
"Too Well Used by His Master": Judicial Enforcement of Servants' Rights in Montreal, 1830-1845

Ian C. Pilarczyk*

The nineteenth century in Montreal was a formative era in the development of modern labour relations. In particular, from 1830 to 1845 the contractual nature of master-servant relations became increasingly apparent, and resort to the local courts as a mechanism for resolving master-servant disputes became commonplace. Master-servant law was comprised of sometimes-competing sources such as notarial contracts and oral agreements, provincial statutes, and municipal bylaws, as well as common law principles and judicial discretion. Other complexities resulted from the discord between the relevant laws governing such relations within the city of Montreal and beyond its limits. Through analysis of primary sources, the author examines the nature and extent of servants' rights in the judicial district of Montreal during this period. He devotes particular attention to both the constituent elements of master-servant relations and the most common types of disputes. He begins with an overview of the various forms of nineteenth-century labour relations in the Montreal area. Next, he undertakes to elucidate the legal nature of these relations, the roles performed by notaries, and the use of indentures to record the reciprocal contractual obligations of masters and servants. He also considers the differences in master-servant law in the two principal areas of the judicial district of Montreal. Specifically, he considers thoroughly the types of suits brought within the city of Montreal and beyond its limits and the impact of the different governing laws on their chances of success. Ultimately, servants, through the courts, were generally able to protect their rights by bringing suits against their masters for various forms of misconduct.

Le XIX^e siècle à Montréal a été une période très formatrice pour le développement des relations de travail modernes. Entre 1830 et 1845, la nature contractuelle des relations employeur-ouvrier est devenue de plus en plus manifeste et le recours aux tribunaux locaux pour résoudre les différends était courant. Le droit des relations employeur-ouvrier découlait d'un éventail de sources parfois contradictoires, telles que les contrats notariés et les ententes verbales, les lois provinciales et les règlements municipaux ainsi que les principes de droit commun et la discrétion judiciaire. D'autres problèmes résultaient des différences entre les lois s'appliquant à Montréal et celles en vigueur au-delà des limites de la ville. À travers une analyse des sources primaires, l'auteur évalue la nature et l'étendue des droits des ouvriers dans le district judiciaire de Montréal durant la période en question. Il accorde une attention particulière aux éléments constitutifs de la relation employeur-ouvrier et aux principaux types de conflits. L'article débute par un survol des différentes formes de relations de travail et aborde ensuite la nature juridique de ces relations, le rôle joué par les notaires et l'utilisation des contrats synallagmatiques pour formaliser les obligations réciproques des employeurs et des ouvriers. Il aborde également les différences juridiques entre les deux principales régions du district judiciaire de Montréal. L'auteur analyse les types de demandes présentées devant les tribunaux à Montréal et ailleurs et l'impact des différentes lois applicables sur les chances de réussite du demandeur. Il conclut que les ouvriers étaient généralement en mesure de faire respecter leurs droits à travers le processus judiciaire.

* B.A. (McGill); J.D. (Boston University); LL.M. (McGill); D.C.L. candidate and sessional lecturer, Institute of Comparative Law, McGill University. I am indebted to Shauna Van Praagh for her invaluable guidance as my advisor for my LL.M. thesis, from which this article is derived, as well as G. Blaine Baker for his incisive comments and encouragement. In addition, I wish to acknowledge Nicholas Kasirer of the McGill Faculty of Law; Jeremy Webber, Dean of the Faculty of Law, University of Sydney, formerly of the McGill Faculty of Law; Paul Craven of York University; and Brian Young of the McGill History Department.

© McGill Law Journal 2001

Revue de droit de McGill 2001

To be cited as: (2001) 46 McGill L.J. 491

Mode de référence : (2001) 46 R.D. McGill 491

Introduction

I. The Nature of Labour Relations in Nineteenth-Century Montreal

- A. *Apprentices and Journeymen*
- B. *Domestic and Miscellaneous Servants*

II. The Law of Master and Servant

- A. *The Role of Notaries*
- B. *Indentures*
 - 1. Language
 - 2. Transfer and Continuance
 - 3. Termination and Cancellation

III. Master-Servant Law for the Judicial District of Montreal

- A. *In the City of Montreal*
- B. *Outside the City Limits*

IV. The Master in Montreal Court: Judicial Protection of Servants' Rights

- A. *The Master as Defendant in the City of Montreal*
 - 1. Unlawful Withholding of Wages
 - 2. Wrongful Termination
 - 3. Physical Mistreatment
- B. *The Master as Defendant outside the City Limits*
 - 1. Unlawful Withholding of Wages
 - 2. Physical Mistreatment
 - 3. Non-performance of Duty
 - 4. Wrongful Termination

Conclusion

Introduction

On 13 April 1843, a young apprentice hatter named Cornelius Kelly deserted the service of William Gettes, a prominent hatter and furrier in Montreal. Kelly was not the first apprentice to abscond from Gettes's service; in fact, Gettes was no stranger to labour discord or to the court processes designed to adjudicate master-servant disputes. Shortly after the new year began in 1838, for example, he was forced to sue an apprentice for desertion.¹ Six months later two more of his apprentices absconded. Besides filing suit against them, Gettes also resorted to advertising one of the runaways in the local newspaper. He warned the public not to "harbour or employ" his apprentice "as much for example as respect to justice," and forwarded the curious supposition that "[h]is parents can assign no other reason for his running away, than for being too well used by his Master."² A year later Gettes sued another deserting apprentice but settled out of court.³

While having apprentices flee from his service was therefore not unusual, it is likely that nothing in his previous experience had prepared Gettes for the events that were to transpire following Kelly's departure. Kelly, no doubt feeling entirely "too well used" by his master, sued Gettes for mistreatment, and Gettes was forced to post bail for his court appearance the following week. Gettes countersued for desertion, and Kelly was arrested and bound to trial. Before the Court of Weekly and Special Sessions in October of 1843, Kelly's indenture—and by extension, his legal connection to Gettes—was formally terminated.⁴

The lawsuits by Gettes and Kelly are vivid examples of the complexity of master-servant law in the judicial district of Montreal during the early nineteenth century. The complaint filed by Kelly initiated an adversarial process designed to enforce the law of master and servant, and led to the eventual severance of these two parties' bonds of employment. Through the use of primary sources, this article seeks to ascertain the

¹ *William Gettes v. Thomas Kenan* (9 January 1838), Archives nationales du Québec à Montréal [hereinafter A.N.Q.M.], Registers of the Court of Weekly and Special Sessions [hereinafter W.S.S.(R.)] 10, 14 (no disposition). The variant spellings of the furrier's last name found in the sources—"Gettes", "Gettess", and "Geddes"—illustrate some of the attendant difficulties in analyzing primary sources of this period. I have used "Gettes" throughout this work as he signed it as such on Kelly's indenture. See *infra* note 138.

² *William Gettess v. John Brayer* (18 July 1838), A.N.Q.M., Files of the Court of Quarter Sessions [hereinafter Q.S.(F.)]; *William Gettess v. Louis Maxwell* (18 July 1838), A.N.Q.M., Q.S.(F.). See also *The Montreal Transcript* (25 August 1838) (advertising Louis Maxwell as a runaway apprentice).

³ *William Gettess v. Samuel Brazier* (1 December 1840), A.N.Q.M., Registers of the Police Court [hereinafter P.C.(R.)] 33.

⁴ *Cornelius Kelley v. William Geddes* (20 October 1843), A.N.Q.M., W.S.S.(R.) [hereinafter *Kelley v. Geddes*]. See Part IVA, below, for a discussion of this case.

nature and extent of judicial protection of servants' rights in the district of Montreal from 1830 to 1845. That said, this work has four primary objectives. First, and most broadly, it seeks to complement the limited body of scholarship on early-nineteenth-century Canadian master-servant law. Second, this article aims meaningfully to analyze a neglected, but crucial, aspect of the legal regime during this period: the role of the lower courts and justices of the peace who, as "servants of the law", functioned as the main arbiters of labour disputes.⁵ Third, while not a comparative study, this article seeks to permit a fuller understanding of the rich complexity of master-servant law in Montreal—a city which was a point of intersection between the French civil law and the English common law. Last, it is the objective of this work, through the analysis of earlier records, to determine whether the numerous assumptions about labour law in pre-industrial Montreal are accurate.

For ease of analysis, this article will set out the relevant master-servant law as applied in the judicial district of Montreal from 1830 to 1845. Then it will explore the nature of court cases brought by servants against their masters. As the judicial district of Montreal encompassed both the city proper and certain outlying townships, and as the applicable laws differed within the city and beyond its limits, these will be discussed separately.⁶

1. The Nature of Labour Relations in Nineteenth-Century Montreal

When examining labour relations in Montreal, distinctions must first be drawn between the various forms of employment relationships existing during this period. The term "servant" had much broader social and legal connotations than those inherent in its narrower, present-day usage. As such, positions as diverse as domestic ser-

⁵ Little effort has previously been expended to analyze comprehensively the nature of the disputes and judgments rendered by these nineteenth-century courts in this field.

⁶ Two observations are warranted about the relationship between this topic and the sources consulted. While this article concentrates heavily on apprentices, journeymen, and domestic servants, the sources often precluded identification of the precise status of the parties involved, other than to make the general observation that one was a subordinate and the other an employer. Accordingly, unless specific identification was possible, apprentices, domestic and hired servants, journeymen, and labourers have been subsumed under the general rubric of "servant". This has the added advantage of mirroring the more expansive sense in which this term was used during this period than is connoted by its modern usage. Masculine pronouns and the designation "master" have also been used throughout, as the preponderance of servants and employers were male. Most domestics, however, were female. For analyses of domestic servants in nineteenth-century Canada, see *e.g.* the companion article to this piece, I.C. Pilarczyk, "The Law of Servants and the Servants of Law: Enforcing Masters' Rights in Montreal, 1830-1845" (2001) 46 McGill L.J. [forthcoming]; C. Lacelle, *Urban Domestic Servants in Nineteenth Century Canada* (Ottawa: Environment Canada, 1987); G.L. Hogg, *The Legal Rights of Masters, Mistresses and Domestic Servants in Montreal, 1816-1829* (M.A. Thesis, McGill University, 1989) [unpublished].

vant, apprentice, journeyman, hired servant and employee (e.g. store clerk, cart driver, milkman), and day labourer were subsumed under this rubric.⁷ Other categories, such as seamen, voyagers, and canoemen, are important elements of the labour landscape, but are usually specifically identified as such in period sources.⁸ All servants of the first half of the nineteenth century, however, shared the distinction of serving a superior, usually referred to as "master" or "mistress". To remain faithful to contemporary language these terms have been retained as they appeared in the primary sources, rather than be replaced with the generic terminology of "employer" and "employee".⁹ As all these relationships were governed by master-servant law, the term "servant" as used here encompasses apprentices, domestics, hired servants, labourers, and journeymen.

It must also be emphasized that early Victorian society was deeply stratified, and as such there were important conceptual and socio-economic differences between the various categories of servants. There were also pronounced hierarchies within the servile class. For our purposes, it is sufficient to illustrate by way of example that a skilled journeyman had little in common with a common labourer or farmhand, and a governess's social standing was often far removed from that of an ordinary kitchen maid.¹⁰

⁷ This division mirrors that of William Blackstone, who divided servants into four categories under the common law: domestic servants, apprentices, hired labourers, and servants *pro tempore*. See W. Blackstone, *Commentaries on the Laws of England*, vol. 1 (London: Revised Apollo Press, 1813) at 429-31. See also Hogg, *ibid.* at 25-26; C.L. Tomlins, "The Ties That Bind: Master and Servant in Massachusetts, 1800-1850" (1989) 30 *Labor Hist.* 193 at 211. "Servants *pro tempore*" refers to individuals who served others voluntarily, often temporarily, in a "superior ... [or] ministerial, capacity; such as stewards, factors, and bailiffs" and will not be addressed in this article (see Blackstone, *ibid.* at 431). The civil law also implied a distinction between classifications of servants (see M. Bugnet, *Oeuvres de Pothier*, vol. 2, 3d ed. (Paris: Marchal et Billard, 1890) at 441, para. 827). This system of classification was similar, but perhaps even more expansive, in the United States. As one nineteenth-century American law text on the law of master and servant stated, "[A]ll who are in the employ of another in whatever capacity, are regarded in law as servants" (Tomlins, *ibid.* at 196, n. 10).

⁸ Seamen, voyagers, canoemen, and the like performed functions largely dissimilar from those of other servants and were governed by different legislative enactments. All those employed in nautical pursuits, including apprentice seamen, are therefore excluded from this analysis.

⁹ See e.g. G.L. Hogg & G. Shulman, "Wage Disputes and the Courts in Montreal, 1816-1835" 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) 127. Respecting the usage of these historic terms makes the reading of this text more difficult, but their use underscores important cultural distinctions of the society which used them" (*ibid.* at 127, n. 1).

¹⁰ For a discussion of hierarchies in nineteenth-century London, see J.R. Gillis, "Servants, Sexual Relations and the Risks of Illegitimacy in London, 1801-1900" in J.L. Newton, M.P. Ryan & J.R. Walkowitz, eds., *Sex and Class in Women's History* (London: Routledge and Kegan Paul, 1983) 115 at 140. See also G.S. Jones, *Outcast London: A Study in the Relationship between Classes in Victo-*

A. Apprentices and Journeymen

Among the most visible servants of this period were apprentices and journeymen. Journeymen—individuals who successfully completed their terms of apprenticeship—represented the largest part of the skilled freelance labour of the time, enjoying the highest wages, the most social respectability, and the most opportunity for social mobility. Prior to the widespread industrialization of English and North American cities, apprenticeship was a prevalent form of job training. Apprenticeship was an institutionalized form of work-study in which the apprentice provided services for a specified time to acquire professional skills. The length of the apprenticeship, as well as the obligations of both the master and apprentice, were commonly specified in notarized indentures.¹¹

The institution of apprenticeship in Lower Canada generally, and Montreal more specifically, may be said to have its roots in the Custom of Paris and the laws of Great Britain, borrowing both their traditions and basic structures.¹² A standard three-tiered system was followed, in which an individual began as an apprentice, graduated to journeyman, and culminated with recognition as a master (*maître*). The European tradition, and that of the early colonial periods in New France and British North America, was that a journeyman had to complete a "masterpiece" (*chef d'œuvre*), or pay an induction fee (*droit d'entrée*) to a guild, to be officially recognized as a master.¹³ Some scholars have argued that in Quebec during this time, a journeyman (at least in some crafts) was merely required to complete a specified term of employment in his area of speciality to be accorded the right to call himself a master.¹⁴

rian Society (Oxford: Clarendon Press, 1971) at 350-57. For discussion of master-servant relationships in other jurisdictions, see e.g. L.W. Towner, *A Good Master Well Served: Masters and Servants in Colonial Massachusetts, 1620-1750* (New York: Garland Publishing, 1998); S.C. Maza, *Servants and Masters in Eighteenth-Century France* (Princeton: Princeton University Press, 1983).

¹¹ For a discussion of indentures, see Part II.B, below. Seven-year terms of apprenticeship, while standard in England, were not common in colonial America or in Quebec during this period. See G. Hamilton, *Contract Incentives and Apprenticeship: Montreal 1791-1820* (Ph.D. Thesis, Queen's University, 1993) at 18 [unpublished]. Interestingly, justices of the peace had the statutory power to bind any children above the age of five as apprentices if they were found begging in the street, by virtue of *An Act to Amend an Act Passed in the Ninth Year of His Majesty's Reign, Intituled [sic], "An Act for the More Speedy Remedy of Divers Abuses Prejudicial to Agricultural Improvement in This Province"*, 1830 (Qc.), 10 & 11 Geo. IV, c. 1, s. 49 [hereinafter *1830 Amendment Act*]. Discussion of this issue, however, is beyond the scope of this article.

¹² See generally Hamilton, *ibid.*; see also P.H. Audet, *Apprenticeship in Early Nineteenth Century Montreal, 1790-1812* (M.A. Thesis, Concordia University, 1975) at 15 [unpublished].

¹³ See generally D.T. Ruddell, *Apprenticeship in Early Nineteenth Century Quebec, 1793-1815* (M.A. Thesis, Université Laval, 1969) at 10-15 [unpublished]; Audet, *ibid.* at 6-8.

¹⁴ See e.g. Ruddell, *ibid.* at 15. Others have argued that the sole impediment preventing most journeymen from holding themselves out as masters and hiring servants of their own was a shortage of

Scholars have shown that apprenticeship in Canada began to change radically by the beginning of the nineteenth century, with apprenticeship devolving from a personalized form of work-study to an indistinguishable form of servitude.¹⁴ As labour historian Bryan Palmer has written,

As masters accumulated capital, stepped up production demands because of market considerations, and hired increasing numbers of apprentices to do the heavy and often unskilled labour needed in the shop, apprentices began to see only the tyranny of their obligations and grew resentful of the master's failure or refusal to fulfill his responsibilities adequately.¹⁶

While indentures stipulated responsibilities on the part of masters, the quality of life and education received by apprentices was determined primarily by the masters themselves.¹⁷ The breakdown of the institution of apprenticeship was already visible by the turn of the eighteenth century, manifesting itself in an appreciable upturn in the frequency of desertions.¹⁸ By the second half of the nineteenth century, the traditional vestiges of servitude (most profoundly in apprenticeship) had largely given way to a

capital. See e.g. M.A. Poutanen, *For the Benefit of the Master: The Montreal Needle Trades during the Transition 1820-1842* (M.A. Thesis, McGill University, 1985) at 96-98 [unpublished, hereinafter *For the Benefit of the Master*].

For the sake of simplicity, I use the present name Quebec to refer to the colony.

¹⁵ See generally Ruddell, *supra* note 13 (Quebec City); Audet, *supra* note 12 (Montreal). See also B.D. Palmer, *Working-Class Experience, the Rise and Reconstitution of Canadian Labour, 1800-1980* (Toronto: McClelland & Stewart, 1992) at 28; *For the Benefit of the Master*, *ibid.* at 2-3. The transformation of American apprenticeship began earlier, but the institution was essentially lifeless by the middle part of the nineteenth century. See W.J. Rorabaugh, *The Craft Apprentice, From Franklin to the Machine Age in America* (New York: Oxford University Press, 1986) at 57-75.

¹⁶ Palmer, *ibid.* at 29.

¹⁷ Ruddell, *supra* note 13 at 3.

¹⁸ See generally Audet, *supra* note 12. See also Palmer, *supra* note 15 at 28. Hamilton explains that apprentices were paid "more than the value of their marginal product during the early years of their contract and less during the latter years. It was this divergence ... that gave rise to the incentive to run away" (*supra* note 11 at 121). For experiences in other jurisdictions, see generally Ruddell, *ibid.* (Quebec City); Rorabaugh, *supra* note 15 at 48-49 (United States). Indeed, the number of runaway servants seems to have increased in North America from century to century. See e.g. S.V. Salinger, *"To Serve Well and Faithfully", Labor and Indentured Servants in Pennsylvania, 1682-1800* (Cambridge: Cambridge University Press, 1987) at 103 (detailing the rise in deserting servants in colonial Pennsylvania). Not all scholars who have analyzed Montreal labour issues have agreed that desertion in this jurisdiction was an endemic problem. See e.g. Hogg, *supra* note 6, stating at 19, n. 8, that the "problem" of desertion [of domestics] is somewhat exaggerated in Lower Canadian newspapers and documents." Both Hogg and Hamilton view indentures as a successful means of combatting desertion. Hamilton states that "[i]f the runaway problem was indeed chronic it suggests that masters and apprentices were unable to construct contracts which apprentices would not breach by running away" (*ibid.* at 128). Hamilton's analysis of indentures is valuable, but fails to take into account that even if financial inducement were the primary motivation for apprentices to desert, it was by no means the only one. Furthermore, many apprentices, like other servants, were not bound by written agreements.

more market-driven variant, which encompassed fewer responsibilities on the part of masters while retaining some degree of the customary paternalistic and proprietary attributes.¹⁹ Along with spreading dissatisfaction on the part of servants, growing insubordination, and the formation of collective organizations came an erosion of masters' authority.²⁰ Masters therefore turned increasingly to the courts to deal with recalcitrant apprentices and other servants as the century progressed.²¹

B. Domestic and Miscellaneous Servants

The single most striking difference between journeymen and apprentices, on the one hand, and domestic and other servants, on the other, was that apprentices had the possibility of advancing to journeyman and eventually master status, while the status of domestics and other servants tended to remain static.²² Largely for this reason, this latter group of servants was commonly conceived of as inhabiting a lower social stratum. Domestic servants in particular, however, were far from homogeneous. While a majority of domestics were female, were employed to provide household or professional assistance, and lived under their master's roof, the similarities often ended there.²³ The term "domestic servant" encompassed a multiplicity of job descriptions and social statuses. At the lowest rung of the social ladder were included the "maid-of-all-work", "kitchen skivvy", and "child servant". In contrast, ladies' maids, nurses, and governesses inhabited a markedly different social orbit from that of the less gen-

¹⁹ Palmer, *supra* note 15 at 29. But see J. Burgess, *Work, Family and Community: Montreal Leather Craftsmen, 1790-1831* (Ph.D. Thesis, Université du Québec à Montréal, 1987) [unpublished]. Burgess, in her examination of the leather trade in Montreal, concluded that the master-servant relationship within this group of artisans was not disintegrating.

²⁰ In the United States, masters in the post-Revolutionary period complained that each successive generation of apprentices was increasingly insolent (Rorabaugh, *supra* note 15 at 42-56). For discussion of illegal collective organizations in nineteenth-century Canada, see Palmer, *ibid.* at 30-31. Examples of such early Montreal unions included tailors and shoemakers (1830), printers (1833), and bakers, firemen, and mechanics (1834) (*ibid.*).

²¹ Audet, *supra* note 12 at 157; Rorabaugh, *ibid.* at 45 (United States). See also Ruddell, *supra* note 13 at 168-69 (citing the decline on the part of masters in training and guiding apprentices as responsible for the courts' increasing influence).

²² While this was generally true, Hogg points out that some domestics (most notably boys) were later apprenticed to skilled crafts (*supra* note 6 at 56-57).

²³ For discussion of domestic servants in Montreal during the 1810s and 1820s, see generally Hogg, *ibid.*; Lacelle, *supra* note 6. Hogg defines domestic servants as "anyone who served in a menial capacity, performing work and labour in and about his or her master's ... home, or business, where the work and labour performed were particular to the maintenance of the master ... or to the master's ... home, or place of business" (*ibid.* at 23). For discussion of domestics in other jurisdictions, see e.g. T.M. McBride, *The Domestic Revolution: The Modernization of Household Service in England and France, 1820-1920* (London: Croom-Helm, 1976); P. Horn, *The Rise and Fall of the Victorian Servant* (New York: St. Martin's Press, 1975).

teel members of the household help.²⁴ While domestic servants typically performed functions related to the master's home or business, other servants were employed as hired hands of every description. This subclass encompassed canal workers and ditchdiggers, farmhands, cart drivers, and innumerable similar unskilled servants.

II. The Law of Master and Servant

A. The Role of Notaries

The involvement of notaries in master-servant law, a legacy of Quebec's civil law system, is undoubtedly one of the most striking differences between this jurisdiction and other areas of the British Empire during the nineteenth century. A notary—not to be confused with a notary public in common law systems—is a civil law jurist who specializes in matters related to immovable property.²⁵ Among their other functions, nineteenth-century notaries prepared and witnessed a host of contracts that defined the terms of the master-servant relationship. These notarial contracts were known by a multiplicity of names: in English, they were commonly referred to as “indentures”, “engagements”, “agreements”, or “articles of apprenticeship”; in French, they were referred to as “*brevets*”, “*brevets d'apprentissage*”, or “*engagements*”.²⁶ Most commonly they were two to three pages in length and usually handwritten by the notary, but occasionally printed.²⁷ Indentures identified the contracting parties and their occupations and residence and then set out the duties of the parties (usually standardized). The document was then signed or marked by the parties in the presence of the notary. As such, notaries essentially translated the language and intentions of the contracting parties into a legal contract couched in the legal phraseology common to the time, but reflecting any individual stipulations required by the parties.²⁸ After a servant was bound by such a document, he or she was commonly referred to as “indentured”.²⁹

²⁴ See e.g. Gillis, *supra* note 10 at 117.

²⁵ In their modern-day function in Quebec, notaries specialize in providing legal counsel, negotiating contracts, drafting documents, and representing clients in non-adversarial proceedings before courts or administrative agencies. In addition, notaries employed as public officers draft and receive authenticated deeds and acts. See R.P. Kouri *et al.*, eds., *Private Law Dictionary and Bilingual Lexicons*, 2d ed. (Cowansville, Qc.: Yvon Blais, 1991) s.v. “notary”.

²⁶ Other variants include contracts for apprentices to notaries, commonly referred to as “*brevets de cléricature*”. For the sake of simplicity, the term “indenture” is used below.

²⁷ See Hogg, *supra* note 6 at 17.

²⁸ *Ibid.* at 17-18.

²⁹ It should be noted that servants bound by indentures were often referred to by the rather more painful-sounding nomenclature “indented”. This latter term was commonly in use in Montreal in the 1830s, but was largely replaced with “indentured” by the 1840s.

While the personal relationships existing between masters and servants may have been extremely varied, they were, above all, legal relationships involving mutual responsibilities. Many master-servant contracts were informal verbal agreements, as befitted associations based on social, religious, ethnic, and other connections. By contrast, the institution of apprenticeship, a particularly formal type of labour relationship, was usually based on an indenture entered into by both parties. Variants, however, were also common for many other forms of master-servant relationships. The most obvious examples are those involving long-term or specialized occupations or both (e.g. maltsters hired by Molson's Brewery, or journeymen in any number of different trades).³⁰ While the process was not nearly as ubiquitous as for apprentices, other servants were also indentured before notaries. Indentures were found for occupations as diverse as farmhand, ditchdigger, domestic servant, deliveryman, and shop clerk.³¹

The reasons why some of these servants were indentured while others were not is best explained by the individual circumstances surrounding the parties.³² Indentures for non-skilled servants were probably dictated largely by demands for unusual duties, quasi-adoptions, or by a lack of, or in preferment to, traditional community links between master and servant.³³ The social position of the master, his previous experiences with servants, or the relative inconvenience of replacing a wayward servant might also have been contributing factors that determined whether a master insisted that a servant be formally indentured.³⁴

³⁰ For discussion of journeyman tailors and foremen bound by indentures, see generally *For the Benefit of the Master*, *supra* note 14 at 78-104.

³¹ The demarcation between an apprentice and another variety of servant was sometimes blurred, as apprentices often performed household tasks. Moreover, some indentures explicitly characterized the servant as having more than one formal role; for example, in 1833 Joseph Cropper was bound as an apprentice "pastry cook and confectioner, and as ... household and domestick [*sic*] servant for and during ... five years to be reckoned from and after the day of the date hereof" (Indenture of Joseph Cropper to Henry Meissen [?] and Elizabeth Shepherd (12 March 1830), A.N.Q.M., Notarial File of George Dorland Arnoldi). For discussion of the intersection between apprenticeship and domestic duties, see Part 1.B, above.

³² For a discussion of indentures for domestic servants, see generally Lacelle, *supra* note 6; Hogg, *supra* note 6 at 37-66; Palmer, *supra* note 15 at 28. For a discussion of indentures in general in Montreal, see generally Hamilton, *supra* note 11.

³³ See e.g. Hogg, *ibid.* at 18-19; R. Sweeny, *Internal Dynamics and the International Cycle: Questions of the Transition in Montréal, 1821-1828* (Ph.D. Thesis, McGill University, 1985) at 98-102 [unpublished]. Further discussion of quasi-adoptions will be found at *infra* note 58 and accompanying text.

³⁴ For example, Lacelle has suggested that indentures were used to ensure that domestic servants did not quit service prematurely (*supra* note 6 at 46). But see Hogg, *ibid.* at 19, n. 8. With respect to servants, there is little or no information on their attitudes towards indentures. As will be argued here, indentures, from servants' perspective, could be seen as a mixed blessing. One of the positive attributes

By drafting these indentures, notaries played an integral role in master-servant law during this period. Notaries retained copies of these indentures in their personal files—thereby functioning as a form of registry office—and made amendments to indentures as well as facilitated and recorded transfers, cancellations, and terminations. Furthermore, as shall be discussed, indentures offered an additional source of protection for both parties by explicitly demarcating the terms of employment at the outset. An important, if not readily apparent, corollary to this observation is that notaries were undoubtedly called on to perform remedial and dispute-settlement functions in at least some circumstances. In the absence of any exhaustive examination of the thousands of extant notarial documents (a daunting task which, in any event, would be exacerbated by the vagaries of the primary sources themselves), the precise extent of notaries' participation in labour relations following the drafting of indentures must remain speculative; nonetheless, their importance to Montreal master-servant law should be emphasized.

B. Indentures

1. Language

The language and clauses of typical indentures blended elements common to those found in England and France.³⁵ The servant was generally obliged to serve and obey his master and avoid any damage to his master's interests during his service.³⁶ To limit the risks to masters, indentures occasionally provided explicitly for a probationary period of service, during which the master could freely dismiss the servant from his service if he found the quality of his work to be lacking.³⁷ In the case of appren-

of indentures is that they often implied a long-term, reasonably secure position of employment for skilled workers (or for workers who would acquire skills during their terms of indenture). This is, of course, a vicious generalization, but one that holds true insofar as common labourers and other types of unskilled servants were much less likely to be bound by indentures. The distinction is somewhat comparable, in modern parlance, to that between an "at-will" employee and an employee hired on the basis of an employment contract.

³⁵ Hamilton, *supra* note 11 at 1; Ruddell, *supra* note 13 at 16. For a comparative analysis of these documents and those found in England, France, and colonial America, see generally Hamilton, *ibid.* In England, for instance, municipal laws ensured that indentures were legally binding, and negligent apprentices as well as masters were subject to legal sanction. In colonial America, indentures were often registered in mayoral offices, so that a record would be available in the event of legal proceedings (*ibid.* at 19). Notarial offices in Montreal, while not as centralized as mayoral offices, could have performed a similar function.

³⁶ See e.g. Ruddell, *ibid.* at 17. The period of service for Montreal apprentices was typically four to six years, and apprentices were usually between fourteen and sixteen years of age when indentured (Hamilton, *ibid.* at 33).

ticeship indentures, they tended more than other types of indenture to contain detailed stipulations of responsibilities on both sides. For example, the indenture binding Cornelius Kelly as an apprentice latter stated:

Mary Haron promises that her said Son shall apply himself and work day by day ... without loss of time, Shall do all and every such work as shall be given him to do by his said master ... relative to said art and trade, shall attend and work without loss of time ... also shall colour wash and clean skins, obey the lawful commands of his said master ... shall not absent himself from the employment of his said master either by day or by night without leave[,] not waste or lend his masters goods or bring in any spirituous liquors in any part of the said W[illia]m Gettes [*sic*] premises or see it done by others without giving him notice thereof, [and] shall not divulge the secrets of any of the affairs and transactions of his said master.³⁸

As is the case in Kelly's indenture, these documents commonly stipulated specific employment obligations (*e.g.* the colouring and washing of skins), as well as general obligations common to virtually all indentured servants (*e.g.* working without loss of time).

Indentures could also contain provisions that appear, on their face, to be circumventions or modifications of established tenets of master-servant law during this period. Some indentures explicitly gave masters the right to withhold payment if the servant was dismissed prematurely. One such indenture accorded a master the right to dismiss his boy domestic servant and withhold the twenty pounds payment due to him after five years' service if he proved "'to be debauched or addicted to liquor, [or] lazy or careless.'"³⁹ This was in conflict with the municipal bylaws, which stipulated that wages due were to be paid at the time of termination.⁴⁰ Indentures—most notably for female domestics—not infrequently contained clauses that prohibited the servant from becoming married prior to the completion of the stipulated term of service.⁴¹ Such a provision was the subject of a court case in Montreal in 1833, in which the court expressly rejected the legality of this prohibition.⁴²

While facially similar, indentures entered into during this period evinced numerous English- and French-language variations. In mentioning the parties to the agreement, French-language indentures usually placed the father's name first with a statement that the father had bound his minor son for the child's "advantage and profit", or

³⁷ Hamilton, *ibid.* at 78-81. For discussion of probationary periods in the context of desertion prosecutions, see Pilarczyk, *supra* note 6 at text accompanying note 117.

³⁸ It should be noted that Kelly's indenture appears within the files of the court only because it was cancelled during the court proceedings, as discussed here; see text accompanying note 140.

³⁹ Hogg, *supra* note 6 at 65 [footnote omitted].

⁴⁰ See *infra* note 91 and accompanying text.

⁴¹ See *e.g.* Hogg, *supra* note 6 at 55-56.

⁴² See Pilarczyk, *supra* note 6 at n. 146.

that the son (with his father's assistance) had voluntarily engaged himself. English indentures most often stated that the minor son, with his father's assistance, had voluntarily entered into the agreement.⁴³ Furthermore, they tended to list specific rules of conduct that servants were to obey. Among the most common requirements, usually in the case of apprentices, was that they were to make up time lost or to "return all the time ... los[t] by his fault and negligence."⁴⁴ Such indentures also tended to show a great concern for moral behaviour, requiring servants not to absent themselves or to frequent taverns and houses of ill repute.⁴⁵ French-language indentures also frequently required that servants (other than domestics) assist with household chores after normal working hours.⁴⁶

In French-Canadian apprenticeship indentures, parents or tutors were also generally obligated to return runaway servants to their master if they deserted.⁴⁷ Punitive clauses were often included, by which the apprentice or a relative was responsible for the payment of a substantial sum should the term of service not be fulfilled.⁴⁸ It was also much more common for these apprenticeship indentures to make allowances should the master die before the term of service was formally concluded.⁴⁹

In both English- and French-language apprentice indentures, masters were required to provide instruction in all the mysteries of the craft, and usually to provide

⁴³ Under the civil law, consent by both the father and child was necessary as well as presumed (Ruddell, *supra* note 13 at 17).

⁴⁴ Indenture of Cornelius Kelly to William Geddes (18 February 1841), A.N.Q.M., Files of the Court of Weekly and Special Sessions. See also Ruddell, *ibid.* at 18.

⁴⁵ Kelly's indenture obligated him to "not play at cards[,] dice, or any other unlawful games," in addition to the prohibitions against desertion or consuming liquor (Indenture of Cornelius Kelly to William Geddes, *ibid.*). See also Audet, *supra* note 12 at 17; Hamilton, *supra* note 11 at 19.

⁴⁶ See e.g. Ruddell, *supra* note 13 at 18. Hogg points out that indentures occasionally forbade assigning domestic chores to apprentices, presumably as such work was beneath their social station (*supra* note 6 at 24-25). Hamilton suggests, however, that few apprentice indentures prohibited work unrelated to the master's craft, implying that such work was often a required part of an apprentice's duties (*ibid.* at 90).

⁴⁷ Ruddell, *ibid.* at 18; see also Hamilton, *ibid.* at 151-52. Hamilton states that a majority of indentures in Montreal obligated parents to search for and return runaway apprentices, in marked contrast to indentures in colonial America (*ibid.* at 166-67).

⁴⁸ See e.g. Audet, *supra* note 12 at 155; Hamilton, *ibid.* at 95. Audet also maintains that indentures "with a punitive clause ... allowed master and apprentices a certain amount of freedom, and perhaps accounts for the lack of disputes between French-Canadian masters and French-Canadian apprentices" (*ibid.*). The apprenticeship indenture of Terrance Duffy called for a penalty of ten pounds if the agreement was not fulfilled, payable by the apprentice's brother and a third party (Indenture of Terrance Duffy to James Herecourt (2 June 1832), A.N.Q.M., Notarial File of George Dorland Arnoldi). For an example of a prosecution in which a servant was condemned to pay ten dollars to his master under such a clause in his indenture, see Pilarczyk, *supra* note 6 at note 196 and accompanying text.

⁴⁹ Ruddell, *supra* note 13 at 19-20.

board, lodging, bedding, and clothing. If clothing was not provided, a clothing allowance was often specified. Mistresses were sometimes obligated to wash and mend an apprentice's clothing.⁵⁰ Domestic servant indentures often stipulated that the necessities servants were to receive were to be "*suivant l'usage de ce pays*" or similar language which indicated that they were to be appropriate to the servant's social station; a representative clause was that the servant was to receive "good and wholesome boarding, lodging, [and] clothing befitting a person in the capacity of an indentured servant."⁵¹ At the end of the term of employment, the servant (most often an apprentice) might have received a sum of money, a suit of clothes, or the tools of the trade.⁵²

One striking difference between English and French indentures was that French Canadians often included explicit provisions for servants' religious instruction in the Catholic Church and their first communion, allowing servants to attend mass and observe religious holidays, or both.⁵³ Given the number of French-Canadian (Catholic) servants indentured to English-Canadian (Protestant) masters, there were obvious concerns that Protestant masters would otherwise impede the practice of, or instruction in, servants' Catholic faith. In contrast, English indentures emphasized formal education, such as instruction in reading and writing or ciphering provided either by masters or through enrolment in night school, and rarely mentioned religion at all.⁵⁴

⁵⁰ For example, James Clarke's apprenticeship indenture to Joseph Page, brush manufacturer, provided, in lieu of clothing, for a clothing allowance of three, five, six, seven, eight, and nine pounds, respectively, for the seven years of his term. The indenture continued:

[I]t being, however understood and agreed that should it appear to the said Joseph Page that the said James Clarke is not sufficiently and properly clothed, he the said Joseph Page shall have the right and be at liberty to furnish such clothing as may be requisite for the said James Clarke and to deduct whatever Sums he may advance for that purpose, from the said Sums so to be annually allowed as aforesaid (Indenture of James Clarke to Joseph Page (27 June 1836), A.N.Q.M., Notarial File of George Dorland Arnoldi [hereinafter Clarke indenture]).

⁵¹ Hogg, *supra* note 6 at 60 [footnote omitted].

⁵² See e.g. Ruddell, *supra* note 13 at 18. These payments to apprentices, often referred to as "freedom dues", were dictated by municipal law in colonial America (Hamilton, *supra* note 11 at 17). The converse of this was that some masters or mistresses demanded apprentice fees, although such fees were far from the norm. Fees were usually demanded for highly sought-after professions, such as medicine or law. For example, an apprentice milliner was to pay "Ten Pounds currency as a remuneration fee for the trouble she may have in instructing the said [apprentice] in her said Trade" (Indenture of Ellen Gannon to Mrs. Maetzler (18 October 1830), A.N.Q.M., Notarial File of George Dorland Arnoldi).

⁵³ See e.g. Ruddell, *ibid.* at 19; Audet, *supra* note 12 at 17-18. For a comprehensive discussion of these ethnic and religious differences, see generally Ruddell, *ibid.* at 144-57.

⁵⁴ A rare contrary example was the indenture of a domestic which stipulated that she be "taught the Catechism of the Church of England and confirmed in the same as soon as can be" (Indenture of

In agreements made between French-Canadian servants and English-Canadian masters, specific prohibitions against removing the servant from Montreal were much more likely to be included.⁵⁵ Perhaps most interestingly, French-language indentures frequently contained obligations to treat servants "*doucement et humainement*", or similar language.⁵⁶ English-language indentures rarely contained such language, leaving open the question as to whether French-Canadian parents were more concerned about possible ill-treatment. Cornelius Kelly, an apprentice who sued his master for ill-treatment during this period, was bound by an indenture that contained no such language.⁵⁷

The indenturing of a minor-aged servant often served a dual function, namely, to provide life skills as well as care and upkeep. Parents in financial straits frequently resorted to apprenticeship as a form of de facto foster care or adoption.⁵⁸ A similar prac-

Letitia Gass to William Lindsay (12 March 1830), A.N.Q.M., Notarial File of George Dorland Arnoldi).

⁵⁵ Ruddell, *supra* note 13 at 20-21. The reasons why these prohibitions did not appear in French-language indentures are not clear. Ruddell suggests that it may be because English masters were more likely to leave the city or because French Canadians operated under an unwritten assumption against such removals and felt the need to articulate such clauses only when English-Canadians were involved. English-Canadian indentures rarely prohibited removal outside the city, but frequently prohibited transfers outside the Province of Quebec (*ibid.* at 22). A note on the language of indentures and their signatories is also in order. English-Canadian servants were much more likely to be bound to English-Canadian masters, although the converse was not true. Interestingly, in nineteenth-century indentures involving English-Canadian masters and French-Canadian servants, the contracts were usually written in French (see *ibid.* at 158-59). This may reflect a desire on the part of masters to ensure that the terms of employment were unquestionably understood by their servants.

⁵⁶ *Ibid.* at 19. An excellent example is an indenture binding Pierre Giroux to a Montreal farmer, which carefully spelled out a long list of obligations on the master's part, stressing that he was to treat him as a good father would treat his own son: "[L]e dit Etienne Guillot s'oblige traiter et entre tenir [*sic*] le dit Pierre Giroux en bon père de famille suivant sa condition, et comme un de ses propres enfants, le nourrir à sa table et lui fournir raisonnablement et généralement tous les hardes et chaussures qu'exige la condition de Cultivateur ..." (Engagement par David Giroux à Etienne Guillot (18 November 1833), A.N.Q.M., Notarial File of Antoine-Eusèbe Bardy [hereinafter Giroux indenture]).

⁵⁷ For discussion of this case, see *infra* note 131 and accompanying text.

⁵⁸ See Engagement par John Sullivan et son épouse à Pierre Précourt (6 February 1832), A.N.Q.M., Notarial File of Antoine-Eusèbe Bardy [hereinafter Sullivan indenture]; J. Webber, "Labour and the Law" in P. Craven, ed., *Labouring Lives: Work and Workers in Nineteenth Century Ontario* (Toronto: University of Toronto Press, 1995) 105 at 127. In such agreements, parents contracted for their child at a very young age ostensibly to be apprenticed until the age of majority. Unlike apprenticeship indentures, these documents frequently did not specify skills or crafts in which the child was to be trained, and the child was usually bound for much longer periods. Some indentures also contained language not commonly used in other indentures, such as guarantees to treat the child as part of the master's family. The language of one such indenture reads as follows:

Lesquels ont par ces présentes engagé à Pierre Précourt de St. Athanas Michel Sullivan leur enfant âgé de quatre ans et demis [*sic*] pour et jusqu'à sa majorité et promettent

tice was the indenturing of minors as domestic servants until they reached the age of majority.⁵⁹

2. Transfer and Continuance

The very existence of indentures demonstrates that masters had a strong interest in securing a steady and co-operative source of labour. Traditionally masters were largely unhampered in their ability to transfer indentures (and by extension, servants) to other masters as they saw fit. To many servants, this would have been particularly inconvenient. By this period, however, many indentures allowed for transfer only if the servant or guardian consented, while other indentures categorically prohibited it. Similarly, many contained provisions governing a master's move to another locale.⁶⁰ In certain situations the parties agreed to continue the terms of service, despite the occurrence of events that would normally lead to cancellation. Henry Moore, son to a paymaster of His Majesty's Thirty-Second Regiment of Foot, was bound as a student and apprentice to a regimental surgeon for a five-year term. Four years later the surgeon was sent out of the province, and the parties transferred the indenture to another regimental surgeon so as to allow Moore to continue his studies.⁶¹ The existence of prohibitions against transfers is but one example of the legal protection that indentures could afford servants during this period.

aujourd'hui le jamais inquiéter à cet effet, et sa part le dit Pierre Precourt promet nourrir, entretenir le dit Michel Sullivan dans la religion Catholique et généralement se comporter avec lui censure il le ferait pour son propre fait enfant le se prendre et corriger quand il sera nécessaire, ce à quoi les dits premiers comparaissant promis [*sic*] acquiescer car a fin et mais dans le cas où le petit enfant lorsqu'il aura un certain moment laisser sa maison ou qu'il la laisserait à son absence a lors le dit Pierre Precourt n'entend pas être responsable mais promet faire son possible pour la ramener (Sullivan indenture, *ibid.*).

⁵⁹ See Hogg, *supra* note 6 at 48-50. While beyond the scope of this article, these "quasi-adoption" indentures would appear to present a fruitful area for further study.

⁶⁰ See e.g. Indenture of Patrick Dunn to James Wilson (6 January 1832), A.N.Q.M., Notarial File of George Dorland Arnoldi (prohibiting the master from taking his apprentice brush maker with him in the event he left the province, without first obtaining the permission of the apprentice's father). See also Ruddell, *supra* note 13 at 20; Audet, *supra* note 12 at 147-49; Hamilton, *supra* note 11 at 94.

⁶¹ Indenture of Henry Moore to Richard Poole (23 October 1835), A.N.Q.M., Notarial File of George Dorland Arnoldi. Moore was transferred to Duncan McGregor on 14 August 1839. Another intriguing example is that of John Lander, apprentice engraver, indentured to John Rannie in Ireland in 1829. Two years later, Lander accompanied his master to Montreal, and they signed another indenture, agreeing to continue the apprenticeship on the same terms (Indenture of John Lander to John Rannie (4 November 1831), A.N.Q.M., Notarial File of George Dorland Arnoldi).

3. Termination and Cancellation

A common feature of indentures, particularly those drafted in French, was provision for termination. If the master died prior to the end of the term of service, some indentures were automatically terminated, while others required the master's family to reimburse some portion of monies received as apprentice fees.⁶² When the term of service had expired, masters were occasionally required to grant proof of discharge or good conduct.⁶³ An example of an indenture containing such a stipulation is that of William Lang, bound to Joseph Shuter, a Montreal merchant. The notation on the agreement stated that "whereas the said Engagement terminated and was completed ... to the entire satisfaction of the said Joseph Shuter, they the said appearers do now therefore cancel the same and mutually discharge each other of all claims which either party may or can have the one upon the other."⁶⁴ Indentures could also be cancelled, usually at the master's behest.⁶⁵ Cancellation was commonly recorded by the notary with the original indenture, either by notation on the document itself or by affixing an appendix. Most frequently no explanations were recorded, leaving some uncertainty as to the most common grounds for cancellation.⁶⁶ For instance, in January 1835 a

⁶² See e.g. Ruddell, *supra* note 13 at 19-20.

⁶³ See e.g. Audet, *supra* note 12 at 145. Audet, in his work on apprenticeship in Montreal between 1790 and 1812, identified only one apprentice who received certification of completion of his service. Certification does not appear to have been quite so rare during the period examined here. For discussion of proof of discharge in other jurisdictions, see Ruddell, *ibid.* at 19; Hamilton, *supra* note 11 at 73.

⁶⁴ Indenture of William Lang to Joseph Shuter (12 March 1830), A.N.Q.M., Notarial File of George Dorland Arnoldi. The importance put on certificates of good conduct and the like, however, suggests that such certification was probably more prevalent (if less formal) than these indentures suggest. It is likely, as Hamilton posits, that notation of successful completion may have been entered on servants' copies of their indentures (*ibid.* at 163). This would also account for why so few notations are found on indentures in the notarial files.

⁶⁵ Hamilton finds a 15 percent cancellation rate of Montreal apprenticeship indentures during the period covered by her thesis (*ibid.* at 97). For discussion of annulment and abrogation of indentures, see generally *ibid.* at 169-208. Indentures that provided for probationary periods were less likely to be annulled, suggesting that masters were frequently uncertain about the productivity they could expect from their apprentices, and accordingly dismissed those that did not meet their expectations (*ibid.* at 207).

⁶⁶ Ruddell has provided an example of a clause in an indenture that allows for cancellation in case of ill-treatment: "en cas de mauvais traitement, de sa part, le présent engagement demeure nul et résilié de plein droit et sera le dit apprentif déchargé de présent engagement sans dépens [ou] dommages ..." (*supra* note 13 at 30-31). Pierre Giroux's indenture, as another example, stated that "[s]era libre également au dit David Giroux de retirer son enfant d'entre les mains du Etienne Guillot, seulement dans le cas qu'il serait notoire que le dit Pierre Giroux serait maltraité dans la maison du dit Etienne Guillot" (Giroux indenture, *supra* note 56). Audet identified the following as among the most common grounds for cancellation: illness, accident, or insanity; disputes between the parties; parents'

domestic servant was indentured to a Montreal shoemaker for a period of three years. Five weeks later, the notary recorded on the indenture that "for certain good causes they [the parties] have agreed to cancel and by these presents do cancel the said Engagement and release each other of and from all obligations resulting therefrom."⁶⁷ While a master's dissatisfaction was the most obvious reason for cancellation, myriad cancellations appear to have been induced by mutual displeasure.⁶⁸ Servants indubitably had less leeway to seek nullification of indentures, but they could do so before a court of law, as the case of Cornelius Kelly exemplifies.⁶⁹ Servants—most notably apprentices—could also terminate their terms of employment upon payment of an agreed-upon sum of money to their master.⁷⁰

Indentures could be galling chains of bondage that tied servants to their masters for substantial periods, and there is little doubt that their original purpose was to protect the socio-economic interests of masters.⁷¹ But it must be emphasized that indentures, by their very nature, provided for reciprocal responsibilities. By setting out the obligations of the principal party to the labour relationship, indentures afforded servants legally cognizable claims against their superiors. This was particularly important in cases of servants who traditionally had the least economic and social leverage, such as domestics. Indentures were proof of the mutually binding, contractual nature of these relationships, and hence heightened the ability of servants to protect their in-

buying time remaining on the contract; damages to master's property by the servant; and desertion (*supra* note 12 at 151). See also Ruddell, *ibid.* at 25-31.

⁶⁷Indenture of Margaret Hutson to Richard Adams (9 January 1835), A.N.Q.M., Notarial File of George Dorland Arnoldi.

⁶⁸For example, the cancellation of James Clarke's indenture as an apprentice brush maker to Joseph Page was apparently due to mutual dissatisfaction. While no explicit reasons were given, the notarial file contains a terse note from Page, dated less than two months after the contract date: "I am Agreeable to Break[ing] James Clark[']s indenter [*sic*] with pleasure therefore you will [do] what is requested." This suggests that Page was responding to a request by Clarke that his indenture be cancelled (Clarke indenture, *supra* note 50).

⁶⁹See Part IV.A, below, for discussion of this case and others in which servants sought cancellation of their indentures in the city of Montreal; see Part IV.B, below, for discussion of the same issue outside the city limits.

⁷⁰See *e.g.* Ruddell, *supra* note 13 at 27-28.

⁷¹For examination of the role of apprenticeship indentures in protecting masters' interests in Montreal, see generally Hamilton, *supra* note 11. Hamilton notes that there were several contractual enforcement mechanisms available to masters to dissuade apprentices from deserting, including contingent end payments, clauses requiring parents or guardians to return runaways, and increasing compensation over the term of their apprenticeship. Lengthy discussion of Hamilton's work is not possible within the confines of this article, but it is worth emphasizing that regardless of the enforcement mechanisms available to masters, servants (including many apprentices) clearly deserted in impressive numbers during this period. A clearer understanding of the efficacy of such enforcement mechanisms would entail the Byzantine task of comparing indentures against judicial records.

terests before courts of law.⁷² Indentures also set out the social parameters of the relationship, especially important when the servants were orphans or emigrants.⁷³ For multiple reasons, therefore, indentures provided tangible and legally enforceable benefits to servants.

III. Master-Servant Law for the Judicial District of Montreal

A. In the City of Montreal

Meaningful discussion of labour relations during this period necessitates at least a cursory exposition of the nature and sources of master-servant law. It should be stressed, however, that such an exposition poses considerable challenges. First, debate over whether French or English law was controlling in Quebec raged from the time of the Conquest to the second half of the nineteenth century.⁷⁴ Second, no definitive or comprehensive source detailing Canadian master-servant law exists for this period. Third (and related to the previous point), most labour disputes were heard before justices of the peace sitting singly or in pairs, and as was mentioned earlier, these were not generally courts of record.⁷⁵ Existing judicial records were virtually silent on which specific legal principles were implicated. Discussions of relevant evidentiary or procedural rules were extremely summary, and appear exclusively in statutes governing master-servant law. Fourth, it must be stressed that this article seeks to analyze master-servant law for the greater district of Montreal. As shall be discussed, there were fundamental differences in the corpus of master-servant law applied within the

⁷² See e.g. Lacelle, *supra* note 6, arguing at 82-83 that domestic servants *circa* 1820 were in a position of greater equality than otherwise might have been the case due to the existence of indentures and labour shortages.

⁷³ See e.g. J. Parr, *Labouring Children: British Immigrant Apprentices to Canada, 1869-1924* (Montreal: McGill-Queen's University Press, 1980) at 84-91. Parr notes that "formal apprenticeship indentures did more to define the rights of British immigrant children than to extinguish their liberties." Indentures were legally binding on masters, set the market value of the child's services, and provided potential legal redress against the master (*ibid.* at 84). But these contracts were not without cost: Parr notes that in the process they "destroyed the illusion, the warm and welcome illusion of being 'like family', which every child immigrant must have at some time entertained" (*ibid.* at 91).

⁷⁴ For discussion of the conflicts during the eighteenth and nineteenth centuries over whether French or English law should be controlling in Lower Canada (the "reception debate"), see generally Webber, *supra* note 58; Hogg, *supra* note 6 at 22-36.

⁷⁵ A similar situation existed in nineteenth-century Upper Canada and Ontario. See D. Hay & P. Craven, "Master and Servant in England and the Empire: A Comparative Study" (1993) 31 *Labour/Le Travail* 175 at 180. Hay & Craven observe that the informal nature of these proceedings accounts for why "the striking recurrence of this policy in widely dispersed times and places has not received the attention it deserves from lawyers or historians" (*ibid.*). See also Webber, *ibid.* at 107.

city limits as opposed to that outside the city.⁷⁶ Accordingly, only general observations about the law of this period can be made, and even then with some trepidation.⁷⁷

The term "master-servant law" refers to the corpus of primarily statutory law that pertained to employment relationships. English-based labour law differed from jurisdiction to jurisdiction, but shared three common attributes: it applied to contractual employment relationships; it imposed sanctions for contractual breach; and it was enforced and administered at the local level by magistrates and justices of the peace.⁷⁸ Statutory law was often supplemented by other local legislative enactments, as was the case in Montreal. Thus, it has been said that throughout the British Empire master-servant law was everywhere the same, and yet everywhere distinctive.⁷⁹

Even in light of this truism, however, the interplay between English common law and French civil law makes Quebec a particularly interesting jurisdiction to examine. Montreal, by virtue of being a heavily English city in a predominantly French milieu, was even more singularly distinctive. Master-servant law in Montreal was strictly the offspring of neither the English common law nor the Custom of Paris (which was virtually silent on contractual relationships). Rather, it developed as a *mélange* influenced heavily by English and French law, but exhibiting local variations. The corpus of master-servant law, then, shared a common genesis, but was a uniquely local creation.

Analysis of judicial records indicates that two main sources of written law were applied: provincial statutory enactments and local legislative enactments, referred to in Montreal as the "Police Regulations".⁸⁰ A third source must also be mentioned: le-

⁷⁶ The judicial district of Montreal—as opposed to the judicial districts of Quebec City and Trois-Rivières—encompassed the city proper, as well as specified townships outside the city limits. As the law within the city itself differed from that in the outlying townships, they have been treated separately within this article and the companion piece, Pilarczyk, *supra* note 6.

⁷⁷ I have attempted to recreate the law in this area as far as possible. I emphasize, though, that our modern conceptions of an ordered judicial system and systematic codification or compilation of statutory authority and precedent did not exist meaningfully during this period. Most prosecutions were brought privately, and the historical or legal value of preserving and compiling them for posterity was largely unappreciated. If for no other reason, I hope this article will prove helpful by providing the impetus for future work on this subject.

⁷⁸ Hay & Craven, *supra* note 75 at 180. For discussion of master-servant law in nineteenth-century Ontario, see generally Palmer, *supra* note 15; Webber, *supra* note 58; 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.

⁷⁹ I am indebted to Paul Craven for this observation.

⁸⁰ Explicit reference to these bodies of law sometimes appear in the records of the lower courts. See e.g. *John Kemp v. William Eamon* (1 May 1832), A.N.Q.M., W.S.S.(R.) 197. The court made a finding as follows: "neglecting and refusing to enter the service and employ of ... the Prosecutor to whom he is engaged ... the whole in contravention to the Provincial Statute passed in the 57th Geo. III chap.

gal principles applied by justices of the peace, "justice-made" law. Moreover, there were different legislative enactments that were controlling for the city itself versus the district of Montreal. These will be addressed in turn.

Numerous statutory enactments concerning disputes in master-servant relations were promulgated in Quebec during the eighteenth and nineteenth centuries.⁸¹ From 1830 to 1845, the main legislative enactment was a provincial statute enacted by the Assembly on 22 March 1817, applicable in Montreal, Quebec City, and Trois-Rivières.⁸² For present purposes, the most important aspect of the *Statute of 1817* was that it authorized justices of the peace in the Court of Quarter Sessions (upon approval by the Court of King's Bench) to make regulations respecting master-servant relations, subject to certain limitations: neither masters nor mistresses could be subjected to a fine exceeding ten pounds current money of the province, nor could servants be fined in excess of the same amount or given prison terms longer than two months for any violations.⁸³ The statute accorded justices of the peace the authority to hear complaints that servants had deserted or secreted themselves, or were preparing to desert or secrete themselves, and to hold them in prison for up to forty-eight hours until the matter was heard.⁸⁴ In addition, the statute provided fines of five to twenty shillings for

16 and to the Rules and Regulations respecting apprentices and hired or Indentured servants in such case made and provided" (*ibid.* at 197-98); *Benjamin Workman v. Margaret Cathers* (21, 28 August 1832), A.N.Q.M., W.S.S.(R.) 309, 313 at 309 (alleging defendant acted "in contravention to the Provincial Statute and to the Rules and Regulations of Police in such case made and provided"). These references, however, were few and far between. The majority of breach of service cases made no explicit reference to relevant legislation, as was common for many offences during this period in other Canadian jurisdictions. See e.g. B.J. Price, "'Raised in Rockhead. Died in the Poor House': Female Petty Criminals in Halifax, 1864-1890" in P. Girard & J. Phillips, eds., *Essays in the History of Canadian Law*, vol. 3 (Toronto: University of Toronto Press, 1990) 200. Price notes, "Convicting authorities did not bother to state which law [governing petty crime] was being applied; offenses were described by reference to the defendant's actions alone, unaccompanied by any mention of statutory provisions" (*ibid.* at 204).

⁸¹ As these statutory enactments were frequently superseded by later enactments, only those statutes in force during the period covered by this article will be discussed.

⁸² *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*]. This statute was renewed by successive statutory enactments. See e.g. *An Act for the More Speedy Remedy of Divers Abuses, Prejudicial to Agricultural Improvement and Industry in This Province*, 1824 (Qc.), 4 Geo. IV, c. 33, s. 23; *An Act for the More Speedy Remedy of Divers Abuses, Prejudicial to Agricultural Improvement in This Province*, 1829 (Qc.), 9 Geo. IV, c. 37, s. 30; *1830 Amendment Act*, *supra* note 11, s. 48.

⁸³ *Statute of 1817*, *ibid.*, s. 6.

⁸⁴ *Ibid.*, s. 7. Defendants were often in prison while awaiting trial, however, for considerably longer periods than forty-eight hours.

servants who engaged in "gaming", in default of which they were subject to imprisonment for eight days.⁸⁵

Eventually the justices of the peace enacted a more comprehensive set of regulations, entitled *Regulations Respecting Apprentices and Hired or Indented Servants* and appearing in the *Montreal Police Regulations*.⁸⁶ These regulations gave two or more justices of the peace, sitting in weekly or special sessions, the authority to determine all master-servant disputes in the city of Montreal, in proceedings conformable with the *Statute of 1817*.⁸⁷ Further, they explicated the varieties of possible offences committed by servants: desertion; refusal or neglect of their lawful duties; refusal to obey their master's commands; or any "fault or misdemeanor" while in service.⁸⁸ Moreover, the regulations required that all servants by the month or longer give fifteen days' advance notice of their intention to leave their master's service, or else be adjudged to have deserted.⁸⁹ Masters were likewise bound to the same period. Masters, though, could summarily discharge a servant, provided they paid all wages that would have been due if the servant finished his term. The regulations also provided fines of up to five pounds for parties who harboured runaways or enticed servants to desert.⁹⁰ In addition, the regulations also regulated a master's ability to discharge his servant prior to the contracted termination of the employment contract.⁹¹

⁸⁵ *Ibid.*, s. 10.

⁸⁶ *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 also *The Canadian Courant* (4 September 1833). Following the incorporation of the city of Montreal in 1841, the power to make rules and regulations with respect to servants was transferred to the corporation. See *An Ordinance to Incorporate the City and Town of Quebec*, 1840 (Qc.), 4 Vict., c. 35, s. 43 (also applicable to Montreal). For the period under inquiry, however, the *Statute of 1817* and the *Police Regulations* remained the applicable laws.

⁸⁷ *Police Regulations*, *ibid.* at 118, para. 9.

⁸⁸ *Ibid.*, para. 10.

⁸⁹ *Ibid.*, para. 11.

⁹⁰ *Ibid.* at 118-20, paras. 11-13.

⁹¹ *Ibid.* at 119, para. 11; the regulations stipulate:

[E]very master, mistress, or employer, shall give to his or her servants, journeymen, or labourers [fifteen days' advance] ... notice of his or her intention no longer to keep or employ them, after the expiration of their time of service. Provided always, that every domestic, servant, journeyman and labourer, engaged for a time, may be discharged by his or her master, mistress or employer, at or before the expiration of his or her engagement, without notice, upon full payment of the wages which he or she would have received for all the time of his or her service; if the time shall be expired, the person so discharged without notice, shall be entitled to wages for the full time included between the day when such notice should have been given, and the day of his or her discharge as aforesaid (*ibid.*).

While it is clear that the *Police Regulations* were an important tool for governing master-servant relations, the interplay between the provincial statute and the *Police Regulations* is not clearly discernable. For example, the provincial statute provided that all apprentices, domestics, hired servants, and journeymen were subject to fines of up to ten pounds currency or two months' imprisonment in the House of Corrections.⁹² The *Police Regulations*, in turn, stipulated that "[a]ll apprentices to any trade or mechanical art whatever, engaged by written agreement, or servants verbally engaged before witnesses" shall be subject to the "fine and punishment" set out in the provincial statute.⁹³ The *Police Regulations* then continued by stating that "[a]ny domestic, servant, journeyman or labourer engaged ... by the month or longer" was subject to fines no greater than twenty shillings.⁹⁴ The careful distinctions drawn among these groups of servants in the *Police Regulations* therefore suggested that all indentured apprentices or servants bound verbally could be imprisoned up to two months and fined ten pounds, while other servants (e.g. domestics, servants, journeymen, and labourers) were subject to fines of up to twenty shillings. At first glance, these distinctions seem counterintuitive.⁹⁵ It may have been felt, however, that indentured apprentices and verbally bound servants needed greater dissuasion, as these two categories of servants were perhaps most likely to desert.⁹⁶

B. Outside the City Limits

Given that the justice system's apparatus was centred within the city of Montreal, there were obvious attendant difficulties for parties to legal suits who resided outside the city. Attendance at court for days on end while miles from home, for example, was often a great hardship to both prosecutors and defendants alike. Largely for these reasons, in 1836 another statute was passed that was intended to ameliorate many of these difficulties.⁹⁷ As the *Parish Statute of 1836* itself stated, the cities of Quebec,

⁹² *Statute of 1817*, *supra* note 82, s. 6.

⁹³ *Supra* note 86 at 118, para. 10.

⁹⁴ *Ibid.* at 119, para. 12.

⁹⁵ Analysis of the dispositions from the judicial records consulted does not contradict the existence of this dichotomy. The sparsity of detail, however, about the exact status of servants appearing in these records (i.e. whether they were verbally bound, journeymen, etc.) prevents a determination with any degree of certainty. See generally Pilarczyk, *supra* note 6.

⁹⁶ It may be that, as noted, apprentices bound by indentures were more likely to flee from service to seek employment as journeymen, and hence posed a greater economic loss to the typical master. Conversely, this may merely reflect that verbally bound servants were surely more common than those bound by indentures, or may have been more likely to deny the existence of an employment agreement if it served their interests to do so.

⁹⁷ *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*, 6 Will. IV, c. 27 [hereinafter *Parish Statute of 1836*]. Taylor's justice of the peace manual outlines the princi-

Montreal, and Trois-Rivières were specifically excepted from the statute's reach.⁹⁸ Effectively, this meant that the *Parish Statute of 1836* was binding on justices of the peace outside the city limits, but that the law as set out in the *Statute of 1817* and the *Police Regulations* was to govern within the city itself.

The *Parish Statute of 1836*, which applied to apprentices, male or female servants, and journeymen, provided more detail than the *Statute of 1817* and the *Police Regulations* combined, although the specific provisions were dissimilar. It listed applicable offences on the part of servants 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 a servant's superior.⁹⁹ Unlike the *Statute of 1817* and the *Police Regulations*, the *Parish Statute of 1836* also specified that fines could not exceed £2 10s. or fifteen days' imprisonment for default of payment.¹⁰⁰ Furthermore, servants who deserted could be "condemned to make such time good to his Master."¹⁰¹ Third parties remained liable for employment offences: harbouring a runaway was punishable by a fine of up to £2 10s., while enticing an apprentice to desert was punishable by the same fine or incarceration for up to one month.¹⁰² Moreover, in comparison to the provincial statute and municipal law in effect within the city of Montreal, this statute contained much more explicit provisions protecting servants.¹⁰³

ples of master-servant law as applicable in the "country parishes", obviously referring to this statute (H. Taylor, *Manual of the Office, Duties, and Liabilities, of a Justice of the Peace* (Montreal: Armour & Ramsay, 1843) at 280-93). This statute was rendered permanent by *An Ordinance to Render Permanent Certain Acts Therein Mentioned*, 1840 (Qc.), 3 Vict., c. 6, s. 14.

⁹⁸ *Parish Statute of 1836, ibid.*, Preamble.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.* While the language of the *Parish Statute of 1836* suggests that masters too could be imprisoned for default of payment of penalties imposed against them, it seems unlikely that this would occur, if for no other reason than that the *Statute of 1817* explicitly foreclosed the possibility of subjecting masters to any penalty greater than a fine of ten pounds.

¹⁰³ *Parish Statute of 1836, ibid.*; it read as follows:

Secondly, that if any such Apprentice, Servant, or Journeyman, bound or engaged as aforesaid, has any just cause of complaint against his or her Master, Mistress, or employer, for any misuse, defect of sufficient and wholesome provisions, or for cruelty or other ill-treatment, or other matter of the same kind, such Master ... may be prosecuted before two Justices of the Peace; and if the complaint shall appear to be well founded, such Justices of the Peace may condemn such Master ... to pay a penalty not exceeding two pounds ten shillings currency. ... Thirdly, that on complaint made ... by any Apprentice, Servant, or Journeyman, against his or her Master ... of continued misuse, and repeated violations of the ordinary and established duties of the parties towards each other, any Justice of the Peace, at a special sitting, may, on due proof of the

While the language of the *Parish Statute of 1836* makes it evident that it was inapplicable within city limits, this did not preclude the possibility that justices of the peace in Montreal may nevertheless have chosen to apply it. For example, the records of the lawsuit brought by Cornelius Kelly against his master on grounds of ill-treatment clearly indicate that this legislation was used as a legal basis for the action. This was so despite the fact that the case was heard before a Montreal court, involved parties who were domiciled in Montreal, and was based on an indenture drafted before a Montreal notary.¹⁰⁴ While justices of the peace were themselves "servants of the law", it is equally true that they had varying degrees of legal education, and higher court review of master-servant disputes was a decided rarity.¹⁰⁵ It is little surprise that justices used whatever legal sources were available, especially in situations like the one just mentioned, as the *Parish Statute of 1836* provided the most explicit legislative language for allowing servants to prosecute masters for ill-treatment under master-servant law.

While local and provincial legislative enactments were an integral element of Montreal labour law of this period, "justice-made" law was an equally important component. The legislative enactments were far from exhaustive, and justices (and by extension, the courts they constituted) enjoyed wide latitude in their discretionary and interpretive functions. In resolving disputes justices often applied basic legal principles, derived primarily from English common law and local law compiled in justice of the peace manuals.¹⁰⁶ The common law precepts themselves often emerged from judi-

fact, annul the agreement or contract (whether verbal or written) ... Seventhly, that no such Master ... shall take and carry out of the District in which they reside, any such Apprentice or Servant, without the consent of such Apprentice or Servant, (or his or her parents or guardians, if a minor), except such as may be bound to the sea service. ... Ninthly, that in all verbal agreements between Masters ... and the Servants and Journeyman, for any longer period than a month, the party who shall not intend to continue the engagement beyond the term so agreed upon, shall be bound to give the other party fifteen days notice at least to that effect, otherwise the agreement shall be held to have been continued for one month, from the date of such notice; the whole under a penalty of two pounds ten shillings currency, and in default of payment of imprisonment in the common gaol of the District, or in the house of correction, during a period not exceeding fifteen days.

It also stipulated that every legal proceeding be commenced within three months after the commission of the offence (*ibid.*, s. 4).

¹⁰⁴ For discussion, see *infra* notes 131, 137 and accompanying text.

¹⁰⁵ For discussion of the backgrounds of justices of the peace in Montreal, see generally 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) [unpublished, hereinafter *Justices of the Peace in the District of Montreal*].

¹⁰⁶ It is a daunting task to recreate the sources used by justices of the peace or other jurists in any part of British North America during this period. The Nahum Gelber Law Library at McGill University, however, contains a superlative collection of English, French, and American eighteenth- and

cial interpretation of earlier master-servant statutes, and in turn affected the enforcement of successive master-servant provisions.

Examination of a number of these contemporary manuals used by justices in Montreal during this time reveals a dizzying array of often-conflicting legal precepts related to the law of masters and servants. An oft-cited principle in these works was that deserting servants were to make up the time lost through their misbehaviour, although there were several variants of this rule in these manuals.¹⁰⁷ This principle mirrors the law as specified in the *Parish Statute of 1836*. This rule, however, was obviously not applied consistently. Few dispositions within the city limits explicitly required that truant servants make up their time, and those that did may have been based on the language of the individual indentures in those cases. Outside the city of Montreal, justices of the peace apparently required that time be made up more frequently, although the summary nature of the surviving records leaves some doubt as to the actual frequency of such dispositions.¹⁰⁸

Another principle set out in these manuals was that masters were deemed to have taken their servants "in sickness and in health", and therefore discharging an ill servant was impermissible.¹⁰⁹ These manuals also exhibit a number of regional variations

nineteenth-century (and older) legal materials in its Canadiana collection, many of which were owned and used by local justices. See G.B. Baker *et al.*, *Sources in the Law Library of McGill University for a Reconstruction of the Legal Culture of Quebec, 1760-1890* (Montreal: Faculty of Law and Montreal Business History Project, McGill University, 1987). Among the relevant materials *circa* 1845 are J.F. Archbold, *The Justice of the Peace*, 3d ed. (London: Shaw and Sons, 1845); E. Carter, *A Treatise on the Law and Practice on Summary Convictions and Orders by Justices of the Peace* (Montreal: John Lovell, 1856); W.C. Keele, *The Provincial Justice, or Magistrate's Manual, Being a Complete Digest of the Criminal Law of Canada*, 2d ed. (Toronto: H. & W. Rowsell, 1843); J.G. Marshall, *The Justice of the Peace, and County and Township Officer, in the Province of Nova Scotia* (Halifax: Gossip & Coade, 1837); Taylor, *supra* note 97; *Acts Relating to the Powers, Duties and Protection of Justices of the Peace in Lower Canada* (Quebec: S. Derbishire & G. Desbarats, 1853). For a discussion of justice of the peace manuals used in other jurisdictions, see *e.g.* J.A. Conley, "Doing It by the Book: Justice of the Peace Manuals and English Law in Eighteenth Century America" (1985) 6 J. Legal Hist. 257. For the related topic of early nineteenth-century Quebec law reporting, see *e.g.* E. Whan, T. Myers & P. Gossage, "Stating the Case: Law Reporting in Nineteenth-Century Quebec" in Fyson, Coates & Harvey, *supra* note 9, 55; R. Crête, S. Normand & T. Copeland, "Law Reporting in Nineteenth Century Quebec" (1995) 16 J. Legal Hist. 147.

¹⁰⁷ See Keele, *ibid.* at 28 (make up time lost or provide financial satisfaction, or face imprisonment for a term not to exceed three months); Marshall, *ibid.* at 444-45 (make up double time, or more at magistrate's discretion if during harvest time or the like); Archbold, *ibid.*, vol. 1 at 108-109 (make up time lost or provide financial satisfaction, or face imprisonment for up to three months); Taylor, *ibid.* at 282 (make up time lost or face imprisonment of up to fifteen days).

¹⁰⁸ Pilarczyk, *supra* note 6 at 65.

¹⁰⁹ For the rule that was no discharge for sickness, see *e.g.* Keele, *supra* note 106 at 29; Marshall, *supra* note 106 at 443; Archbold, *supra* note 106 at 106.

not likely to have been followed in Montreal. For example, Marshall's Nova Scotia manual required female servants to finish their term if they married while in service.¹¹⁰ Regardless of the efficacy of these manuals, however, the wide latitude given to justices undoubtedly accounts for aberrant dispositions that do not conform with legislative enactments.¹¹¹

As mentioned earlier, master-servant law in Montreal during this period exhibited a disparity between the remedies available to masters and servants. The remedies available to servants were limited to fines, while servants themselves were subject to imprisonment.¹¹² This incongruity was roundly attacked by reformers of the nineteenth

¹¹⁰ For an example of a Montreal case in which the former rule was emphatically rejected, see Pilarczyk, *supra* note 6 at note 144 and accompanying text. Marshall's manual also stated that Nova Scotia law required certificates of discharge for all servants bound for six months or longer, with masters who hired servants without certificates liable to a ten-pound fine (Marshall, *ibid.* at 447-48). Conversely, Taylor's manual for Montreal contains another seemingly regional variation, stating that masters were not allowed to take their servants out of the district without the servant's consent, or that of their guardian or tutor (*supra* note 106 at 283). This principle was often reflected in indentures (see Part II.B.2, above) and also appeared in the *Parish Statute of 1836*, *supra* note 97, Preamble.

¹¹¹ See e.g. Pilarczyk, *ibid.* at notes 103, 142 and accompanying text.

¹¹² For a discussion of this dichotomy in nineteenth-century Upper Canada, see Webber, *supra* note 58 at 137. Some social historians have conceptualized this division as meaning that masters could choose to bring breach of contract claims before civil courts or claims of violations of labour regulations before criminal courts. See e.g. Hogg & Shulman, *supra* note 9 at 129; Hogg, *supra* note 6 at 33. I believe these conclusions are problematic. First, the lower courts retained the same mixed jurisdiction inherent to justices of the peace, who had authority to try both civil and criminal matters in the modern sense of those terms. A pronounced dichotomy between civil and criminal jurisdiction simply did not exist in the courts where the vast majority of master-servant disputes were tried, and at any rate, it is doubtful that such a dichotomy would have been recognized by jurists or lay people of the period. 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 363-64. Second, and related to the first point, the notion of "breach of contract" could only have existed at an abstract level. Prosecutions were generally worded in terms such as "having left, quit and abandoned the service without just cause or permission, having been duly engaged as a servant" or as "having left the employ of the prosecutor to whom he is engaged in the capacity of servant, in contravention to the Provincial Statute and the Rules and Regulations respecting apprentices and hired or indentured servants," and I have found no evidence suggesting that there was a tangible distinction between them. Indeed, all master-servant relationships were contractual, by virtue of indentures or oral agreements before witnesses, and the absence of either was an absolute defence insofar as it refuted the existence of a master-servant relationship. The offences enumerated in the *Police Regulations* included behaviour typically proscribed by the indentures themselves. Third, the peculiar nature of master-servant relations also meant that the dispositions rendered by courts were neither purely civil nor criminal as we understand those terms today. Indeed, the concept of criminality was a fluid one during this period, although it seems clear that desertion would have been considered a criminal offence in nineteenth-century parlance. See e.g. *Justices of the Peace in the District of Montreal*, *supra* note 105 at 43-46. If modern-day terminology needs to be applied,

century and defended equally vociferously by its supporters, who argued "that masters had property to answer for their misdeeds, whereas servants had only their liberty."¹³ It is important to accentuate, however, that while there were implicit inequalities built into the law, the law offered protections to both parties in the master-servant relationship.

The existence of these legislative enactments indicates a concerted attempt at providing a coherent set of laws that contemplated local realities.¹⁴ This reservation, coupled with the dispositions rendered by courts, suggests that master-servant law for the district of Montreal during this period was fairly consistent.¹⁵ Earlier periods no doubt exhibited a greater tension as to whether English or French legal precepts were controlling. By the period under examination, however, one can say that master-servant law was applied by justices of the peace (an eminently English institution) to regulate labour relationships based primarily on English models. Furthermore, this was done by applying procedural rules and remedies that were, in turn, largely English in origin. While Montreal master-servant law was a uniquely local creation, its structure and application indicates that the paramountcy of English principles in the field was well established by this period.

The very existence of these legislative enactments demonstrates that there was a perceived need to regulate the master-servant relationship and to set out the parameters of available remedies. During this period, both masters and servants sought legal recourse before courts to enforce these provisions, and courts generally protected the interests of both groups.

at the risk of presentism, I believe that the term "quasi-criminal" is more accurate than "tort", the term that Fyson employs in *ibid.* Tort or delict actions are private civil causes of action seeking damages against a defendant for violation of a duty owed to the plaintiff. Courts did not award damages in desertion prosecutions, and any fines imposed reverted to the treasury (or one half to informers). Furthermore, having servants return to service was usually the paramount goal of desertion suits, and servants were subject to imprisonment for non-compliance.

¹³ Webber, *ibid.* at 137.

¹⁴ Hogg & Shulman, *supra* note 9, conclude at 129 that the law in this area was "deliberately encouraged to develop in this muddy fashion, because it suited the class aims of masters, mistresses and employers." I am unconvinced by the notion that the employing classes were best served by an ambiguous system of law, and furthermore doubt that the employing classes had the foresight or the inclination to make an intentional effort to develop a haphazard system.

¹⁵ As stated, the law applied outside the city limits differed. Moreover, within this article and the companion piece other dispositions are occasionally discussed that do not fit easily within the parameters stipulated in the relevant legislative enactments. This serves as a potent reminder that while master-servant law may have been relatively consistent, it was far from uniform. Given a fairly unsophisticated legal system of mainly local justice, enforced by justices of the peace possessing considerable discretionary powers, without a limited system of precedent and higher court review—to mention but a few of the characteristics—this is to be expected.

IV. The Master in Montreal Court: Judicial Protection of Servants' Rights

Every lawsuit concerning master-servant law brought before a local court was indicative to some degree of a working relationship that had effectively broken down in the eyes of at least one of the parties involved. By the time under examination, Montreal courts recognized the reciprocal nature of responsibilities owed to masters and servants, perhaps coinciding with the diminishing economic importance many servants—especially apprentices—had to their masters.¹¹⁶ While masters' perceptions of their legal rights were no doubt disparate from those of their servants, these concerns reflect the increasingly contractual nature of master-servant relationships and the manner in which they were enforced. This section will analyze the types of legal recourse available to servants within the district of Montreal during the period 1830 to 1845.

A. The Master as Defendant in the City of Montreal

When examining lawsuits brought by servants against their masters, analysis must be done with an appreciation of the many factors that would have militated against servants suing their superiors, such as financial barriers, class structures, and ignorance of legal rights. Some servants who contemplated filing suits must have suspected that the sympathies of justices, as members of the propertied class, would naturally incline towards masters.¹¹⁷ These obstacles would have been even more pronounced for certain categories of servants. Journeymen, as well as apprentices who were at a well-advanced stage of apprenticeship, were often important resources to their masters. As such, their premature departure could prove inconvenient or even

¹¹⁶ In the context of the United States, Rorabaugh observes that courts sided with apprentices more frequently after 1800 as their economic value to masters decreased (*supra* note 15 at 52-53). In mid-nineteenth-century America, for instance, courts enforced masters' obligations toward their servants, ensuring that masters properly fed and clothed their apprentices if required to do so by the terms of their indenture (Hamilton, *supra* note 11 at 20). Courts also protected servants against brutal treatment, unlawful withholding of wages due, and the like. In fact, contemporary American critics often complained that the regime of master-servant law offered servants too much protection. A commentator in New York in 1839—echoing sentiments that were undoubtedly shared by many Montreal masters—stated that when apprentices “abscond from their proper service, it is not every employer who now thinks it worth his while to take the legal measures for recovering their time” (*ibid.*).

¹¹⁷ For an example of the perceived importance of social status before the courts, see Lewthwaite, *supra* note 112 at 356-57 (recounting an example of a defendant, charged with assaulting his domestic servant, who alleged in court that she was actually his apprentice, in the hopes of elevating his perceived social station in the eyes of the justices and thereby obtaining favourable treatment). For discussion of justices and conflicts of interest, see Pilarczyk, *supra* note 6 at text accompanying note 204.

economically devastating. Domestic servants and unskilled labourers, however, would generally have had no such leverage, and would have been further hampered by their gender, lowly social status, or both.¹¹⁸

Given the subordinate status inherent in servile positions of this time, even one defined by labour shortages, the fact that servants prosecuted their masters so frequently, and with considerable avail, provides vivid evidence of the reciprocal, contractual manner in which courts came to view labour relations.¹¹⁹ Master-servant legislation clearly contemplated that labour relationships entailed rights and duties on the parts of both masters and servants. Servants brought suit against their masters for such offences as unlawful withholding of wages, wrongful termination, and physical mistreatment, and moreover, were often successful.

1. Unlawful Withholding of Wages

As discussed, failure to pay a servant his lawful wages was a defence against desertion. It is therefore eminently reasonable to predict that nonpayment could also constitute grounds for legal proceedings, as indeed was the case.

Even cursory examination indicates that wage suits against masters were frequent.¹²⁰ Due to the enormous volume of such cases, detailed analysis of wage suits is beyond the scope of this work, but they furnish compelling evidence that servants had recourse to the law to protect their financial interests. For example, Grace Laing Hogg, in her research on the legal rights of domestic servants in Montreal, uncovered 1,161 suits brought by servants and employees for unpaid wages before the inferior term of the Court of King's Bench between 1816 and 1835.¹²¹ Numerous such lawsuits

¹¹⁸ See e.g. Hogg, *supra* note 6 at 75.

¹¹⁹ Members of socially subordinate classes in nineteenth-century Canada often pursued legal remedies, although usually against members of the same socio-economic class. For example, prostitutes in Montreal during this period used the lower courts to settle disputes and brought prosecutions for such crimes as assault, rape, riot, and larceny. See M.A. Poutanen, "Reflections of Montreal Prostitution in the Records of the Lower Courts, 1810-1842" in Fyson, Coates & Harvey, *supra* note 9, 99 at 109. See also *Justices of the Peace in the District of Montreal*, *supra* note 105 at 394. Similarly, many members of the poor and criminal classes did the same. See generally Price, *supra* note 80 (discussing petty criminals in Halifax).

¹²⁰ A similar observation has been made about wage suits in the last quarter of the nineteenth century in Ontario. See Webber, *supra* note 58 at 145.

¹²¹ Hogg, *supra* note 6 at 4. For the specific period covered by her thesis, 1816-29, there were 109 such cases. See also Hogg & Shulman, *supra* note 9. The inferior term of the Court of King's Bench heard cases involving ten pounds sterling or less, while the superior term dealt with cases involving over ten pounds sterling. In 1834 the Commissioner's Court was set up in Montreal to hear cases involving four pounds, three shillings and four pence or less. See generally D. Fyson with the assistance

were also brought before the superior term of the Court of King's Bench during the period examined here. For example, a labourer in 1830 brought suit against an inn-keeper for the balance due him as wages, and was awarded wages of £14 14s. 7d., as well as costs and interest on the amount until payment was received.¹²²

Of the defences raised by masters against such suits, an allegation of misfeasance on the part of their servants was the most common.¹²³ Under the applicable regulations, a servant who deserted before his term of service was expired could be fined up to twenty shillings,¹²⁴ and desertion was often considered to have voided a master's obligations.¹²⁵ Masters frequently claimed that their servants had disobeyed their lawful commands or otherwise conducted themselves improperly during their term of service,¹²⁶ or that no agreement had been entered into.¹²⁷

That servants sued for unpaid wages with such frequency suggests that they viewed the courts as relatively impartial forums where their rights could be vindicated. Mere judicial access, however, would have been largely meaningless if servants were rarely successful. Hogg and Shulman were able to trace the dispositions of 235 wage suits by servants for the years 1830 to 1835. Of these, 42 percent were won outright, 17 percent settled, and 7 percent lost outright. A further 13 percent were discontinued and 21 percent dismissed. Thus, 59 percent of these prosecutions were successful in whole or in part.¹²⁸

of E. Kolish & V. Schweitzer, *The Court Structure of Quebec and Lower Canada 1764 to 1860* (Montreal: Montreal History Group, 1994).

¹²² *John O'Neill v. J.B. Bellamy* (17 April 1830), A.N.Q.M., Court of King's Bench Registers [hereinafter K.B.(R.)], vol. 1, 329.

¹²³ Hogg & Shulman, *supra* note 9 at 140.

¹²⁴ *Police Regulations*, *supra* note 86 at 119, para. 12.

¹²⁵ See Hogg, *supra* note 6 at 85.

¹²⁶ *Ibid.* at 85-87. Hogg notes that, at least in some instances, it appears that masters merely used such allegations as a means of avoiding contractual liability, as otherwise they would likely have brought legal proceedings themselves for such misbehaviour (*ibid.* at 87).

¹²⁷ *Ibid.* at 88.

¹²⁸ Hogg & Shulman, *supra* note 9 at 137. In addition, some proportion of the cases discontinued were probably settled between the parties without the court's knowledge. Hogg & Shulman state, with reference to these figures, that "[i]f the legal process was not discouraging enough, the possibility of losing one's case probably dissuaded many individuals from contemplating litigation" (*ibid.*). The same may be said about masters who filed suit—notably for employment offences—but I believe that Hogg & Shulman's own figures show that servants were successful more often than not. Furthermore, Hogg traces fifty-five wage cases brought by domestic servants in Montreal during the same period. Of these fifty-five cases, in fourteen the servant was awarded the full amount sought as well as court costs; in two the full amount, without costs; in ten a portion of the amount sought, plus costs; in five a portion of the amount sought, without costs. Seven cases were settled, seven dismissed with costs, and nine discontinued (Hogg, *ibid.* at 77-78). Thus, thirty-one of these fifty-five cases were at least partially successful, not counting those that were settled. Again, Hogg notes that "a significant group of

While wage suits clearly were common during this period, it should also be emphasized that judicial records necessarily understate the extent of the phenomenon of such disputes. Court proceedings are often evidence that other, non-adversarial means of settlement had failed.¹²⁹ Not only were many disputes likely settled outside the judicial arena, but some disputed amounts were probably too insignificant to justify court proceedings. The sheer number of wage cases before the courts of this period, however, indicates that when traditional forms of mediation were unavailing, servants had ready access to courts to vindicate their economic interests.

2. Wrongful Termination

Servants were also able to bring suit against employers for what, in modern parlance, amounted to wrongful termination.¹³⁰ In these cases servants alleged that they were required to leave their master's employment prior to the termination of their term of service without legitimate cause. In the case of servants who obtained room and board from their masters—most notably apprentices—termination would involve a loss of lodgings as well as employment. This is best exemplified by the case in which Cornelius Kelly sued his master for ill-treatment. While the original complaint spoke only of mistreatment, Gettes's summons specified that he was charged with having repeatedly violated his duties as master by frequently abusing and mistreating Cornelius Kelly. More particularly, it stated that Gettes "without legal cause, provocation or inducement whatsoever" discharged Kelly from service and subsequently refused to house or support him.¹³¹

Besides the personal inconvenience that such premature termination could engender, it could also strain family finances. A common strategy among families of limited means was to bind out their children as apprentices or other servants so as to provide them with both the necessities of life and (at least in theory) career instruction. In 1838 a widow sued a prominent Montreal merchant for damages caused by his having unlawfully discharged her minor daughter from her position as a domestic servant, thereby "occasion[ing] great expense and damages to the plaintiff who is now reduced

seven not only lost their cases but were saddled with court costs as well" (*ibid.* at 78). These seven cases, however, do not represent a large proportion of the total sample. I believe that the success rate indicated by these figures illustrates that servants were usually successful. Most tellingly, if servants did not feel they had a substantial chance of prevailing, surely they would not have resorted to legal proceedings nearly as often as they did. Financial and other barriers clearly did not foreclose legal action for many servants.

¹²⁹ See *e.g.* the remarks of Hogg: "The disputes over wages which eventually were settled through the court system, were probably the exceptional cases, and should not be perceived necessarily as a routine or normal situation ... Each civil suit hints at the failure of all usual methods, such as appeal to kinship, community, ethnic, social or religious ties, to resolve disputes" (*ibid.* at 71-72).

¹³⁰ See *e.g.* *ibid.* at 92.

¹³¹ *Cornelius Kelly v. William Geddes* (19 October 1843), A.N.Q.M., Q.S.(F.).

to the necessity of paying for board and lodging of said minor daughter who is without place."¹³²

Such cases are closely related to wage suits, as a master's failure to give his servant notice of termination at least fifteen days in advance rendered him liable for the wages to which his servant would otherwise have been entitled.¹³³ As such, a servant who was bound for a designated term of service and was dismissed without proper notice could seek to recover the wages due to him for the time remaining in his term.

3. Physical Mistreatment

Servants could also seek protection under the law for ill-treatment at the hands of their masters. Unlike the *Parish Statute of 1836* in operation outside the city limits, both the *Statute of 1817* and the *Police Regulations* were largely silent on the issue of physical mistreatment. This does not mean, however, that servants within the city limits were powerless to seek redress for this offence. Despite the limitations of the relevant legislative enactments, servants were free to seek remedy under master-servant law or criminal law.

The right of physical chastisement had traditionally been conceptualized as an inherent part of masters' authority. Chastisement of servants that exceeded social norms on what constituted "moderate" as opposed to "immoderate" correction, however, rendered masters susceptible to prosecution. The most obvious vehicle for use by servants was to charge abusive masters with assault and battery, and such prosecutions were recurrent during this period. For instance, an apprentice chair maker took this step in 1842, alleging that his master had "violently and without cause or provocation assaulted and beat the said Deponent, striking him over the head with a broomstick which he broke upon the head of the Deponent ... [and] [t]hat Deponent suffered much pain from the blow."¹³⁴ His master appeared before the Court of Special Sessions and was bound in the amount of twenty pounds to keep the peace toward his servants for one year.¹³⁵

¹³² Hogg & Shulman, *supra* note 9 at 130 and n. 7 (citing *Catherine McGuire v. A. Doyle* (17 January 1835)). This case was brought before the Court of King's Bench, inferior term.

¹³³ *Police Regulations*, *supra* note 86 at 119, para. 11. See also *Parish Statute of 1836*, *supra* note 97.

¹³⁴ *Samuel Jackson v. Thomas Albert Martin* (29 March 1842), A.N.Q.M., Q.S.(F.) 40.

¹³⁵ *Ibid.* at 44, where initial complaint entered; *Domina Regina v. Thomas Albert Martin* (29 March 1842), A.N.Q.M., P.C.(R.) 44, where a warrant of arrest was granted and Martin was bound to appear at the Court of Special Sessions; *Samuel Jackson v. Thomas Albert Martin* (31 March 1842), A.N.Q.M., W.S.S.(R.), where Jackson sought a recognizance to keep the peace. The day after Jackson initially filed suit, Martin countersued for desertion, although the suit was later settled out of court (*Thomas Albert Martin v. Samuel Jackson* (30 March 1842), A.N.Q.M., P.C.(R.) 45). Martin was the same master who twice prosecuted Robert McIntosh for desertion in 1841. See Pilarczyk, *supra* note

Master-servant law also had as one of its tenets that courts were empowered to release abused servants from their terms of service, a disposition that would often have been of most direct benefit to servants.¹³⁶ William Gettes, the hatter and furrier who had such difficulty retaining apprentices during this time, was one example of a master sued successfully by an apprentice. On 13 April 1843, Cornelius Kelly had Gettes arrested for assault and battery, alleging that "yesterday the twelfth day of April instant he was without any reasonable cause or provocation on his part violently assaulted[,] beaten and struck by one William Geddes of the same place, hatter."¹³⁷ Gettes was required to post bail for his appearance the following week.¹³⁸

On 20 October 1843, Gettes was brought before the Court of Weekly Sessions on the charge of "illtreating the def[endant] his apprentice by virtue of 6th Will[iam] 4th ch. 27 page 230."¹³⁹ As the court clerk recorded:

[The] def[endant] appears] in person and pleads that he is not guilty of the allegations set forth in this summons—and admits that he has discharged the def[endant] from his service and that he will not allow him to enter into his house—and moreover says that he is willing that the Indentures passed before L. Guy Esquire between him and the said Pros[ecutor] and bearing date the 18 February 1841 be annulled and discharged. The Court having heard the said def[endant] annul the said agreement or Contract between him the said defendant and prosecutor and thereby discharges the said Pros[ecutor] from that said agreement or contract, and orders that the said def[endant] do pay the costs of this action.¹⁴⁰

As indicated, the court discharged Kelly from his indenture and required Gettes to pay costs of 9s. 3d. Since Gettes had consented to annul the indenture, the court was not required to adjudicate the issue of whether Gettes had, in fact, mistreated his appren-

6 at notes 1, 59 and accompanying text. No attempt was made here to ascertain how often servants brought suits for assault against their masters; however, even cursory examination of the files of the lower courts during this time reveals that there were numerous assault cases brought by servants against their masters.

¹³⁶ As Hamilton notes, while masters during this period were allowed to discipline apprentices (and other servants), many jurisdictions commonly allowed courts to discharge apprentices from their service or to fine masters for abuse (*supra* note 11 at 20).

¹³⁷ *Queen v. William Geddes* (13 April 1843) A.N.Q.M., Q.S.(F.) (arrest warrant).

¹³⁸ *Queen v. William Geddes* (13 April 1843), A.N.Q.M., Q.S.(F.) (complaint); *Queen v. William Geddes* (13 April 1843) A.N.Q.M., Q.S.(F.) (recognizance). Gettes countersued for desertion, alleging that Kelly left his service on 12 April 1843 without cause, and Kelly was bound to appear at court on 17 April 1843 (*Queen v. Cornelius Kelly* (13 April 1843), A.N.Q.M., Q.S.(F.)).

¹³⁹ As was mentioned earlier, the *Parish Statute of 1836* should not technically have been applicable in this case.

¹⁴⁰ *Kelly v. Geddes*, *supra* note 4.

tice.¹⁴¹ The Gettes case is of particular interest as it illustrates the fluidity of law during this period, overlapping criminal law with master-servant law to achieve justice.

The analysis of Montreal court records thus reveals that servants could either seek legal remedy under ordinary provisions of the law and prosecute their masters for assault and battery or attempt to do so under the provisions of master-servant law. As the case of Cornelius Kelly indicates, some courts even extended the reach of legislative enactments such as the *Parish Statute of 1836* and used it as a legal basis for enforcing master-servant law. Thus, courts could be highly responsive towards enforcing servants' rights and remedies, using their discretionary powers to promote the mutuality of obligations demanded by these contractual relationships.

B. The Master as Defendant outside the City Limits

Due to the dearth of information available on cases heard before justices of the peace outside the city limits, as well as the fragmentary nature of the surviving records themselves, one is necessarily hampered in analyzing the functioning of these courts as they enforced master-servant law. Examination of the quarterly returns for justices of the peace in the district of Montreal, however, indicates that master-servant disputes were one of the most common types of matters heard by these jurists. Masters were sued by servants during this period for wages due, physical mistreatment, non-performance of duty, and wrongful termination.

1. Unlawful Withholding of Wages

While the wage suits brought before the higher courts of Montreal far outnumber those found within the records of the justices of the peace outside the city limits, justices of the peace did grapple with such disputes.¹⁴² The quarterly return filed by a justice of the peace in 1840 for Sorel contained three such lawsuits.¹⁴³ In the first case, a master was convicted of owing 8s. 9d., and was ordered also to pay costs of 6s. 6d.¹⁴⁴ More interesting, however, are the two other cases heard before this justice, brought against different masters. In these cases the plaintiffs were unsuccessful, but the jus-

¹⁴¹ While neither the *Statute of 1817* nor the *Police Regulations* contained explicit provision for the cancellation of indentures due to ill-treatment, justices of the peace no doubt had the authority, real or perceived, to do so.

¹⁴² Further examination of wage suits is necessary before drawing inferences from this fact.

¹⁴³ It is striking that this was the only quarterly return found that explicitly contained wage suits. As mentioned, other wage disputes were likely classified as "non-performance of duty" cases (see Part IV.B.3, below) or were otherwise heard by higher courts in Montreal.

¹⁴⁴ *Louis Carré dit Laroche v. Zeba* [?] *Vangborn* (31 December 1839), Sorel, A.N.Q.M., Quarterly Returns for Justices of the Peace [hereinafter J.P.(Q.R.)].

tice nevertheless awarded costs to both of them.¹⁴⁵ It is intriguing to contemplate why this occurred, as it suggests the presiding justice was sympathetic to their claims while nevertheless dismissing their suits. Perhaps the justice felt bound to dismiss the complaints, but also believed the defendants had acted in bad faith. Regardless of the reason, these two cases in particular demonstrate that servants could occasionally bring unsuccessful legal proceedings against their masters and not be penalized financially for doing so.

2. Physical Mistreatment

While there is likewise a dearth of detail in cases of this kind, it is evident that the justices hearing these prosecutions did not shy away from scrutinizing the behaviour of the masters charged with ill-treatment. When a convincing argument was made, justices demonstrated their disapprobation of masters' conduct by releasing the prosecutors from service.

Just such a situation is recorded in the quarterly returns of the justices of the peace for the county of Two Mountains in 1840. The records reveal that three justices heard a suit brought by an adult (presumably not a relation) on behalf of Duncan McDonald, an apprentice tailor under the age of majority, against his master on charges of "[b]rutal Treatment to the apprentice." The court, upon hearing the evidence, convicted McDonald's master and fined him 2s. 6d. plus 10s. costs, while also releasing McDonald from service.¹⁴⁶ Unfortunately, it is impossible to ascertain from the records either the nature of the evidence presented or the relationship between the adult prosecutor and McDonald. It is interesting to contemplate, however, that a third party was willing to undertake the responsibility of prosecuting such a case in a local court.

In 1843, a servant in Beauharnois likewise filed suit to "annull [*sic*] an engagement", probably on the grounds of ill-treatment. The suit was successful, and the court annulled the indenture and imposed costs against the master of fourteen shillings.¹⁴⁷ J.A. Mathison, a justice of the peace in Vaudreuil, convicted another master for "[i]ll usage to his Servant," fined him 15s. and costs of 8s. 10d., and released the

¹⁴⁵ *Benjamin Therien v. Olivier Arieneau* (31 December 1839), Sorel, A.N.Q.M., J.P.(Q.R.) (suit brought "[f]or having refused to pay to his apprentice nine pounds, wages"; defendant acquitted but unsuccessful party given costs of eight shillings); *Sarah Gibbs v. Edward C. Allen* (31 December 1839), Sorel, A.N.Q.M., J.P.(Q.R.) (suit brought for 15s. in wages; defendant acquitted but unsuccessful party given costs of 5s. 6d.).

¹⁴⁶ *Robert McVicear for Duncan McDonald v. Benjamin Halebrook* (1 September 1840), Two Mountains/Argenteuil, A.N.Q.M., J.P.(Q.R.).

¹⁴⁷ *André Prevost v. Julius P. Colburn* (21 October 1843), Beauharnois, A.N.Q.M., J.P.(Q.R.).

servant from service.¹⁴⁸ These cases indicate that at least some servants were able to obtain justice by having their indentures or terms of service cancelled, as stipulated in the statutory enactments of the period. In all, four such cases were found for the years 1830 to 1845, three of which resulted in conviction.¹⁴⁹

From a modern perspective, these legal proceedings may be somewhat unsatisfying; one might wish that the masters had been heavily fined, imprisoned, or both. The nature of these records regrettably precludes comprehensive analysis of the evidence presented before these courts. The import of these cases brought before courts both within and beyond the city limits should nevertheless be fully appreciated. During this period, not only did legislative enactments stipulate that masters could be sued for ill-treatment and their servants released from service, but also courts recognized the limits of moderate chastisement at the hands of masters. The fact that such cases were possible is even more striking when one considers that courts were generally constituted by employers and members of the monied class, that physical chastisement was an accepted part of paternalistic relationships, and that various social and economic factors would have limited servants' flexibility of action. There is little doubt that what many servants ultimately sought was freedom from their indentures, and by extension, freedom from the oppressive conduct of their masters. That servants were not inhibited from seeking legal vindication is potent corroboration for the view that servants viewed the employment relationship as involving mutual duties, and that courts enforced the mutuality of obligations entailed by these relationships.

3. Non-performance of Duty

Found within the records of the justices of the peace for the district of Montreal were five prosecutions brought against masters for non-performance or negligence of duty towards their servants. These suits reflect the language of the *Parish Statute of 1836*, which allowed for prosecutions of both masters and servants for "repeated violations of the ordinary and established duties of the parties towards each other."¹⁵⁰ For example, in 1842 two successful suits were brought by servants in Saint Malachie de Ormstown. The quarterly return filed in July of that year discloses that a servant successfully prosecuted his master for "nonperformance of established duty of Master to servant," and was awarded 7s. 6d. plus court costs of 6s.¹⁵¹ Another master was condemned to pay "[o]ne months' wages and twenty shillings of penalty" plus courts

¹⁴⁸ *Jean Baptiste Adam v. Andrew Braddeur* (15 October 1842), Vaudreuil, A.N.Q.M., J.P.(Q.R.).

¹⁴⁹ The sole exception was a prosecution "pour mauvais traitement envers sa servante," in which the prosecutrix was unsuccessful and made to pay costs of 8s. 9d. (*Pauline Touchette v. Eustache Gratton* (30 June 1842), Ste. Marie de Monnoir, A.N.Q.M., J.P.(Q.R.)).

¹⁵⁰ *Supra* note 97, Preamble.

¹⁵¹ *Martin Neally v. John Carrie* (11 October 1842), St. Malachie de Ormstown/North Georgetown, A.N.Q.M., J.P.(Q.R.).

costs of 18s. 6d. for “neglect of duty between Master and Servant.”¹⁵² The reference to wages in this latter case suggests that a dispute over nonpayment of monies due, premature termination, or both might have been at the forefront of this suit.

In all but the previous case, the sparsity of detail in these records leaves no indication as to whether they implicated a failure to provide adequate food and board, ill-treatment, wage disputes, or the like. In contrast, surviving judicial records tended to be overt about servants’ gravamina. This fact, coupled with the observation that the only cases recorded as “non-performance of duty” prosecutions appear in the quarterly returns for Saint Malachie de Ormstown and Beauharnois, strongly suggests that this nomenclature was used by the presiding justices as a general descriptive term which may have encompassed any breach of a master’s obligations.¹⁵³ As such, non-performance of duty is best seen not as encompassing a distinct offence, but rather as a catch-all phrase. Regardless, what is evident is that unlike desertion cases, in which fines were imposed by courts and reverted to the treasury (except shares awarded to informants), these proceedings awarded damages as well as court costs to successful prosecutors.

4. Wrongful Termination

Only one case for what explicitly amounted to wrongful termination was found in the quarterly returns of the justices of the peace. On 15 April 1841, before a justice of the peace residing in Chambly, a master was sued for “compelling Plaintiff to quit his Domicile before the end of his term,” and the case was settled out of court.¹⁵⁴ Other such cases may have been brought under the rubric of wage suits, non-performance of duty between master and servant, or the like. In the absence of clarifying information contained in these primary sources, it is impossible to extrapolate with any degree of certainty from these records. Yet it is likely that in at least some instances of suits for wages, servants were suing to recover wages due them by virtue of their premature termination from employment.

¹⁵² *Patrick Lynch v. James Grundage* [?] (4 July 1842), St. Malachie de Ormstown, A.N.Q.M., J.P.(Q.R.).

¹⁵³ The other three such cases identified for this period were unavailing: *John Currie v. Alexander Steel* (13 April 1843), Beauharnois, A.N.Q.M., J.P.(Q.R.); *Michael Costello v. James Cowan* (13 April 1843), Beauharnois, A.N.Q.M., J.P.(Q.R.) (master awarded costs of 6s. 3d.); *Colin McFadden v. George Cross* (20 October 1841), St. Malachie de Ormstown/Beauharnois, A.N.Q.M., J.P.(Q.R.) (master awarded costs of five shillings).

¹⁵⁴ *Edward Coorney v. Samuel Whittaker* (15 April 1841), Chambly, A.N.Q.M., J.P.(Q.R.).

Conclusion

Master-servant law in Montreal, like other jurisdictions throughout the British Empire, shared certain common attributes, but was also a unique *mélange* shaped by the influences of French civil law and English common law. During the period from 1830 to 1845, master-servant law involved a multitude of sometimes-competing sources, including notarial contracts and verbal agreements, legislative enactments such as provincial statutes and municipal bylaws, and common law principles and the interpretations of individual judges in their discretionary role as arbiters of master-servant disputes.

While master-servant law traditionally favoured the rights and prerogatives of masters, by this time courts were centrally involved in adjudicating employment disputes that involved both parties to the employment relationship. Master-servant relationships had become largely contractual in nature, and as such entailed responsibilities on both parties. Servants were able to use the forums of local courts to protect their rights, and brought suit against their employers for unlawful withholding of wages, wrongful treatment, and other breaches of a master's duty. The number of servants who brought suit against their masters, as well as the variety of servants who appear within the judicial records, is witness to servants' access to courts during this period. Further, that servants were often successful prosecutors before courts of law is witness to the relative fairness of courts in adjudicating master-servant disputes.

Both legislative enactments and the disposition of cases for the judicial district of Montreal indicate that the law provided for, and enforced, limits on masters' behaviour. Municipal and provincial legislation provided remedies when servants were "too well used" by their masters, or when masters otherwise reneged on their obligations. During a time when the traditional elements that defined master-servant relationships continued to erode and employment increasingly came to be defined in contractual terms, servants frequently used the courts to enforce their contractual rights. While the balance of power in master-servant relationships during this period remained asymmetrical, the willingness of courts to enforce masters' responsibilities contributed to the gradual but inexorable trend towards a well-defined mutuality of obligations between master and servant.
