

Indian Slavery and Freedom Suits: The Cases of Rachel Viney and Rachel Findlay

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Although we often think of Negro slaves obtaining their freedom under certain circumstances, it is also true that some Indians¹ in Virginia who were slaves obtained their freedom. Many of them used the court system in Williamsburg, especially in the 1770s when “a multitude of cases” were heard.² The procedures were later spelled out in the Code of Virginia,³ and freedom suits were mentioned in the files of the Superior Court, in local court orders, and in decided cases of the Supreme Court.⁴ This article tells the story of two women, residents of Southwest Virginia, who obtained their freedom through the local court systems, Rachel Viney in 1815 and Rachel Findlay in 1820.

How could slaves file a lawsuit against their master? In these specific cases the exact details are missing, but it is known that Quakers, Methodists, and some local citizens were often willing to give assistance and encouragement. If the slave could reach the courthouse, then the laws of Virginia were specific. Persons who believed that they were entitled to be free were permitted to appear before the justices of the court in the county where they lived. If the court believed there was enough evidence to hear the case, the slave was permitted to file a petition reciting the reasons for the belief. The facts of the case usually showed that the individual was descended in the maternal line from an Indian brought into Virginia and held in slavery at a time when such was illegal; such illegal enslavement of Indians occurred repeatedly. After the case was filed, the master or owner of the slave was required to appear and post bond in an amount double the value of the petitioner. In the meantime, the slave was protected by the sheriff of the county. All court costs and attorney’s fees were free because the slave was usually without means and considered to be a pauper. These freedom suits were often referred to as *in forma pauperis* cases. Some were indexed under the word “Pauper” or the first name

of the person bringing the suit. Seldom were surnames mentioned, but the two cases that follow are exceptions.

The master's bond required that there be no interference and no abuse toward the slave while the evidence was being gathered, and there was to be no prohibition from allowing the summons to be obtained. Yet, in at least one instance in Southwest Virginia, the lower court refused to hear a case. Consequently the attorney filed a writ asking to transfer the case to the higher or Superior Court. This fact emerged from the Findlay lawsuit where the documents filed proclaimed that because a certain relative of the master was a justice on the court, it would be impossible for the case ever to be heard there.⁵

In the two specific cases mentioned in this article, one was filed in Montgomery County and the other in Wythe County, Virginia. Each of the petitioners was named Rachel, one with the surname Viney, the other Findlay. Each had been freed by a court in Eastern Virginia, but since these records have not survived, exact details are unknown. Even though the slaves had obtained their freedom, their masters moved them westward, where they were sold illegally as Negro slaves. As a result, the two Rachels had to file freedom suits to try once more to gain their freedom.

Rachel Viney and eighteen other members of her family were from Northumberland County, Virginia, and her first case was held in the District Court for Richmond, Westmoreland, Lancaster, and Northumberland. There they recovered their freedom by verdict dated September 7, 1791. In addition to their freedom they were awarded one shilling in damages. These facts were recited in the case filed in Montgomery County on December 23, 1806, when, for the second time, Rachel filed for her freedom.⁶ The evidence showed that her ancestor was Mary, who had come into Eastern Virginia by ship with her granddaughter, Bess. They were identified as Indians, not Africans, and were described as being "of yellow complexion and had long straight hair down to their waists." Bess was a young girl of twelve or thirteen. No Indian tribe was mentioned. Rachel Viney was a child of Sarah, a descendant of these two Indian women. The case stated that she had been sold back into slavery as a Negro. She was purchased by Henry Patton, of a well-known family who lived in that part of Montgomery County that is now Pulaski County.⁷

Her petition was filed in March 1807 without fees or costs because she was classified as a “pauper.” She filed for trespass, assault and battery, and false imprisonment, which was the standard request in such cases. Not only was she suing for her own freedom but she was also petitioning the court for her children — Hannah, Santy, Jimmy, Abigail, Joe, and Solomon — all of whom were being held illegally by Henry Patton. In addition, she sued for her son Marcus who was in the possession of Samuel Patton, a son of Henry, and her son Jupiter, who was in the possession of Andrew Johnston of Giles County. Her daughter Hannah’s three children — Sam, Daniel, and William — were also included in the suit. After more than eight years in the court system, all were declared to be free in 1815.

In 1816, the Giles County list of “free persons of colour” included Rachel Viney, age 49, then living on the New River at Philip Peter’s place. Her occupation was listed as a spinster, meaning someone who does spinning and weaving. Also in Giles County were Hannah age 27, Jupiter age 22, Senty [Santy] age 18, Abbey age 14, Joe age 12, Solomon age 10, Sam age 7, Daniel age 5, Bill age 3, and Jim age 4 months. In 1830, Jupiter, Jimmy, and Hannah were still residing in Giles County.⁸

The other Rachel, identified as Rachel Findlay, had a similar experience. She was declared to be free the first time in 1773 by the court in Williamsburg. She claimed her descent from her grandmother named Chance, who was brought into Virginia by Indian trader Henry Clay of what is now Powhatan County. Based on uncertain evidence, Chance was approximately six years old and had been kidnapped by Clay somewhere in the Southern Indian Nations; Catawba, Choctaw, and Creeks were all mentioned. Two Indian children, Chance and James (who was about eight years old), and their progeny were raised by the Clays. The exact date of their arrival in Virginia is not known, and it is not known how soon after their arrival Henry Clay took them to the Henrico Court in August 1712 to have their ages adjudged. At this time Indian slavery was no longer legal in Virginia, a fact ignored by the Clay family.⁹

Rachel Findlay, the granddaughter of Chance, was illegally transferred about 1773 to the frontier of Virginia by Mitchell Clay of Powhatan. She was then twenty years old, and her daughter Judy was six. They lived in the remote parts of what is now West Virginia, at

the place later known as Princeton. The following year Rachel and Judy were sold as Negro slaves to John Draper, who lived in Drapers Valley in that part of Wythe County that became Pulaski. While with the Drapers, Rachel had eleven children, and although she attempted many times to find someone to help her get to the court (twenty miles away in Wytheville) or find an attorney to help her, she did not make the trip until 1813. She was then sixty years old and had forty-two descendants, many or all of whom would also be entitled to their freedom if her case succeeded. The results were not immediate because her evidence had to be gathered in Powhatan County, where the elders of the community knew her and her circumstances. Court papers show that Rachel made at least two trips to Powhatan to take depositions for the trial. Eventually, the case was transferred to Powhatan, and in May 1820, after seven years in the court system, she was once again declared a free person.

Not only did Rachel Findlay file her case for freedom, but thirty of her forty-two descendants can be identified in various lawsuits which followed. In addition, her youngest daughter somehow found her way to Huntsville (Madison County), Alabama, and records there show that she received her freedom based on her mother's successful lawsuit.¹⁰ Other members of Rachel's family were probably given to Draper children who moved west and left no local information.

The court order books mention those family members of Rachel who had been freed in the local courts. Their freedom was granted, based on the fact that their mother (or their grandmother) Rachel Findlay had been freed by the court in Powhatan. Later, the same court recognized her success when she filed for registration as a free person of color descended from an Indian named Chance.¹¹

Rachel Findlay's story appeared in the *Journal of the Afro-American Historical and Genealogical Society* in 2003. In addition, court papers filed in Wythe and Powhatan counties were used as a basis of the historical novel *Free in Chains*, written by this author and published in 2002.¹²

Since publication of the novel, the article in the *JAAHGS*, and the book *Free People of Colour*, a descendant of Chance who traced his heritage through Rachel's daughter Judy, her daughter Ann, and her daughter Malinda, has been identified and is residing in Florida. He has an extended family living in various places in the United States

and is very proud of his Indian heritage and the fact that he was able to make the connection to Chance, born about 1706.¹³

The reader can only imagine what it must have been like for the two Rachels to know that they had followed the rules, gained their freedom, and then were betrayed and returned to slavery as Negroes. Rachel Viney spent twenty-four years in illegal servitude after the first court case in Northumberland. It took the Montgomery County Court more than eight years of that time to reach its decision. Rachel Findlay waited forty-seven years for her freedom after her case was heard in Williamsburg. Seven of those years were spent waiting for the courts of Wythe and Powhatan counties to act. Dreams of freedom for themselves and their many descendants must have given them the patience and determination to win.

Editor's Note: For a more detailed account of freedom suits and of the context in which cases like those recounted in this essay could arise, see Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law —An American History* (New York: Palgrave Macmillan, 2002), chapter 2, "Indian Foremothers and Freedom Suits in Revolutionary Virginia."

Endnotes

1. The word *Indian* in this article refers to people only recently identified as Native Americans, a term never used in references published on this subject. See for example, Amy Ellen Friedland, "Indian Slavery in Proprietary South Carolina," Masters Thesis, Emory University, 1975; Almon Wheeler Lauber, *Indian Slavery in Colonial Times Within the Present Limits of the United States* (New York: Columbia University, 1913).
2. Helen Tunnicliff Catterall, *Judicial Cases Concerning American Slavery and the Negro*, vol. 1 (New York: Octagon Books, Inc., 1968), p. 64, footnotes 89, 91; hereafter cited as Catterall, *Judicial Cases*.
3. Code of Virginia 1849, Title 30, Chapter 106, pp. 464–5.
4. For some of the cases and court orders, see Mary B. Kegley, comp., *Free People of Colour: Free Negroes, Indians, Portuguese, and Freed Slaves* (Wytheville: Kegley Books, 2003); hereafter cited as Kegley, *Free People of Colour*. Catterall, *Judicial Cases* mentions cases heard in the Supreme Court of Virginia.
5. Wythe County Chancery, 1808-01SC, *Rachel, a woman of color, v. John Draper*. The case recited that a Joseph Crockett, one of the justices, was related through marriage to the Draper family. Consequently, a writ was signed by Peter Johnston,

- Judge of the Superior Court, allowing the case to be presented to the higher court. Most of the available information came from her lawsuit.
6. Montgomery County, Virginia, Chancery suit, # 185, *Rachel Viney (also Vine, Vena) v. Henry Patton*; hereafter cited as *Viney v. Patton*. The suit began in 1806, the petition was filed in March 1807, and the case was decided in 1815.
 7. *Viney v. Patton*; for some information about the Pattons, see *Early Adventurers on the Western Waters*, vol. 1, by F. B. Kegley and Mary B. Kegley, and vol. 2 by Mary B. Kegley.
 8. Loose Papers, Giles County, Library of Virginia Archives.
 9. Henrico County Order Book, August 1712, p. 161.
 10. Madison County, Alabama, Deed Book P, p. 270.
 11. Powhatan Order Book, August 1820.
 12. *Journal of the Afro-American Historical and Genealogical Society*, 22:1 (2003); Kegley, *Free People of Colour*; Mary B. Kegley, *Free in Chains: A Novel* (Wytheville, Va.: Kegley Books, 2002).
 13. Personal correspondence with the author.