he could was clearly a prudent decision.

The obvious choice of escape route, and the one he almost certainly took, was to cross the nearby Ohio River into Ohio. He probably did so soon after the 1835 verdict.<sup>16</sup> It's possible that he continued onward to other free states from there. It hasn't been possible to identify him in records thereafter, perhaps because he took the further precaution of changing his name.

Jeremiah Bush maintained that he had no idea of what happened to Archer after the 1835 trial and disclaimed any responsibility. Neither did Benjamin Estill know how to find Archer.<sup>17</sup>

Difficult as his road was, with never-ending resistance to the emancipation that he had been promised, Archer (McDonald) did become a free man. He departed Kentucky, surely for a free state. He remained free for at least the first five years after his 1835 trial, while the people who most wanted to find him, Jeremiah and Benjamin, did not know where he was (and both of them would be dead by

---

<sup>15</sup> Robertson's opinion was sufficiently difficult to decipher that a summary prepared by a legal reporting publication of the era, Dana's Reports, was itself hard to follow and of dubious accuracy.

<sup>16</sup> It's unlikely that the Greenup Court issued any emancipation documents to Archer while an appeal was pending. Archer would instead have had a copy of a document from the court confirming the verdict in his favor in his suit for freedom. One assumes that his lawyer also wrote up an official-looking paper for him stating that the Greenup County Court had issued a decision determining that he was a free man. Use of those types of papers would have been a vastly safer plan to cross the Ohio River compared to trying to evade slave-catching patrols as if he were a fugitive. Once across, one assumes that he tried to keep a low profile. The court record states that it was "proven" that Archer had left the Commonwealth of Kentucky, so someone knew that he had departed the state. That individual probably also knew when but no mention of the details are included in the surviving records.

<sup>17</sup> Benjamin, as Julia Estill's husband, was able to hold his brother-in-law Jeremiah, as Julia's estate administrator, financially liable for Archer's disappearance. In the Benjamin Estill v. Jeremiah Bush case (1835-1840 in Madison County), Benjamin was awarded a judgment for the value of Archer. It's not clear that Benjamin ever received any of the money. Benjamin Estill's date of death is uncertain although he was apparently still alive in early 1840. He can't be found in the 1840 census and probably died later in 1840. Jeremiah Bush was a difficult person to collect judgments from, especially for out-of-county creditors on his home turf. If Benjamin's heirs pursued collection from Jeremiah they would have had to spend a lot of time on it.

1842). And he held papers that would attest to his free status as of July 1835. All in all, it's very likely that Archer successfully remained a free man for the rest of his days.

It's unknown, however, whether Archer was able to ever again see any of his family members that he had to leave behind in 1835. After Julia's death, Lucretia, who may have been Archer's wife, and her children, who may also have been Archer's children, were taken and sold by Benjamin's sons.<sup>18</sup>

Archer's proven determination and his own arduous but successful path to freedom raise at least the possibility that, one day, he also found a way to reunite with others of his family in freedom.

---

<sup>18</sup> After Julia's death, Lucretia and her children were taken from Greenup County to Robert Miller's plantation in Madison County and then to Lexington by Benjamin's sons. They were sold in Lexington by Benjamin's son Benjamin, Jr., per testimony in *Estill v. Bush* (1835-1840 in Madison County). The name of the buyer was not stated. It's unclear how this happened legally, while Jeremiah was still administering his sister's assets. It hasn't been possible to learn what became of Lucretia and her children; she can't be identified in the 1870 census.